

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.926/89

Vasant Waman Pradhan,
Flat No.406,
Shalaka
Maharshi Karve Road,
Bombay - 400 021. .. Applicant

vs.

1. State of Maharashtra
through
Chief Secretary,
General Administration Department,
5th Floor,
Mantralaya,
Bombay - 400 032.

2. Union of India
through
Secretary,
Ministry of Home Affairs,
New Delhi

and 23 others. .. Respondents

Coram: Hon'ble Member(J)Shri D.Surya Rao

Hon'ble Member(A)Shri M.Y.Priolkar

Appearances:

1. Mr.G.K.Masand
Advocate for the
Applicant.

2. Mr.M.I.Sethna
Counsel for the
Respondents, I.L.S.

JUDGMENT:
(Per D.Surya Rao, Member(J))

Date: 26-11-1990.

The applicant herein is a senior I.P.S.
officer of the Maharashtra Cadre in the rank of
Deputy Inspector General of Police - Level I. He is
aggrieved by the order of the State Government
No.I.P.S.3187/3/3368-POL-I dated 3.12.1988 informing
him that the Govt. had decided not to promote him to
the post of Special I.G.P. since the Establishment
Board(Screening Committee) had found that the applicant

did not achieve the minimum gradation of B+ (positively good) required for promotion to this post. Before dealing with the contentions raised herein, it would be necessary to refer to certain factual aspects, as is contained in the records produced and the material papers filed herein.

Earlier to the filing of the present application the applicant had filed W.P.623/1985 before the High Court of Bombay assailing the action of the Govt. of Maharashtra in not promoting him to the post of D.I.G. Level-I (which post he is now occupying) with effect from 1983 and his consequent non-promotion as Special Inspector General of Police with effect from November, 1984. The applicant's name came up for consideration along with other eligible I.P.S. officers in November, 1984 for these two posts before an Establishment Board constituted for this purpose, by the Govt. of Maharashtra in accordance with the guidelines issued by the Govt. of India. The applicant's confidential reports upto 1983-84 were considered on 6-11-84 and after such consideration he was not found fit for promotion even to the post of D.I.G. Level-I. Since promotion to Special I.G.P is from D.I.G. Level-I/Additional I.G.P. he was not at all considered by the Establishment Board for the higher post of Special I.G.P at that time. At the time when the Board met on 6-11-84 there were certain adverse remarks recorded in his C.R. for the period 1-10-81 to 31-3-82 which had not been communicated

to him as well as certain adverse remarks for the period 1-4-83 to 31-3-84 which were communicated to the applicant only on 5-3-1985 i.e. after the meeting of the Establishment Board on 6.11.84. The plea of the applicant before the High Court of Bombay in W.P.623/85 was that he had made a representation against the adverse remarks for 1983-84, that no action was taken thereon, that the adverse remarks should be quashed and that he must be given promotion as D.I.G. Level I and thereafter as Special I.G.P. During the pendency of the Writ Petition the adverse remarks for 1983-84 were partly expunged by Govt. themselves. In view therefore of a learned Single Judge of the Bombay High Court ordered on 6-5-1985, by way of interim directions, that the State Government should consider the case of the applicant for the promotions. Thereafter the Establishment Board met on 21-5-1985 and after perusing the applicant's A.C.Rs upto the year 1983-84, reconsidered the decision taken on 6-11-84 and found the applicant was fit for promotion to the post of D.I.G.Level I but not fit for further promotion to the post of Special I.G.P. At the meeting held on 21.5.85 the fitness of the applicant alone for promotion was taken up by the Board and no comparative assessment was done vis-a-vis the applicant and other officers who had come up for consideration on 6-11-84.

Pursuant to further directions of the High Court dtd. 4-4-1986 the Board again met on 29-4-1986 and a comparative assessment was made of the applicant and other officers who were considered for promotion on 6-11-1984 and the applicant was graded as B. Two of his seniors S/Shri S.P.Singh and A.M.Mistry were graded as A and B+ while three of his juniors S/Shri V.K.Saraf, R.Balakrishnan and D.Ramachandran were graded as A, A- and A respectively. The Board held that an officer to be eligible for promotion to the grade of Special I.G. should get a grading of B+(Positively good) and since the applicant did not get this grading he is not fit for promotion.

Thereafter W.P.623/85 was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985, re-numbered as Transfer Application 397/1987 and disposed of on 6-4-1988. The Tribunal noted that for the year 1981-82 the Reporting Officer S.K.Chaturvedi wrote a very good report about the applicant but the reviewing authority the then Home Secretary B.K.Chowgule had stated as follows:-

"I do not agree with the report of the Reporting Officer. He did not impress me as an active officer. I would rate him as just an average officer. Not yet fit for promotion."

The Tribunal also noted that for the year 1983-84 the reporting officer had written very good remarks

but the Reviewing officer (again Shri B.K.Chowgule, Home Secretary) had made the following remarks which were communicated :-

"He is an average type of officer. he will not be of much use to Government in most of the assignments at his level. Work not upto the mark. His integrity is doubtful as complaints against him were received about asking money from subordinates."

The Tribunal also noted that in the C.R. for 1983-84 the remarks about the alleged want of integrity had been expunged by the Govt. itself but the adverse remarks for 1981-82 still remained. After considering the rival contentions, the Tribunal held that the adverse remarks for 1981-82 were not communicated and that the case of the applicant for promotion should be reconsidered ignoring the adverse remarks for 1981-82. In regard to the remaining adverse remarks for 1983-84, viz. the remarks remaining on record after expunction by Govt. itself of the remarks relating to lack of integrity, the Tribunal agreed with the counsel for the applicant that they are vague and purely subjective in nature and directed that these remarks should also be expunged. The Tribunal observed that since the applicant had got a grading of 'B' despite the adverse remarks of 1981-82 and 1983-84, he would necessarily improve if these remarks are not taken into account, but left it open to the Establishment Board to determine

the aspect about improvement in rating. The Tribunal finally allowed T.A.397 of 1987, with a direction to the respondents, to reconvene the Establishment Board, with a view to consider the claim of the applicant for the post of Special I.G. as on 16.11.84 along with other officers promoted, in accordance with the directions and observations made in the judgment.

2. As a result of the direction of the Tribunal dtd. 6.4.1988 the Establishment Board again met on 28.10.1988. The Establishment Board evaluated him and again gave him the grading 'B'. Since he did not obtain grading of "B+" (positively good), which according to the committee is the minimum required for promotion to the grade of Special I.G.P, the committee declined to recommend him for promotion. It is this recommendation of the Board which gave rise to the impugned order of the State Govt. dated 3.12.1988 which is assailed in this application.

3. We have heard the arguments of Mr.G.K. Masand, learned counsel for the applicant and Mr.M.I. Sethna, Standing Counsel for the State of Maharashtra for respondents 1 to 5.

4. Before considering the rival contentions it would be useful to refer to the rule position in relation to promotion to posts above the higher scales

in the IPS for promotion to the supertime scales of pay of the IPS i.e. to posts of DIG Level-II and above, the relevant rules governing such promotion are the IPS Pay Rules 1954 (hereinafter referred to as the Pay Rules). Rule 3(2)(A) of the Pay Rules provides that selection to the Supertime scales shall be based on merit with due regard to seniority. The Ministry of Home Affairs, Govt. of India had also issued guidelines in letter No.26/20-76-I.P.S. Cell dated 26th August, 1976 as contained in the annexure to the said letter to regulate promotions to the Senior Scale, Selection Grade and Supertime Scale of the I.P.S. These guidelines provide for constitution of a Screening Committee, zone of consideration of officers for promotion to the grade of D.I.G., Addl.I.G. and I.G., method of selection and period of validity of a panel. Under the head "Method of Selection", the guidelines provide that Selection should be based on merit with due regard to seniority as provided in Sub Rule 2(A) of Rule 3 of the Pay Rules, that suitability of officers may be judged by evaluating their character roll record as a whole and general assessment of their work, that reasons for supersession may be kept on record in the case of officers not included in the panel and that a special review may be done in cases where adverse remarks in the C.Rs are expunged after representation. It would also be useful to refer to the gradings to be given by the Screening Committee in evaluating the merit of the officers and

the minimum grading which an officer should secure to become eligible for promotion. Admittedly the Pay Rules of 1954 or the guidelines Dtd. 26.8.1976 issued by the Govt. of India do not provide for gradings nor do they prescribe any minimum grading which an officer is required to secure for promotion. However, the Maharashtra Government had issued instructions in the form of resolutions, prescribing gradings when selections were to be made for promotions. The State Govt. also prescribed a minimum grading in respect of certain posts. These resolutions have been enclosed as Exhibits P.2 to P.4 to the rejoinder filed on behalf of the State Govt. Ex.P.2 is a resolution of the Govt. of Maharashtra dtd. 28-1-1975 and paragraph 2 thereof lays down that promotion to posts above Class I should be by strict selection and that only persons who possess "positive merit" and achieve tangible results should be considered suitable for promotion irrespective of seniority.

Paragraph 3 prescribes the same criteria for promotion to the posts of Heads of Departments. Ex. 3 is a State Govt. resolution dtd. 1-4-1976 which clarifies at para 3(b) how positive merit is to be determined and is in the following terms, "For being considered as a person possessing positive merit a Government servant's record should be free from serious blemish and should show that a person concerned is able,

not only to discharge efficiently the duties of the post held by him for the time being, but to shoulder the duties and responsibilities of a higher post."

P. 4
Ex. 4 is a resolution of the State Govt. dtd. 7.7.1987 requiring gradings to be given to officers on the basis of the confidential rolls. The gradings

prescribed are A+(outstanding), A(Very good), A-

(nearing very good), B+(positively good), B(good),

B-(Average) and C(below average). Ex. 5 is a resolution

dtd. 19.9.77 which replaces para 3(b) of the earlier

resolution Ex. B-3 dtd. 1-4-76 in regard to determi-

nation of positive merit and is in the following

terms, " for a Govt. servant to be considered as

possessing positive merit, the overall assessment

of his record should show that he possess positive

qualities like initiative, drive, integrity and efficiency

to a noticeably higher degree than necessary for

discharging efficiently the duties of the post held by

him and also shoulder the responsibilities of a higher

post. The person should be clearly fit for promotion

to a higher post and should not be a borderline case."

The minutes of the proceedings of the Screening

Committee dtd. 28.10.1988 disclose that the committee

consisted of 4members besides the Chief Secretary.

At this meeting on 28.10.1988 no comparative assessment

was made vis-a-vis the applicant and the other persons

selected, pursuant to the earlier meeting of the

Screening Committee held on 6.11.84. ~~and~~ ^{as} the applicant alone was considered and an assessment as to his fitness was made on a scrutiny of his confidential rolls for five years 1979-80 to 1983-84. The minutes disclose that each of the four members of the committee gave a grading for each of the five years and then proceeded to give an overall grading for all the five years. The Chief Secretary did not independently give any gradings but on the basis of the gradings given by the other 4 members gave an overall grading. The minutes disclose that one member gave the applicant a grading of B+, that three members gave him a grading of B and on the basis ^{thereof} ~~the~~ the Chief Secretary gave the applicant a grading of B. Since the applicant did not get a minimum grading of B+(positively good) he was considered not fit to be promoted to the post of Special I.G..

5. Before dealing with the rival contentions it would be necessary to consider the question of the right of the applicant to inspection of documents and the claim of privilege thereto by the respondents. The applicant had sought production of the minutes of the Establishment Board meetings held on 21-5-1985, 11-2-1986, 29-4-86, 6-4-1988, minutes relating to the selection of respondents 6 to 25 and all rules, regulations, guidelines, resolutions and other documents prescribing criteria for selections. The respondents have produced all the relevant files relating to the minutes of the meeting including the minutes

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different meetings including the minutes of the meetings held on 6.11.84 and have made them available to the Tribunal. They have also produced the relevant resolutions (vide annexures to their rejoinder). The respondents have also produced the confidential reports relating to the applicant and those juniors to him, who have superseded him as a result of the Screening Committee recommendations dated 6.11.84. While doing so the respondents have claimed privilege and contended that the applicant should not be shown either the minutes or the confidential reports. Applying the Full Bench decision of the Tribunal in B.N.Rangwani v. Union of India - 1988(4)SLJ 684 (CAT), we have over ruled the claims of privilege in regard to the minutes of the meeting held on 28-10-88 which are the proceedings impugned in this application. We accordingly showed a copy of the minutes and ~~and~~ ~~not~~ read out the gradings given by the Screening Committee members and the final grading given by the Chief Secretary of B+. We have extracted the substance of the minutes of the earlier committee meetings to the extent relevant ^{in P} the paragraph 2 supra to complete the sequence of events.

6. We will now deal with the various contentions raised on behalf of the applicant by Sri Masand in support of the pleas that the proceedings of the

Establishment Board/Screening Committee dated 28-10-88 and the consequential impugned order of the State Government dated 3-12-1988 are illegal and liable to be quashed and further that the applicant is entitled to a direction that he is deemed to have been selected to the post of Special Inspector General of Police. The first contention raised by Sri Masand is that the proceedings of the Establishment Board/Committee dated 28-10-1988 and the impugned order dated 3-12-1988 of the State Government are liable to be set aside and that the applicant is entitled to a direction from the Tribunal that the respondent-State do promote him as Special I.G. of Police from the date on which his juniors were promoted. As already stated earlier at para 4, Rule 3(2)A of the Pay Rules prescribes that the appointment in question should be based on merit with due regard to seniority. Paragraph 2 of Ex.P.2 the resolution of the State Government dated 28-1-75 on the other hand prescribes that promotion should be made only on the basis of positive merit irrespective of seniority. The minutes of the Establishment Board/Screening Committee disclose that no weightage whatsoever was given to seniority and that the sole reason for not selecting the applicant was that on an evaluation of his character rolls he was categorised as B (Good) and not B + (Positively good). The decision of the Screening Committee

in basing the selection on positive merit alone is thus contrary to Rule 3(2)A of the Pay Rules as reiterated in the guidelines of the Government of India dated 26-8-1976. Again the Board/Committee has given no reasons whatsoever as to why the applicant was superseded. The guidelines issued by the Government of India dated 20-8-1976, require that reasons for supersession of the applicant ought to have been recorded. The minutes of the Board/Committee do not contain any such recorded reasons and consequently the decision of the Committee is clearly in violation of the prescribed guidelines. It was contended by Sri Sethana on behalf of the respondents-State Government that the Committee has evaluated the applicant after scrutiny of his confidential rolls as B (Good) and since the others including the juniors to the applicant selected in November 1984 had been evaluated as B + (positively good) no further reasons need be recorded. In our view, this is no answer to the violation of the statutory rules and the guidelines prescribed. The matter is covered by the observations of the Supreme Court in AIR 1974 SC 87 (M.L.Capor Vs. Union of India). That was no doubt a decision rendered in regard to selection of State Civil and Police Service officers and the selections were to be done in accordance with the I.A.S./I.P.S. (Appointment

by Promotion) Regulations 1954. Rule 5(2) of the regulations as they then stood provided that the select-list shall be based on merit and suitability in all respects with due regard to seniority. ^{Thus P} Rule 5(2) was similar to Rule 3(2)A of the Pay Rules. ^{Again P} Rule 5(5) of the Promotion Regulations stated that if it is proposed to supersede any ^{number} (of the State Civil Service) the Committee shall record its reasons for the supersession. This regulation is similar to para (3) (iv) of the guidelines dated 26-8-1976 which requires that the reasons for supersession may be kept on the record in the case of Officers who are not included in the panel. The Supreme Court considered the scope and effect of Regulations 5(2) and 5(5). In regard to the prescription as to seniority in Rule 5(2) it was observed:-

"the required number has thus to be selected by a comparison of the merits of all the eligible candidates of each year. But in making this selection, seniority must play its due role. Seniority would however be only one of the several factors affecting assessment of merit as comparative experience in service should be. There could be a certain number of marks allotted, for purposes of facilitating evaluation to each year of experience gained in the service."

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Again in regard to recording of reasons it was observed in Capoor's case as follows:-

"In the context of the effect upon the rights of aggrieved persons as members of a public service who are entitled to just and reasonable treatment by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts in service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the selection committee. This is all that the supposed statement of reasons amounts to."

These observations of the Supreme Court are in our view apposite and give a complete answer to the arguments of Sri Sethana. The Committee went through a process of selection and gave gradings which is not based on reason. The process was gone through and nothing more, ignoring

the requirements of Rule 3(2)A of the Pay Rules and the guidelines of the Government of India dated 28-6-1986.

The proceedings of the Screening Committee dated 28-10-88 and the consequential order of the State Government dated 3-12-1988 are therefore illegal.

7. It is next contended by Sri Masand that the Board/Committee had acted illegally in adopting the Maharashtra Government Resolutions Ex.P.2 to P.5 annexed to the rejoinder filed by the State Government. As already stated supra, the State Government Resolution dated 28-1-75 lays down that an officer can be promoted only if he possesses 'positive merit' while the Resolution dated 7-7-87 lays down the gradings which can be given to an officer, one of which is B + (positively good). Sri Masand contends that the Board/Committee has treated a grading of B+ as synonymous with positive merit and since it did not give the applicant this grading, it had held him ineligible for promotion as Special I.G. of Police. He contends that the Pay Rules or the guidelines of the Government of India do not provide for a minimum grading for an officer to be promoted to the super time scale of Special I.G. and as such the application of the State Government resolutions is contrary to the former. Sri Masand also contends that the adoption of the State Government's resolutions is violative of the

rights of the I.P.S. Officers of the Maharashtra Cadre conferred under Article 14 of the Constitution. It is contended that the I.P.S. constitutes an all-India Service governed by the All-India Services Act 1951 and the rules framed thereunder, that there have to be uniform criteria throughout the country for determining the method of promotion to senior scale posts and that if each State applies different criteria then that would amount to discrimination vis-a-vis officers serving in ^{one} the State, in comparison with those serving in another State. We are unable to agree with this latter contention. For purposes of promotion to the senior time scale posts the competition is between officers belonging to a particular state cadre and not inter-se between officers belonging to different State cadres. Officers allotted to the States and forming a part of the State cadre constitute a distinct class in comparison with officers of other State cadres though they come up for appointment through a common selection process. Prescription of a minimum standard of efficiency for senior time scale posts viz. that he must get a minimum grading of B+ (positively good) cannot, therefore, be termed violative of the rights of the applicant guaranteed under Article 14 of the Constitution. But the method adopted for evaluating whether he is positively good must not be in violation of the Pay Rules of 1954 and the guidelines dated 26-8-1976. The State Government resolution Ex.P.2 dated 28-1-75 specifically directs

selection to be made irrespective of seniority. Hence if the grading B+ (positively good) is to be assessed ignoring seniority such a selection would be bad. While holding that it is open to the State Government to prescribe that an officer for selection as Special I.G. should get a grading of positively good, we are of the view that for assessing such 'positive merit' seniority should have also been one of the factors to be taken into consideration and due weight should be given by the Committee to seniority. Since the State Government Resolution directs ignoring seniority, the resolutions of the State Government as framed cannot be applied to selections to the All India Service. Therefore, the manner of assessment adopted by the Screening Committee in coming to the conclusion that the applicant should be categorized as 'B' and not 'B+' is liable to be quashed since the assessment made therefor was contrary to the Pay Rules or the guidelines.

8. We will now take up the question whether the screening committee proceedings are liable to be struck down on the ground that the Tribunal's judgment dated 6-4-1988 was not duly implemented. Sri Masand's first objection is that the Screening Committee was directed to make a comparative assessment of the applicant and others including his juniors selected on 6-11-1984,

whereas the Committee had on 28-10-1988 considered only the case of the applicant individually. It is not denied that there ~~were~~^{was} any comparative assessment of the applicant alongwith others. The contentions in reply of Sri Sethana are two fold: Firstly, that a reading of the Tribunal's order as a whole would disclose that it was not necessary to make a re-evaluation of all the officers and all that the Tribunal intended was a review. We are unable to agree with this contention. There was a specific direction of the Tribunal that the Establishment Board should consider the claim of the applicant to the post of Special I.G. as on 6-11-1984 alongwith the officers who have been promoted on the basis of Establishment ^{Board} meeting held on that day. This would establish that the intention of the Tribunal is not for a review of the applicant's individual case but a comparative assessment. In any event, legal authority is in support of the proposition that comparative assessment is a must. Sri Masand has relied on the decision of the Principal Bench of the Tribunal reported in 1988(1) S.L.J. (CAT) 273 (Kohli Vs. Union of India) wherein in reply to the contention that there is no need for comparative assessment, it was

held that:

"this approach to our mind wholly militates against the very concept of selection on 'merit' with due regard to seniority as embodied in Sub-rule (2-A) of Rule 3 of the I.P.S. (Pay) Rules 1954.

In coming to this conclusion, reliance was placed by the Principal Bench on the observations of the Supreme Court in 1975 SLJ 150 (SC) (Parvez Quadir Vs. Union of India) wherein it was held that:

"it is the duty of the Special Selection Board to prepare a list from among the State Forest Officers and such a list can be prepared in order of seniority if the respective records of such officers is considered and the comparative merit assessed."

We would, therefore, reject the contention that a comparative assessment was not required. Sri Sethana had alternatively contended that even if a comparative assessment is required such an assessment was not necessary since the applicant did not get a B+ rating. He contends that only if the applicant received a B+ rating that a comparative assessment is required. This contention is in our view without merit since we have already held that the rating given to the applicant ignoring seniority is illegal. We would accordingly hold that the proceedings dated 28-10-1988 of the Screening Committee

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(Establishment Board) and the consequential order of the State Government dated 3-12-1988 are liable to be set aside on the further ground that there was a no comparative assessment of the applicant alongwith others selected on 6-11-1984 for the post of Special I.G. of Police.

9. It is then contended by Sri Masand that even assuming that the Maharashtra Government regulations are applicable in making promotions to the senior scale posts of the I.P.S., the applicant should have been graded as B+ (positively good) by the Board/Committee when it met on 28-10-1988 and he could not have been down graded to B (good). The contentions in support of this argument are two fold. Firstly that the Tribunal in T.A. 397/87 had observed that with the expunction of the adverse remarks for 1981-82 and 1983-84, the previous rating of B given to the applicant will substantially improve. He contends that this direction of the Tribunal viz. that the Board/Committee should consider this aspect has been ignored and once again the Board/Committee has arbitrarily graded the applicant as 'B'.
There can be no doubt that ⁱⁿ _{the} ⁱⁿ _{the} Tribunal in T.A. 397/87, ^{had} apart from directing the Board/Committee to make a comparative assessment, had also ordered that it is necessary for the latter to

determine the effect of the deletion of the adverse remarks of 1981-82 and 1983-84 via-a-vis the previous rating of B (good). This is clear from para 10 of the order of the Tribunal in T.A. 397/87 which is as under:

"10. Another question that was posed by Mr. Dada is as to how the applicant who was found suitable for the promotion to the post of DIG Level I with effect from 1983 would become so bad in the next year that he could not get similar rating of B+ when he was considered for the post of Special I.G. This submission would not be acceptable in each and every case because an employee who is very good may, on account of certain strong intervening circumstances in the next year, become bad. Similarly, the rating of an employee may also improve in the next year. Mr. Dada, however, contends that once the adverse remarks of 1981-82 and 1983-84 are ignored there would be nothing which would make a good officer bad. This again is a matter primarily for the Establishment Board to consider and it is not necessary to state that we are quite sure that the Establishment Board will consider this aspect while taking a decision in the review meeting to be held in compliance with this judgment."

From the above it is clear that the Tribunal had proceeded on the basis that the applicant would have to be assessed for the post of Dy. Inspector General of Police Level-I upto 1983 and for the post of Special I.G. upto 1984, that there could be a deterioration in the last year and

that therefore the rating of B+ for D.I.G. level-I will not automatically apply to a promotion of Special I.G. As already recorded by us earlier, the Committee which met on 21-5-1985 considered the suitability of the applicant for both the posts viz. D.I.G. Level-I and Special I.G. on the basis of his A.C.Rs. upto 1983-84 and it was not as though he was considered for the former post on the basis of the A.C.Rs. upto 1983 and for the latter post upto the year 1984. This fact was obviously not brought to the notice of the Tribunal when it rendered the decision in T.A. 397/87. However, we are not reviewing the order of the Tribunal and hence we have to proceed on the basis that the Tribunal did not itself wish or desire to assess whether the applicant should be given a grading of B or B+ and had remitted the matter to the Board/Committee to make such an assessment after eschewing the adverse ACRs of 1981-82 and 1983-84. This was, in any event, the only order which the Tribunal could have passed at that time in view of the decision of the Supreme Court in 1988(1) ATLT (SC) 614 (UPSC Vs. Hiranyalal) wherein the Supreme Court considered the correctness of a decision of the Gauhati Bench of the Tribunal directing grading of an officer as 'Very good' after deleting certain adverse remarks in the CRs (which had not been communicated). The Supreme Court while upholding the decision that the adverse entries should stand

deleted had directed that it was for the Selection Committee to reconsider the effect of the deletion of the adverse CRs and directed reconsideration of the select-list by the Committee. Hence the decision of the Tribunal in TA 397/87 remitting the matter for review of the select-list was rightly ordered. However, the question is whether the Board/Committee which met on 28-10-88 reviewed the case of the applicant in terms of the orders of the Tribunal. Sri Sethna for the Respondent-State Government contends that the minutes of the Board/Committee would show that it did make such an evaluation. We find on a perusal of the Board/Committee minutes that all that was done was an evaluation excluding the adverse remarks for 1981-82 and 1983-84. It again followed the resolutions of the State Govt., that selection should be made on merit ignoring seniority and held that the applicant should be graded as B (good). It is to be noted in this regard that despite the total deletion of the adverse remarks of 1981-82 and 1983-84, the State Government allowed the remarks of the reviewing authority 'unfit for promotion' for these two years, to remain in the CRs of the applicant and the Board/Committee did not discuss or evaluate the effect of this entry. To compound these irregularities the Committee also totally ignored the observations of the Tribunal in TA 397/87 that with the deletion of the adverse remarks for 1981-82 and 1983-84, the previous grading of the applicant viz. 'B' for the post of Special I.G. would substantially improve. The Board/

Committee did not consider the effect of deletion of the adverse entries despite the matter having been remanded to it by the Tribunal to "consider this aspect while taking a decision in the review meeting to be held in compliance with this judgment". It is thus clear that the decision of the Board/Committee to review the grading to be given to the applicant as a result of the decision of the adverse entries has not been done in terms of the judgment. We will consider separately the effect of not complying with these directions of the Tribunal and non-consideration of the case of the applicant.

10. It is next contended by Sri Masand that the applicant having already been assessed as B+ (positively good) at the review committee meeting on 21-5-1985 on the basis of assessment of the ACRs upto 1983-84, it was not open either to that Committee or any other committee to assess him as 'B' (good) on the basis of the ACRs for the same years. Sri Masand seeks to contend, that ^{according to} applying the State Government circulars, even for the post of D.I.G. Level-I, an officer could not be included in the select-list unless he is declared as having 'positive merit'. He contends that standard of efficiency viz. 'positive merit' having been prescribed for all posts above Class-I it follows that this is a common standard applicable to both the

posts, DIG Level-I and Special I.G. It is also contended that there is no guideline or instruction requiring a higher grading than 'positive merit' for the post of Special I.G. and that once the applicant had been assessed and reached this standard, on the basis of evaluation of his character rolls for the years 1979-80 to 1983-84, it was not open to the Committee which met on 28-10-1988 to down grade him or re-assess him to the Grade-B. The applicant was promoted by the State Government to the post of D.I.G. Level-I with effect from June 1983 despite the Board/Committee which met on 21-5-1985 recommending that he should be promoted from 6-11-1984 the date of meeting of the previous Board/Committee. In doing so the Committee evaluated the Character Roll records of the applicant upto the year 1984. Thus, there is no doubt that for determining the fitness of the applicant for promotion to the posts of D.I.G. Level-I and Special I.G., the material or record on which the applicant was assessed, was common and it is not as though the Board/Committee assessed the applicant for the post of D.I.G. Level-I upto the year 1983 and for the post of Special I.G. upto the year 1984. There is also no doubt that applying the State Government resolutions, a grading of B+ (positively good) is a must for both the posts whether it be DIG Level-I or

Special I.G. The question now is whether on the basis of the same record it is possible to give one grading for the post of D.I.G. Level-I and a different grading for Special I.G. For this purpose it would be necessary to refer to the State Government resolutions.

The State Government has by resolution dated 1-4-1970

as modified the resolution dated 7-7-1987 clarified

as to how 'Positive Merit' is to be determined. The

latter resolution ^{prescribed by} required that to get a grading of

'positive merit', "the overall record of the officer

should show that he possess positive qualities like

initiative, drive, integrity and efficiency to a

noticeably higher degree than necessary for discharging

efficiently the duties of the post held by him and

also shoulder the responsibilities of the higher post.

The person should be clearly fit for promotion to a

higher post and not be a border line case. It is clear

that the above definition of 'positive merit' contemplates

promotion from one grade to the next grade and not

for promotion by two grades as in the instant case i.e.

when an officer comes up for consideration for promo-

tion as DIG Level-I he should be found to possess quali-

ties to a noticeably higher degree than necessary for

discharging the duties of the post of DIG Level-II.

Again when the officer comes up for consideration for

promotion as Special I.G. of Police, he should be found to possess qualities to a noticeably higher degree than necessary for discharging the duties of the post of DIG Level-I. The resolution thus appears to contemplate that an officer should render some qualifying service in the lower post and the service rendered in such lower post would have to be assessed for determining his fitness for promotion to a higher post. If due to administrative delays, the officer is not promoted to the lower post, then he cannot be mulcted by denying him promotion to the higher post on the ground that he has not put in the requisite qualifying service. When the injustice meted out to him has been rectified and the officer is given notional promotion retrospectively, the notional service rendered by him will have to be considered as qualifying service. This is clear from the decision of the Supreme Court in AIR 1977 SC 1868 (S. Krishnamurthy Vs. General Manager, Southern Railway). In that case, the appellant before the Supreme Court was entitled to promotion from Wagon Changer to Asst. Yard Master but for no fault of his, the promotion was not given. He was later given promotion from 10-4-1965 whereas his juniors got further promotion as Traffic Superintendents from 1-1-1959. The Supreme Court directed that the applicant be given promotion as traffic Superintendent. P

from 20-12-67 the date of approaching the court, that he should get the benefit of notional promotion from 1-1-59 to enable him to get higher fixation of pay in the post of Traffic Inspector from 20-12-67. It was made clear that, "for qualifying period, if there is such a condition for promotion, his notional service from 1-1-59 will be considered." Again in 1972 SLR 579 (K.K.Jogiah Vs. State of Haryana) a decision rendered by Punjab and Haryana High Court and by the Madras Bench of the Central Administrative Tribunal in 1987 (3) SLJ 97 (CAT) it has been held that if due to administrative delays, the promotion of an employee is delayed he must be deemed to have worked against the posts from the date when the promotion was due. In the latter decision it was also held that on being given retrospective promotion, the employee cannot be denied further promotion on the ground of lack of qualifying service. Applying these decisions, it will follow that the applicant's retrospective promotion notional from 1983 as DIG Level-I must be treated as qualifying service for the post of Special I.G. of Police despite his not having actually rendered such service between 1983 and November 1984 when he came up for consideration. If the service rendered by the applicant in the Grade of DIG Level-II is taken into consideration as qualifying service for the purpose of promotion as Special I.G. of

Police there can be no valid reason why such service should not be taken into consideration to determine whether he has positive merit for the purpose of promotion as Special I.G. of Police. Failure to do so would amount to denying the applicant his due right of consideration for no fault of his. In any event, all the Boards/Committees which met on different occasions considered the service of the applicant upto 1984. The Board/Committee which met on 21-5-1985 on such consideration of the C.Rs. upto 1984 found him fit for the post of D.I.G. Level-I which promotion could not be given to him unless he possessed positive merit. ^{it is} ~~but~~ Yet found him unfit for promotion to the post of Special I.G. of Police. Again the Review Board/ Committee which met on 28-10-1988 and reviewed the applicant's case on the basis of the same C.Rs. graded him as B (good). These conclusions of the two Boards/ Committees are clearly arbitrary and without any rational basis. The former is arbitrary since the ^{had a} Board/Committee having on the basis of the applicant's work as DIG Level-II upto 1984 found him fit for promotion as DIG Level-I but at the same time on the basis of the same record and work found him unfit for promotion as Special I.G. of Police. The decision of the Board/Committee which met on 28-10-1988 and

sought to classify him only as B (good) is equally arbitrary since it did not give any reasons for doing so. It also did not comply with the directions of the Tribunal in O.A. 397/87 as to what would be the effect of deletion of the adverse C.Rs. of 1981-82 and 1983-84 and whether there would not be any improvement beyond the grading of B which the applicant had already secured despite such adverse remarks. If the resolutions of the State Government had prescribed a higher qualification than B+ (positively good) for posts above DIG Level-I then there would have been justification for any of the Boards/Committees to have held that the applicant is unfit if he did not obtain such a grading. However, when the assessment is done on the basis of the applicant's performance as DIG Level-II when the assessment is on the basis of the ACRs for one and the same period viz. upto 1984 and when all the adverse entries have been deleted then there can be no conceivable justification for grading the applicant as B+ (positively good) for promotion as D.I.G. Level-I and to grade him only as B (good) for promotion as Special I.G. We would, therefore, hold that the applicant is deemed to have obtained a grading of B+ (positively good) as on 1-11-1984. We are conscious that it is not within the province of this Tribunal

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to determine or give a grading to the applicant but we are not doing so. We are only confirming the grading already given to the applicant by a duly constituted selection committee as early as on 21-8-1985. We are compelled to do so instead of once again remanding the matter for further review in view of the chequered history of the case. The applicant was first considered on 6-11-84 for promotion both to the posts of D.I.G. Level-I and Special I.G. The Committee which ^{met} ~~met~~ acted illegally in that it took into consideration uncommunicated adverse remarks of 1981-82 and adverse remarks of 1983-84 which were questioned in appeal by the applicant. When the Board/Committee met again on 21-5-85 pursuant to the interim directions of the Bombay High Court dated 6-5-1985, it acted illegally in not making a comparative assessment and it further acted arbitrarily in holding that the applicant is fit for promotion as D.I.G. Level-I but not fit on the basis of the very same record of service as ^{met} ~~unfit~~ for the post of Special I.G. Again when the Board/Committee met for a third time on 29-4-1986 pursuant to the orders of the Bombay High Court dated 4-4-1986 it made a comparative assessment but this Board/Committee did not give any reasons for having superseded the applicant nor did it give due weight for seniority though it was required to do so under the Pay Rules of 1984 and the guidelines issued by the Ministry of Home Affairs. Finally when the Board/Committee met on 28-10-1988, pursuant to the directions of the

Tribunal dated 6-4-1988 in T.A. 397/87, it committed several irregularities. This Board/Committee did not give due weight to seniority nor did it give reasons for superseding the applicant in contravention of the Pay Rules and the guidelines of the Central Government. The Committee also ignored the directions of the Tribunal that it should make a comparative assessment and that it should consider whether the expunction of the adverse remarks for 1981-82 and 1983-84 would result in a substantial improvement in the applicant's previous grading of B (good). We think that no purpose would be served in once again remanding the matter for reconsideration by one more Board/Committee since repeatedly there has been non-application of statutory rules, guidelines and non-compliance with directions of courts/the Tribunal, smacking of bureaucratic obduracy, by the various Boards/Committees by which the case of the applicant was considered. In any event further review is unnecessary since for the reasons given by us supra the applicant has as early as on 21-5-1985 been graded as B+ (positively good) as on 16-11-1984 and such a grading would ^Pensure to his benefit for the purpose of selection as Special I.G. of Police.

11. For the reasons given in the preceding paragraphs, we direct that the order of the Government of Maharashtra No. IPS 3187/3/3368-Pol.1 dated 3-12-88 not to promote the applicant as Special I.G. of Police, since the Board/Committee had on 28-10-1988 found that he did not achieve the minimum grading of B+ (positively good), be quashed and set aside. The Respondent State Government, is directed to promote the applicant as Special I.G. of Police from the date his immediate junior who came up for consideration on 6-11-1984 was promoted, with all consequential benefits of higher pay, increments and other service benefits attached to that post. The application is allowed with these directions. The parties are directed to bear their own costs.

4/11/1988.
(M.Y.Priolkar)
Member (Admn)

D.Surya Rao.
(D.Surya Rao)
Member (Judl).