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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. - 198-  
T.A.No. 260 of 1986.

DATE OF DECISION 3.9.1987.

Shri.A.N.Banerjee Applicant/s.  
Shri.S.C.Bhandari Advocate for the Applicant/s.  
Versus  
The State of Maharashtra & Others. Respondent/s.  
Mr.M.I.Sethna Advocate for the Respondent(s).

CORAM:

The Hon'ble Vice-chairman Shri B.C.Gadgil.  
The Hon'ble Member (A) Shri L.H.A.Rego.

1. Whether Reporters of local newspapers may be allowed yes to see the Judgment?
2. To be referred to the Reporter or not? yes
3. Whether to be circulated to all Benches? yes

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

Transferred Application No.260/86

Shri. A.N.Banerjee,  
Deputy Inspector General of Police,  
Maharashtra State,  
R/o: 26, "Yashodhan",  
Dinshaw Vacha Road,  
Churchgate Reclamation,  
Bombay - 400 020.

.. Applicant  
(Original Petitioner)

Vs

1. State of Maharashtra.
2. P.G.Gawai,  
of Bombay, Indian Inhabitant,  
the Chief Secretary to the  
Government of Maharashtra,  
having his office at  
Mantralaya, Bombay 32.
3. K.K.Moghe, I.A.S.  
The Additional Chief Secretary  
to the Government of Maharashtra,  
Bombay 32.
4. M.S.Palnitkar, I.A.S.  
The Secretary to the  
Government of Maharashtra,  
Mantralaya, Bombay-32.
5. N.V.Sundaraman, I.A.S.  
Secretary to the Government of  
Maharashtra, Mantralaya,  
Bombay-32.
6. M.Subramaniam, I.A.S.  
Secretary to the Govt.of Maharashtra,  
Mantralaya,  
Bombay-32.
7. V.Prabhakar,  
Secretary to the Govt.of Maharashtra,  
Mantralaya, Bombay-32.
8. P.G.Salvi,  
The Secretary to the Govt.of Maharashtra,  
Mantralaya, Bombay-32.
9. K.B.Dabholkar,  
Assistant Secretary to the Govt.of Maharashtra,  
Home Department,  
Mantralaya, Bombay-32.
10. S.O.Rege of Thane,  
R/o. DIG's Bungalow,  
Kopri Colony, Thane.
11. S.G.Sahastrabhojane of Pune,  
R/o: Queen's Garden, Pune-1.

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12. S.M.Baranjape,  
404, "Shalaka",  
Maharshi Karve Road,  
Bombay - 400 023.
13. M.G.Katre,  
Old Secretariat,  
Office of I.G.P.Fort,  
Bombay-1.
14. J.F.Rebeiro,  
The Commissioner of Police for Thane Division,  
Korpri Colony, Thane.
15. C.V.Bapat,  
Sunset,  
J.Bhosale Marg,  
Opp.Mantralaya,  
Bombay.
16. V.A.Deshmukh,  
413, Shalaka  
M.K.Road, Bombay-400 021.
17. S.P.Singh,  
M.S.E.B.Quarters,  
Near Haji Alli,  
Bombay.
18. R.S.Kulkarni,  
Queen's Garden,  
Pune - 411 001.
19. A.M.Mistry,  
'Avanti',  
Narayan Dabholkar Road,  
Bombay - 400 006.
20. V.W.Pradhan,  
406, Shalaka,  
M.K.Road, Bombay-400 021.
21. D.Ramchandran,  
Yashodhan, 6th Floor,  
Dinshah Vachha Road,  
Bombay - 400 020.
22. R.Rangaraju,  
D.I.G.Bungalow,  
Near Police Head Quarters,  
Kolhapur.
23. S.Rammurthi,  
The Commissioner of Police,  
Police Commissioner's office,  
Pune - 411 001.
24. Union of India. .... Respondents.

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil  
Hon'ble Member(A) Shri L.H.A.Rego

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Appearances:

1. Mr.S.C.Bhandari, Advocate for the applicant.
2. Mr.M.I.Sethna, Counsel for the respondents.

JUDGEMENT (Per Shri B.C.Gadgil) Dated: 3.9.1987.

Writ Petition No.800/1981 of the file of the High Court of Judicature at Bombay has been transferred to this Tribunal for decision. The said Writ Petition is numbered as Transferred Application No.260/1986.

2. The application involves the question of promotions from the post of the Deputy Inspector General (DIG, for short) of Police to the post of Additional Inspector General of Police (Addl.I.G. for short). In the application (Original Writ Petition) the applicant (Original Writ Petitioner) has raised a number of contentions. However, all those contentions have not been pressed before us during the course of the arguments. Hence it is not necessary to mention all of them. It would be sufficient to discuss the respective contentions on those points which are agitated before us. These contentions will be dealt with at the appropriate place while discussing the relevant points in dispute.

3. There are certain disputed facts. The applicant joined the Indian Police Service (IPS, for short), (which is one of the All India Services) on 14.10.1954 in the Junior Time Scale, as Assistant Superintendent of Police. On 9.4.1960, he was promoted to the Senior Time Scale post of Superintendent of Police. The next promotional post is that of the Selection Grade. The applicant got this Selection Grade on 1.4.1976. On 3.1.1981, he was promoted to the post of DIG.

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4. On 22.4.1981, the Government of Maharashtra through a Resolution, upgraded six posts of DIG to those of Addl.I.G. On 26.8.1976, (vide Exhibit 'D', page 36 of the compilation) the Govt. of India (GOI, for short) issued guidelines, in respect of promotion to various grades, inclusive of the Super Time Scale posts in the IPS such as DIG, Addl.I.G.etc. On page 36, we see a letter from the GOI, addressed to the Chief Secretaries of all the States and Union Territories, to the effect, that the above guidelines annexed to that letter, should be followed, while selecting members of the IPS, for promotion to the various grades, including the Super Time-Scale posts. It is not in dispute, that the post of Addl. I.G. is a Super Time Scale post. The above guidelines prescribe constitution of a Screening Committee consisting of (i) the Chief Secretary; (ii) Home Secretary and (iii) the Inspector General of Police, to help scrutinise, promotion of the members of the IPS to various posts including that of the Addl.I.G. Guideline III(2) prescribes the "zone of consideration" for such posts. For promotion to the grade of Addl.I.G., it stipulates, that, the officers must have put in at least four years of service as DIG.

5. After six posts of DIG were upgraded to those of Addl.I.G. on 22.4.1981, the matter regarding promotion to these upgraded posts, was considered by a Screening Committee, known as the Establishment Board on the basis of these guidelines. The applicant's case was not placed before this Establishment Board, as he had not completed four years of service, in the grade of DIG as stipulated in the guidelines. In due course, promotion orders were issued, by which certain officers who were junior to the

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applicant, in the integrated seniority list for the IPS were promoted as Addl.I.G. Principally, it is this action of the respondents that is being challenged before us. The applicant has also challenged certain adverse remarks that have been entered against him in his Annual Confidential Reports (ACR for short).

6. We may briefly state the various contentions of the applicant. The Indian Police Service (Regulation of Seniority) Rules of 1954 provides for determining seniority of the members of the IPS. Rule 3 states, that every officer shall be assigned a year of allotment in accordance with the rules. Rule 4 deals with the seniority of the officers inter se. It is not seriously disputed before us, that the implication of these rules, is that the year of allotment would primarily be the basis, for determining seniority and that seniority so fixed, remained unchanged throughout the career of a Police Officer in the IPS. The applicant contends, that Respondents 18-23 are junior to him and that the Establishment Board considered the cases of these juniors, by ignoring him. It is alleged, that this was done by following an arbitrary instruction, that promotion to the upgraded post, should be considered on the basis of 'pay drawn'. The implication is, that DIGs drawing higher pay be considered in preference to those drawing less. It was contended, that these instructions were arbitrary and therefore, could not be given effect to. The respondents in their replies have denied, that any such administrative instructions were issued or that promotions were considered on the basis of the alleged criterion of 'pay drawn'. In view of this position, it is not necessary for us to consider the submission of the applicant, that the consideration of promotion, to the post of Addl.I.G

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on the above criterion of 'pay drawn', is bad.

7. The main attack of the applicant was on the above Guidelines of 1976. Rule 3(2A) of the Indian Police Service (Pay) Rules 1954 (hereinafter, referred to as the "Pay Rules") reads as follows:

"(2) A member of the Service shall be entitled to draw pay in the Selection Grade only on appointment to that grade.

"(2A) Appointment to the Selection Grade and to posts carrying pay above the time-scale of pay in the Indian Police Service shall be made by selection on merit with due regard to seniority:

"Provided that no member of the Service shall be eligible for appointment to the Selection Grade unless he has entered the fourteenth year of service calculated from the year of allotment to him under rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 or under regulation 3 of the Indian Police Service (Seniority of Special Recruits) Regulations, 1960, as the case may be."

It was contended by Shri Bhandari, for the applicant, that in view of the above Rule, promotion to the post of Addl. I.G. was to be made on the basis of 'selection-cum-merit' with due regard to 'seniority' and that it was impermissible for the Central Government, to issue the Guidelines of 1976, which had the effect of altering/modifying the said rule about selection. We have already observed, that the guidelines prescribe a "zone of consideration" in that, for promotion to the post of Addl. I.G. an officer must have put in at least four years of service in the grade of DIG. The argument of Shri Bhandari is, that this prescription about "zone of consideration", cannot be

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made by administrative instructions, as they run counter to the above mentioned rule 3 (2A). In rebutting this contention, Shri M.I.Sethna for the respondents asserted, that the guidelines stipulating four years of service in the grade of DIG, as pre-requisite for promotion to the post of Addl.I.G. was legal and proper and that these guidelines only supplemented or clarified, as to how the merit is to be assessed, with due regard to seniority. It is not disputed by both the learned advocates, that administrative instructions can be issued, when either there are no rules or when they are silent. It was their common ground, that such administrative instructions would be bad, if they tended to alter, amend or nullify the rules, framed under Article 309 of the Constitution. This position has been enunciated by the various decisions of the Supreme Court.

8. In the case of SANT RAM V. STATE OF RAJASTHAN reported in the AIR 1967 SC 1910, the Supreme Court observed that in the rules there was no specific provision laying down the principle of promotion of junior or senior grade officers to the selection grade posts. Government issued administrative instructions regarding the principle to be followed for such promotions. A question however, arose, as to whether such instructions were bad. The Supreme Court held as follows:

"It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not in-consistent with the rules already framed."

A similar point also arose in the case of GURDIAL SINGH FIJJI V. STATE OF PUNJAB reported in 1979(1) SLR (S.C.) 804. A State civil servant was to be selected for the Indian Administrative Service according to the pertinent regulations of 1955. Regulation 5(2) provides, that such selection

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selection is to be made, on the basis of merit and suitability in all respects, with due regard to seniority. Government issued a Resolution, that in considering such selection, the Chief Secretary should record an integrity certificate, while placing the case of a concerned candidate ~~is~~ before the Selection Committee. In the case of the applicant, however, the Chief Secretary did not issue this certificate. The applicant was therefore not selected. He moved the Court, challenging the decision not to select him. The Single Judge of the High Court rejected his contention, that the above mentioned Resolution was inconsistent with Regulation 5(2). In appeal, the Division Bench held, that insistence of such a certificate imposed restrictions and limitations on the Committee and hence this was inconsistent with the regulation. The matter went to the Supreme Court. The Supreme Court held, that maximum efficiency cannot be achieved, unless the concerned persons possess integrity as well as ability and that integrity is a sine qua non of merit and suitability. Thus executive decision requiring the issue of an integrity certificate, effectuates the above mentioned purpose of merit and suitability. The Supreme Court, therefore, held, that the Government orders in that respect did not transgress the requirement of the Regulations but were in furtherance thereof.

9. It is thus clear, that the executive by administrative instructions (~~can make provisions~~) if the rules are silent. Similarly administrative instructions would be valid, if they are supplementary to the rules. The grievance of Shri Bhandari, however, was that insistence of four years of service in the grade of DIG as a pre-requisite for promotion to the grade of Addl.I.G. would

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be illegal, as it introduced an additional element in the conditions of service not envisaged in the rules for the purpose of becoming eligible for promotion to the grade of Addl.I.G. In this regard, he relied upon the decision of the Supreme Court in STATE OF HARYANA v. SHAMSHER SANG, reported in AIR 1972 SC 1546. ~~These~~ That was a case regarding promotion to the post of Assistant. Under the relevant rules of 1952 these posts were to be filled in, by promotion. In 1958, Government issued instructions prescribing a test for such promotion. The instructions further stipulated that such a test would be a qualifying one. The rules however did not provide for such a test. The Supreme Court, therefore held as follows in this case (vide paragraph 7):

"Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affect the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Art.309 by means of administrative instructions. We are unable to agree with the contentions of the State that by issuing the instructions in question, the Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules."

Shri Bhandari also relied upon another judgment of the Supreme Court, in the case of S.L.SACHDEV & ANR V. UNION OF INDIA reported in 1980(3) SLR 503. The post in question was that of a Selection Grade UDC. This cadre of UDC was in a new organisation in the Savings Bank Control Organisation and Savings Bank Internal Check Organisation (SBCO-ICO). This new organisation was established from employees from two sources viz., (i) Audit Office and (ii) the Postal Employees. The Recruitment Rules of 1969

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prescribed, that the concerned officers should have put in a particular number of years of service. However, this aspect is not really relevant. What happened is, that in 1975, the Government issued instructions, that the UDCs originally belonging to the Audit Office, would be considered for the promotional post, to the extent of 20% of their strength and that the remaining posts of the Head Clerks would go to non-Audit Office UDCs. These instructions were challenged on the ground, that they had the effect of amending the Recruitment Rules. The challenge was accepted and the Supreme Court observed as follows in para 13:

" Apart from this consideration, we are unable to understand how the Director General could issue any directive which is inconsistent with the Recruitment Rules of 1969 framed by the President in the exercise of his powers under Article 309 of the Constitution. Those Rules do not provide for the kind of classification which is made by the Director General by his letters to the Head of respective Circles of the new organisation. It may be recalled that the Recruitment Rules only provide for a classification on the basis of the length of service in the new organisation. Any directive which goes beyond it and superimposes a new criterion on the Rule will be bad as lacking in jurisdiction. No one can issue a direction which, in substance and effect, amounts to an amendment of the Rules made by the President under Article 309. This is elementary. We are unable to accept the learned Attorney General's submissions that the directive of the Director General is aimed at further and better implementation of the Recruitment Rules. Clearly, it introduces an amendment to the Rules by prescribing one more test for determining whether UDCs drawn from the Audit Offices are eligible for promotion to the Selection Grade/Head Clerks Cadre."

Another decision of the Supreme Court in the case of GURNAM SINGH V. STATE OF RAJASTHAN & ORS. reported in 1971(2) SLR 799. The applicant before the Supreme Court entered the Rajasthan Administrative Service in 1957, by direct recruitment. In 1967 the applicant along with others was considered for promotion to the senior scale. These promotions were governed by the relevant rules, which provide that promotion would be on the

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basis of merit alone. Government issued orders giving detailed instructions, as to how merit was to be assessed. These instructions show, that it was not open to the Selection Committee to ignore them. The merit formula was prescribed by the instructions. Award of marks based on grading of performance of the person assessed was prescribed as under:

<u>Grading</u>	<u>Marks awarded</u>
Excellent	5.0
Very Good	4.0
Satisfactory	2.5
Unsatisfactory	2.0
Adverse Report	1.5
Adverse Report with punishment.	1.0

The record of service was to be assessed for the immediate preceding 5 years only. These and other similar instructions were struck down by the Supreme Court. The Supreme Court held, that these instructions did not fill up the gap in the recruitment rules, and therefore, Zonal Selection Committee by these instructions and consequently the Committee could not assess merit, by taking into account other relevant factors. In view of the law pronounced by the Supreme Court as above, it is really not necessary for us to refer to the decisions of the High Courts.

10. However, we would briefly make a mention of a decision of the Punjab and Haryana High Court (on which Shri. Bhandari relied), (in the case of UTTAM SINGH v. STATE OF PUNJAB & ORS. reported in 1973(2) SLR 815) Before the High Court, the question was about promotion to the post of Assistant. Under the relevant rules, such promotion was to be effected from

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amongst clerks who had proved their fitness for promotion. It appears that the Public Service Commission, in the course of correspondence with it, suggested, that a clerk should have experience of at least five years of service. Government adopted this suggestion without amending the Rules. The applicant before the High Court, was not considered for promotion on the ground, that he did not possess five years of experience. The High Court held, that the applicant was wrongly overlooked for promotion, on the ground of his experience being less than five years.

11. Shri Sethna submitted, that the requirement of four years of service in the Grade of DIG was not really an addition to the Rules for selection but was only a detail specifying the ambit of "zone of consideration" and that this had been done, to bring about uniformity in the country. According to him, Rule 3(2A) was silent as regards the requirement of a particular number of years of service and that the guidelines only sought to fill in this gap. He further contended, that in effect, the guidelines were intended to supplement the rules. He further argued, that they were clarificatory in nature, with a view to indicate, as to how merit could be assessed on the basis of experience. Furthermore, he submitted, that the experience in the feeder post and its sufficiency thereof, would be a relevant factor, while considering the merits and that this aspect was implied in the process of selection. According to him all that the guidelines purported to do, was, to enunciate such implied principle, by specifically providing, that the candidate must have at least four years of experience in the feeder post.

12. In our opinion, it will not be possible to accept the submissions made by Shri Sethna. We have already observed, that Rule 3(2A) provides that selection would be on merit with

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due regard to seniority. Necessarily therefore, all persons from the feeder post of the DIG, are required to be considered for the purpose of deciding as to whether they stand the above test. The guidelines in substance, have therefore taken away the right of a DIG, with less than four years of service for being considered for selection to the post of Addl.I.G. Such a provision in the guidelines, would go against the basic rule 3 (2A). It will not be possible for the Government to validly contend that the said guidelines are supplementary or clarificatory in nature. In fact it ~~classifies~~ the DIGs into two groups and precludes one of the groups namely, that which has not put in four years of service from being considered for promotion to the grade of Addl.I.G.

13. Shri.Bhandari focussed on the proviso to Rule 3(2A), which states that a Police Officer will not be eligible for the Selection Grade, unless he has entered the 14th year of service. The fact that the rule-making authority, has made such a provision in the rule itself, is an indication that a provision of that type cannot be made by administrative instructions. We find much substance in this contention of Shri.Bhandari.

14. The matter can also be viewed from another angle. We have already observed, that the applicant is senior to Respondents 18-23. On account of the guidelines, the applicant's claim on the basis of seniority for being considered along with his juniors, is prejudicially affected. This is not permissible, unless a provision in that respect, is made under the Rules and not by mere administrative instructions. Thus the applicant has a right for appropriate relief, when his case was wrongly not considered for the post of Addl.I.G.

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15. Shri.Bhandari next relied upon the decision of the Bombay High Court in the case of RAMBHAU RAGHOBALJI REWATKAR V. STATE OF MAHARASHTRA & ANR., 1985 Labour and Industrial Cases 1986. It was held therein, that the guidelines cannot be treated as a condition of service, if marked as "confidential". This aspect however, is not relevant, as we have already held, that the guidelines requiring four years of service as DIG, would not be valid, as it amounts to a condition of service. If it is assumed, that this does not constitute a condition of service, then the guidelines would be valid and in that case, it would be very difficult to hold that the guidelines (which do not constitute a condition of service) would not be valid, merely because they are marked as "confidential". In this particular case, it is significant to note, that the applicant ~~himself~~ <sup>seems</sup> has produced these guidelines which ~~exposes~~ <sup>exposes</sup> their confidentiality. (1) *Ans*

16. The alternative submission of Shri Bhandari was, that the guidelines, even if held to be valid, have not been properly followed. We have already observed that the guidelines stipulate a Screening Committee of three officers. However, in the State of Maharashtra, another body known as the Establishment Board, has been performing the function of a Screening Committee, ~~but~~ <sup>but to</sup> composition of that Board does not conform to that prescribed in the guidelines. We were informed, that the Establishment Board in Maharashtra, comprises ~~of~~ the Chief Secretary and three Secretaries of the Government nominated by rotation every year. In addition, the Home Secretary, if he is not so nominated as mentioned above, as also the IGP, attend as invitees. Shri.Bhandari contended, that an Establishment Board of the like, was a deviation from the guidelines and therefore consideration by it, of promotions to the various posts was bad. The respondents however clarified the matter,

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through a written affidavit dated 18th September 1981, filed by Shri Somanath Dattatraya Limaye, Under Secretary (vide page 46 of the compilation). He has stated, that the State of Maharashtra had proposed to the GOI, that the above Establishment Board be entrusted, with the task of selecting officers for promotion in the IPS cadre and that the GOI had agreed to ~~it~~ <sup>the</sup> ~~in the course of~~ the arguments, Shri Sethna produced before us a copy of this proposal dated 20th Feb. 1977 and the approval of GOI thereto, on 10th April 1977. It is thus clear, that the GOI accepted the proposal of the State Govt. that the above Establishment Board may screen the officers, for selection to the post in question. In view of this, it is not open for Shri Bhandari to contend, that the Establishment Board was not properly constituted as a Screening Committee, as prescribed in the guidelines.

17. The guidelines prescribed a minimum of 8 years of experience as DIG for promotion to the post of Special Inspector General and/or Inspector General. In this litigation, we are not much concerned with promotions to the post of Special Inspector General and/or Inspector General. However, Shri. Bhandari urged, that the guidelines were not observed when Sarvashri Chaturvedi, Kasbekar and Joshi were considered for the post of Special Inspector General and Inspector General as they had not completed the prescribed minimum of 8 years of service as DIG. In our opinion this aspect is irrelevant, while deciding the controversy before us. Besides, the guidelines if valid, would not become bad, merely because they were not observed. In that case, the aggrieved person is at liberty to agitate the question about prejudice caused to him on account of such non-observance and this point would need to be decided independently on its own merits. It will not, therefore, be possible for Shri Bhandari to contend, that the guide-

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lines, if assumed to be valid, were nullified on account of non-observance.

18. Through a belated application in 1987, the applicant seeks certain reliefs, regarding the expunction of adverse remarks in his ACRs for the years 1968-69, 1969-70, 1973-74, 1974-75 and 1978-79. Copies of these remarks are at Exhibits F-1 to F-4 (vide pages 39b to 39e of the compilation) while the copy of the ACR for the year 1978-79 is at Exhibit E (page 39A of the compilation). The contention of the applicant is, that the first four reports are far too vague, ~~as~~ to be termed as adverse. The applicant has, therefore, prayed for a declaration that these reports are not adverse. It is, however, material to note, that the applicant has represented against these reports in the past and his representation was rejected. That suggests, that the applicant himself had treated these reports as adverse. This ~~aspect~~ there is much substance in the contentions of the respondents, that the applicant should be barred from agitating against these reports so belatedly in 1987, when the matter had become ~~at this distance of time~~ <sup>old</sup>. Rule 8 of the All India Services (Confidential Rolls) Rules 1970, provides, that an adverse or a critical remark, entered in a confidential report, has to be communicated to the officer concerned. Thus even a critical remark is required to be communicated. The applicant had earlier represented against these remarks. We would be loathe to countenance the rather vain effort of the applicant, to resurrect those representations after such a long lapse of time, when the adverse remarks have become "ancient". The request of the applicant to declare these remarks ~~is~~ not adverse, in these circumstances is therefore ill-founded.

19. Another contention of the applicant was, that the above mentioned remarks are "washed off", when the applicant

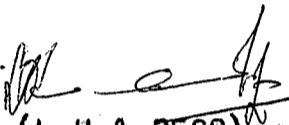
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was promoted as DIG in the year 1981 and that they would be irrelevant, while considering the claim of the applicant for further promotion to the post of Addl.I.G. Reliance in this regard, was placed on the decision of the Supreme Court in the case of STATE OF PUNJAB V. DEWAN CHUNI LAL reported in AIR 1970 SC 2086. In this case prior to 1944, certain adverse remarks on the ground of inefficiency and dishonesty were written against a Police Sub-Inspector (PSI). However, that PSI was allowed to cross the Efficiency Bar in 1944. A question arose, as to whether these adverse remarks would be relevant for holding a departmental enquiry after 1944. The Supreme Court held, that such remarks cannot form a basis for holding a departmental enquiry after 1944, on the charge of dishonesty and inefficiency. Shri Bhandari further relied upon the decision of the Allahabad High Court in the case of DR.GIRISH BIHARI V.STATE OF U.P. & ORS. reported in 1982 Labour and Industrial Cases, 1500. It was also a case of selection under Rule III(2A). There were certain adverse remarks against Dr.Girish Bihari in some years before 1975-76. In 1974, the applicant was promoted to the Selection Grade and was later, confirmed in that grade in 1977. The High Court held, that in view of promotion to the Selection Grade, the earlier adverse remarks were "washed off" and that they would be irrelevant, while considering the incumbent, for further promotion to the post of DIG. It was contended by Shri.Bhandari that the adverse remarks in question were thus "washed off". Repelling this contention, Shri Sethna submitted, that these remarks would be relevant, while considering the case of selection based on merit. According to him, the entire service record would be relevant. We would refrain from expressing a view, one way or the other at this stage.

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20. The net result, therefore, is that the application partly succeeds. The action of the State Government and the Establishment Board in not considering the case of the applicant for promotion to the post of Addl.I.G. on 21st May 1981, is illegal. The State Government and the Establishment Board <sup>co-federatively, say within a period of 4 months</sup> are hereby directed, to consider, the case of the applicant as on 21.5.1981, for the post of Addl.I.G. after ignoring the fact that the applicant had not completed four years of service as DIG in May 1981. It is needless to say, that if on such consideration, the applicant is found fit for selection he would have the benefit of selection to the post of Addl.I.G. from the date his junior is selected to that post after 21.5.1981. Parties to bear their own costs of the application.

  
(L.H.A. REGO) 3-10-1987  
Member(A)

  
(B.C. GADGIL)  
Vice-Chairman