

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 172 of 1999.

7.1.2000
Date of Decision :

Shri T. K. Chowdhary, Applicant.

Advocate for the
Shri Ashok Damija, Applicant.

VERSUS

Union of India & Others, Respondents.

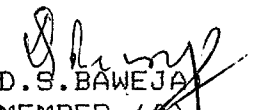
Advocate for the
Shri R. K. Shetty and
Shri V. S. Masurkar Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ✓
- (iii) Library ✓


(D.S. BAWEJA)
MEMBER (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.172/99

Dated this the 7th day of January, 2000 ²⁰⁰⁰ 1999. (d)

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Tukaram Kashiram Choudhary,
Inspector General of Police,
R/o 32, Poornima,
Sir Pochkhanawala Road,
Worli, Mumbai-400 025.

...Applicant

By Advocate Shri Ashok Dhamija

V/S.

1. The State of Maharashtra
through the Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai - 400 021.

2. The Union of India
through the Secretary,
Ministry of Personnel,
Pension and public grievances,
Central Secretariat,
North Block, New Delhi.

...Respondents

By Advocates Shri V.S.Masurkar
and Shri R.K.Shetty

ORDER

{Per: Shri D.S.Baweja, Member (A)}

This OA. has been filed by the applicant challenging the order dated 18.2.1999 of Government of Maharashtra as per which two of his juniors have been promoted from the post of Inspector General of Police to the post of Additional Director General of

...2/-

Police. The applicant has prayed for quashing of this order with direction to the respondents to grant promotion to the applicant from 19.2.1999, i.e. date on which his junior is promoted.

2. The applicant was selected in Indian Police Service (IPS) in the year 1973 and was allotted Maharashtra cadre. Before this he served in Air Force and in Indian Army as Short Service Commissioned officer and accordingly allotted to 1968 Batch of IPS. At the time of filing of OA, the applicant was working as Inspector General of Police (IGP) and due for promotion to the next grade of Additional Director General of Police (ADGP). Since joining in IPS, the applicant has impeccable record of service and has been recipient of several letters of appreciation for his good work. The applicant was awarded the insignia of the Director General of Police in 1994. In the year 1997, the applicant was awarded President's Police Medal for meritorious services. The applicant has not been also issued any adverse remarks at any time. In spite of this, the applicant has been overlooked for promotion to the post of ADGP by the screening committee meeting held in April, 1998 and two juniors of the applicant have been promoted as per the impugned order dated 18.2.1999 and they have taken over on the post on promotion on 19.2.1999. Feeling aggrieved by his non promotion, this OA. has been filed on 5.3.1999 seeking the legal remedy.

3. The applicant has challenged his non promotion advancing the following grounds :-

(a) Nothing adverse has been conveyed to the applicant at any time about his performance. The applicant apart from receiving a large number of appreciation letters has been awarded Insignia of the Director General of Police in 1994 and President's Police Medal for meritorious service in 1997 barely a year before the meeting of screening committee. All this signified that his performance was meritorious and therefore he could not have been overlooked for promotion.

(b) Fall in grading if any has not been communicated and therefore the same could not be taken in consideration for assessing fitness for promotion.

(c) The applicant fears that he was assessed outstanding by the reporting/reviewing officers and the grading might have down graded by the reviewing/accepting authority due to bias against the applicant. But down grading was not communicated and such ^{un}communicated down grading cannot be taken into account.

(d) The applican has been overlooked for promotion as ADGP because of malice, bias and prejudice which the superior officers carved against him and in particular of Shri A.S.Inamdar, Director General of Police (DGP) on account of case of murder of Dalit Youth.

4. The Respondent No. 1 has opposed the OA. by filing first a brief statement opposing admission and grant of interim stay order and then the detailed written statement through Mrs.A.A.Sakhalkar, Joint Secretary to the Government of Maharashtra. The Respondent No. 1 submits that in the meeting of screening committee held on 20.4.1978, the applicant who was due for promotion for the post of ADGP was considered along with the officers of 1968 and 1969 batches. The applicant was not recommended for promotion by the screening committee as he was not found fit and his juniors were found fit for promotion. The Respondent No. 1 admits the issue of Insignia of the DGP and President's Medal for meritorious service. As regards the appreciation letters, the respondents state that they relate to isolated incidents and it is practice in Police Department to give such letters to boost moral. However, such awards and appreciation letters, it is contended, do not signify that the applicant was fit for the next promotion. It is also stated that the fact that the applicant is an awardee of a President's Police Medal was on record before the Committee. However, on assessing the overall record, the committee did not find him fit for promotion. As regards allegations of bias against Shri A.S.Inamdar, DGP, the respondents submit that he has not been made party respondent by name and such allegations have been therefore made at his back. Further, Shri A.S.Inamdar was only one of the three members who constituted the screening committee. The recommendations of the committee were not of any individual member. Therefore the allegations of bias and malice against

Shri A.S.Inamdar are baseless. The allegations of bias and prejudice against the screening committee are also strongly refuted. As regards the down grading of the grading by the reviewing authority/accepting authority, it is contended that this is part of process of writing confidential rolls and no down grading has been done ~~purposely~~. The respondent ^{No.1} Q with regard to assessing the fitness for promotion has S submitted that the same has been done following the guidelines laid as per letter dated 4.9.1989 by the Government of India. Keeping in view the stricter standards for selection as per these guidelines, the screening committee recommended those officers who were assessed 'Very Good' as fit to be promoted. However, based on the assessment of confidential reports, the applicant was not found fit. In view of the submissions made in the written statement, the respondent No. 1 has pleaded that the applicant has failed to make out any case for judicial interference and the OA. deserves to be dismissed.

5. The applicant has filed rejoinder reply refuting the submissions of the Respondent No.1. The applicant has reiterated his grounds taken in the OA. The applicant has advanced reasons as to why he did not make Shri A.s.Inamdar as a party respondent by name although allegations of bias and malafides have been alleged against him. The applicant has also elaborated the procedure for award of President's Police Medal which involved the scrutiny of the performance of the awardee at various levels

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to ascertain meritorious service. The applicant has made several additional averments which are not touched upon in the OA. particularly with regard to delay in accepting the recommendations of the screening committee meeting and non following the new guidelines for promotion by selection issued on 15.1.1999 in supersession of the earlier guidelines dated 4.9.1989.

6. Respondent No. 2 did not file any written statement. No reply has been filed by the Respondents No. 3 to 6 also.

7. We have heard the arguments of Shri Ashok Dhamija, learned counsel for the applicant and Shri V.S.Masurkar and Shri R.K.Shetty for the Respondents No. 1 & 2 respectively. None represented Respondents No. 3 to 6.

8. During the hearing, the counsel for the applicant made a statement at the Bar that he does not press for relief 8(b) and accordingly deliberations are confined to relief 8 (a).

9. The grounds on which the applicant has based his defence have been detailed in para 3 above. The thrust of attack is two pronged. One is based on the allegations of bias and malice and other is with regard to assessment of fitness based on the confidential reports relating to non-conveying of any adverse remarks and down grading of the grading. These will be now looked at in detail.

10. The applicant has alleged that his non promotion is actuated by malice and prejudice which the superior officers carried against him. The applicant has in particular named Shri A.S.Inamdar, DGP alleging that his overlooking for promotion is mainly on account of bias and animosity of DGP Shri Inamdar. The applicant has made supporting averments in Paras 4.6 to 4.17 of the OA. to lay down the foundation for the allegations of bias and prejudice. Before we go into the merits of these allegations, we will briefly review the law laid down by the Hon'ble Supreme Court on the matter of judicial review of the allegations of bias and malafides through catena of judgements. In this connection, we cite the following judgements :-

(a) Express News Papers Pvt.Ltd. vs. Union of India, 1986 (1) SCC 133. In para 116 of this judgement, the Hon'ble Supreme Court has observed that when malafides are alleged, it is necessary that person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise, such allegations remain unrebutted and the court in such case would be constrained to accept the allegation so remaining unanswered or unrebutted on the test of probability.

(b) State of Punjab and others vs. Chaman Lal Goyal, (1995) 29 ATC 546. In para 8, their Lordships of Hon'ble Supreme Court have laid down as under :-

" and in the absence of impleading such a person 'co nomine' so as to enable him to answer the charge of malafides against him cannot be sustained....."

(c) Dr.J.N.Banavalikar vs. Municipal Corporation of Delhi and another, 1996 SCC (L&S) 53. In para 21 of the judgement, the Apex Court has observed as under :-

"..... Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed malafide order in order to favour such junior doctor, any contention of malafide action in fact, i.e. 'malice in fact' should not be countenanced by the court....."

In the present case, it is noted that Shri A.S.Inamdar who is the focus of the allegations of bias and malafides in the OA. with the bulk of the OA. devoted on this issue, has not been made as a party respondents by name. As rightly pointed out by the Respondent No. 1, these allegations has been made at the back of Shri Inamdar and hence no comments can be made. As held by the Hon'ble Supreme Court in the above referred judgements, the person against whom allegations of bias and malafides are made should be made a party respondent so that he has opportunity to answer such allegations. In the absence of such an impleadment, any contention of malafides should not countenanced by the court. The applicant in the rejoinder reply has given elaborate reasons in para 6 to justify non impleadment of Shri Inamdar as a party

respondent by name. The applicant has stated that no personal remedy was sought against Shri Inamdar and relief sought was mainly against the Respondent No. 1 who has taken decision about the promotion of the applicant on the basis of the recommendations of the screening committee meeting. The Respondent No. 1 under whose control Shri Inamdar is working could (it was expected so) get necessary information from Shri Inamdar about the allegations and incorporate the same in his reply. Further what has been alleged by the applicant against Shri Inamdar is a matter of record and such records are available in the offices falling under Respondent No.1, which could therefore be easily verified. The Respondent No. 1 ^{was} expected to look into the matter in impartial manner and ^{to} make enquiry about the allegations before filing his reply. Instead of doing this, the applicant contends that the Respondent No.1 has simply stated that there was no bias against the applicant without mentioning any reasons. We are not impressed by the reasoning of the applicant for non joining of Shri Inamdar as party respondent. The allegations are personal in nature and can be answered by the person concerned only. We also note that the applicant had filed Writ Petition No. 317/99 on 19.2.1999 in the High Court before filing the present OA. The copy of the same has been brought on record. The applicant has submitted that since the promotion ^{order} had been already issued superceding the applicant, the Writ Petition was disposed of giving liberty to the applicant to challenge his non promotion before the Tribunal. On going through this Writ

Petition, we find that the same was specifically directed against Shri A.S.Inamdar making him a party respondent by name alleging malafides and bias against him. The relief sought was mainly that Shri Inamdar, Respondent No. 2 be not allowed to function as member of the screening committee to consider the case of the applicant, writing of ACRs and interfere in any manner with lawful and legitimate discharge of duties by the applicant. The applicant ^{though had} considered it imperative to file a Writ against Shri Inamdar making him party respondent by name, apprehending his non promotion due to allegations of bias and malafides but did not make him party respondent in the OA. We fail to comprehend the reasoning of the applicant for not making Shri Inamdar as a party respondent by name in the OA. which has been filed after disposal of the Writ Petition. The reasons advanced by the applicant for non impleadment do not appeal to us. In view of what is held by the Hon'ble Supreme Court in the cited judgements (supra), we decline to take note of the allegations of bias and malafides and go into the merits of the same to establish that case for bias and malafides has been made out by the applicant. This plea of the applicant in challenging his non selection must therefore fail.

11. The judgement of the Apex Court in the case of A.K.Kraipak vs. Union of India, AIR 1970 SC 150 has been cited by the applicant to support his contention that the biased member of the Screening Committee could influence the opinion of the other

members. In view of what is deliberated, we are of the considered opinion that this judgement does not apply to the present case.

12. The second ground in assailing his non promotion to the post of ADGP is that the Committee has not taken into account the relevant record reflecting his performance in assessing the fitness of the applicant for promotion. The applicant has averred that he received appreciation letters from the various authorities. He has furnished the details in para 4.2 of the OA. and the copies of the appreciation letters have also been brought on the record. In addition, the applicant has been awarded the Insignia of the Director General of Police in 1994 and Police Medal in 1997 for meritorious service barely a year before the meeting of the Screening Committee in April, 1998. The applicant therefore argued that receipt of the appreciation letters and the award of Insignia and Police Medal clearly demonstrated that his ACRs have been either "outstanding" or "Very Good" till 1997. Such being the case, the applicant submits that it is rather surprising as to how the applicant could be found unfit for promotion by the Screening Committee. The Respondent No. 1 has reacted to these submissions in paras 8, 9, 10 and 11 of the written statement. As regards the appreciation and congratulation letters, **it is stated that** they relate to isolated incidents and it is the practice in the Police Department to give such letters of appreciation to boost the moral of the officers. These letters

were therefore not placed on record before the committee as they are not material to evaluate performance. It is further contended that it is ultimately the overall record of officer which is to be assessed by the screening committee. The award of Insignia and Police Medal to the applicant are admitted by the respondent ~~No. 1~~. It is confirmed by the Respondent No. 1 that the fact of applicant being awardee of Police Medal was on record before the Committee. (The applicant has stated award of President's Police Medal in his averments in OA. However, on objection by the Respondent No. 1, the applicant during hearing clarified that what the applicant received was Police Medal awarded by President. Therefore, Medal under reference is being referred to as Police Medal in our deliberations ^{hereafter}). In spite of this, the Respondent No. 1 contended that the applicant was not found fit for promotion after assessment of the overall record of performance by the committee. Keeping in view the rival contentions, we will ^{now} look into the merits of the ground raised by the applicant.

Writing of the Confidential reports of the All India Services' officers is governed by the statutory rules titled "All India Services (Confidential Rolls) Rules, 1970. On referring to the same, we note that in pursuance of clause (b) of Rule 2 of these Rules, Central Government has laid down documents to be included in the confidential roll as defined in this clause. As per these instructions dated 25.5.1980, in item (i), it is laid down that letters of appreciation/Resolution issued by the

Government to a member of All India Service, record about any medals etc. awarded to him in recognition of his service will be the documents of the confidential roll. Therefore, the contention of the applicant is to be seen in the light of these statutory rules. In respect of the appreciation/congratulation letters, we find from the perusal of the same that none of the letters mention that the same is to be placed on the confidential Roll folder of the applicant. It is also not clear whether copies of the letters were sent to the dealing Branch for keeping on record. Further, we note from the format of Confidential Roll which has been adopted during the last several years ^{that} there is Column 3 in Part II to be filled in by the officer being reported upon where the entries with regard to "Medal or Commendations received during the year" are to be made. We find that the applicant has mentioned the appreciation/commendation letters in the relevant year's reports and thus ^{same form} the part of the record of confidential rolls. ^{however} We note that applicant did not enclosed the copies of the letters. Thus the statement of the Respondent ^{No. 1} is not factual. However, on perusal of the appreciation letters, we are inclined to endorse the stand of the Respondent No. 1 that these letters refer to isolated occasions and may not be the true reflection of the overall performance assessment of the applicant for the particular year by his reporting officer ^{or} other authorities.

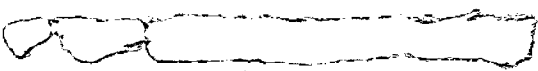
In the background of these observations, the contention of the applicant with regard to appreciation letters is not tenable.

For the award of [redacted] Police Medal, we find that the applicant has mentioned about the same against item 3 of Part II of Confidential report of the year 1997. We do not find any mention by the applicant against item 3 of Part II of 1994 report for the award of Insignia. The respondents have averred that the fact of award of Police Medal was before the screening committee. After going through the file said to be containing the minutes of the Screening Committee of April, 1998 meeting made available by the Respondent No. 1., We do not find any material [redacted] on the file for award of Police Medal particularly the citation. Before we go into the issue of non fitness of the applicant inspite of award of Police Medal given for meritorious service, we will record the submissions made by the applicant with regard to significance of award of Police Medal with regard to statutes² Rules governing the award of the President's Police Medal and Police Medal. The counsel of applicant drew our attention to the following documents brought on ^{the} record with the rejoinder :-

(a) Statutes and Rules relating to the President's Police Medal and Police Medal dated 1.3.1991 and updated upto 17.12.1990.

(b) President's Secretary Notification 1.3.1991 and updated upto 17.12.1990. (v)

(c) Guidelines for submissions of proposals for the award of President's Police medal for distinguished service/Police Medal for meritorious service on the occasion of Independence day 1987.

From the above documents, we note that Police medal is to be awarded for conspicuous gallantry or for valuable service characterised by resource and devotion to duty including prolonged service or ability and merit. As per item 4 of the guidelines, Police Personnel with outstanding/very good record of service only should be recommended. In this respect, the annual confidential rolls of the person concerned should be gone through very carefully before making recommendations. In item 5 of the guidelines, a statement as per the laid down proforma 'B' containing the overall assessment viz. outstanding, very good, good and poor etc. for each calendar year and also extract of the adverse remarks if any for ^{the last} 10 years are also required to be attached with the proposal. Keeping these guidelines in view, it ^{to be} is taken that the proposal for Police medal was made only after ^{at the appropriate level} screening of the record ⁱⁿ for the last 10 years (upto 1996) ^{and the} ~~that~~ ^{that} Same confirmed the grading of the applicant was outstanding/very good  Since the proposal was finally accepted at the President's level and the applicant was awarded Police Medal by the President, it leads to the conclusion that the State Government itself had found the applicant of outstanding/very good performance and the same was accepted at the highest level. It will be pertinent here to reproduce para 13 of the citation for award of Police Medal and cited by the applicant during the hearing :-

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" Shri Choudhary during his 12 years in Air Force and Army and later 23 years in the Police has displayed dedication, commitment to the service and courage, determination and sincerity in his work, has consistently earned very good appraisals and deserves to be awarded Police Medal for meritorious service on the occasion of Republic Day 1997."

Keeping this background in light, we subscribe to the contention of the applicant that he could have fair understanding that the applicant's overall performance was outstanding/very good and the committee should have declared him fit for promotion.

Here we refer to the judgement in the case of Girish Bihari vs. State of U.P. of Allahabad High Court, 1982 LAS I.C.1500 relied upon by the applicant. This is also the case of IPS officer for promotion to the supertime scale. The petitioner was promoted to selection grade on 15.11.1974 and was awarded President's Police Medal in 1977. However, in 1980 the Screening Committee did not select the petitioner for promotion to super time scale and juniors to him were selected and promoted as per order dated 2.12.1980. The petitioner was not found fit by the Screening Committee on the consideration of the adverse entries in the reports of the earlier years. The petitioner had contended that on promotion to selection grade for which the criteria for fitness was also the same, i.e. "on merit with due regard to seniority" as for promotion to super time scale, the earlier adverse entries if any get wiped off and cannot be taken into consideration again. Further, the petitioner was awarded

President's Police Medal signifying that his service was meritorious. The High Court has gone into both these contentions in detail. Since we are concerned with the point of Police Medal, we will review here what is held by the Hon'ble High Court. In para 16 it is observed as under after examining the Statutes/Rules governing grant of President's Police Medal :-

" The citation as contained in the Police Medal and having regard to statutes and Rules framed by the President, we are led to irresistible conclusion that the State Government had itself found the petitioner to be of outstanding ability. The citation indicates that the State Government had scrutinised the petitioner's service record and had found him to be an officer of outstanding ability."

In view of these observations, the High Court held that adverse entries awarded prior to 1977 cannot be taken into account. This judgement fortifies the view we have expressed earlier and the ratio of what is held in this judgement applies to the case of the applicant.

With this back ground, we perused the minutes of the meeting of the Screening Committee held on 20.4.1998 and note that the applicant has been graded "good" by each of the members of the Committee. With this grading, he has not been found fit for promotion. The committee has recorded the reasons for non selection as below :-

" The following officers were not fulfilling the criteria mentioned in para 5 (A) were recommended as unfit for promotion to the rank of Addl. DGP by the Screening Committee.

(1) -----

(2) Shri T.K. Chaudhary, IPS (1968)."

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These remarks are no reasons but only indicate the result of the deliberations. In para 5 of the minutes, the Committee has recorded that the committee took note of good and adverse entries in the service records of all the officers, uncommunicated adverse remarks in the ACRs were not taken into account. The work of the officers was evaluated by the committee. If this procedure for evaluation was followed, then the committee should have recorded reasons as to how the over-looked officer was not found fit in comparison with the others as the analysis of the evaluations done would have been available. This was necessary to reflect the application of mind of the committee for objective assessment of the performance without any bias and arbitrariness. This was all the more necessary in the case of the applicant who had been barely a year ago in 1997 had been awarded Police Medal for meritorious service presumably upto 1996. This fact should struck the minds of the members of the Committee that the State Government had already assessed his performance outstanding/very good over a long period and the same had scrutinised at the various levels in processing of proposal. There is no averment that the record of the applicant was not properly scrutinised which proposing the applicant's name for Police Medal. The committee has also not made any such observation while not finding him fit for promotion. It would therefore be certainly surprising to any one that officer who is awarded a Police Medal finding him outstanding among his all colleagues is not found fit for

promotion in comparison with the same colleagues who could not qualify for Police Medal after a period of few months. In this face of such a situation, the Committee should have taken particular care to record the detailed reasons (which otherwise are also required to be recorded as per guidelines) as to how inspite of award of Police medal in 1997 the applicant is not fit for promotion. The committee should have elaborated ^{as to} what went wrong with the applicant in a short period. We get a feeling of strong suspicion in the absence of the reasons ^{recorded} for overlooking the applicant that the committee did not take any serious note of this fact which was only mentioned in the ACR of 1997 as no material is found on the record in the file made available.

Referring to the guidelines dated 4.9.1989, it is noted that in para IV (c) (v) it is provided that "Detailed reasons for supersession may be kept on record in the case of officers who are not included in the panel or who do not figure on the panel in the order of State seniority of the IPS." As observed earlier, the committee has not recorded the detailed reasons. What is recorded is the result of evaluation of assessment and not the reasons leading to this conclusion. What is recorded is just a rubber stamp reasons applicable for all who have been overlooked. As per the guidelines, the Committee was required to record not only reasons but detailed reasons. This would imply that the committee ^{was} required to analyse the record and ^{then to state} if officer is not found fit ^{as to how he does not measure upto the} fitness mark in comparison with others as the selection is

primarily based on merit. In the present case, the committee has thus violated the provisions of the guidelines as referred to earlier. The need for recording the reasons if provided in the rules has been gone into by the Hon'ble Supreme Court in the case of Union of India vs. Shri M.L.C Kapoor, AIR 1974 SC 87, With reference to Regulation 5 (5) of Indian Police Service (Appointment by Promotion) Regulations. Regulation 5 (5) at that time applicable reads as under :-

" If in the process of selection, review or revision, it is proposed to supercede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession."

This stipulation is therefore the same as in the guidelines dated 4.9.1989 in para IV (C)(V). In this judgement, the committee had not recorded the reasons for non selection of the petitioners (i.e. respondents in the appeal). The Hon'ble Supreme Court while holding that the selection is vitiated on this account has recorded its observations as under on the importance of recording reasons :-

" 29. Lastly, I may refer to another question mooted before us. It was whether the orders of the State Government reverting the officers concerned to their State service posts simply because their names had not been included in the select list of 1968 were illegal for contravening the provisions of Regulation 9 set out above. The Division bench had not only held that no directions were given by the Central Government under Rule 9 (3) of the Cadre Rules, but that the State Government which had itself not considered the question of the fitness of the aggrieved

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officers, had acted on the wrong assumption that it was bound to pass reversion orders simply because the names of the officers concerned had ceased to find a place on the select list."

In the present case, as we have deliberated earlier, the committee has not recorded the reasons leave aside the detailed reasons envisaged as mandatory as per the guide lines. We are therefore of the considered opinion that in view of the law laid down by the Apex Court, this is a serious violation of the guidelines and non selection of the applicant is vitiated on this account. We are also supported by the following two orders where the same conclusion ^{has been} arrived at while dealing with the promotion of IPS officers to super time scale :-

- (a) S.S.Darbari vs. Union of India,
1996 (2) CAT SLJ 701
- (b) Vasant Waman Pradhan vs. State of Maharashtra
1991 (1) SLJ 257.

13. The third contention of the applicant is that the applicant has not been conveyed any adverse remarks at any time. In the absence of any adverse remarks, the applicant could not have been over-looked for promotion. The respondents have admitted that no adverse remarks have been advised to the applicant. The counsel for the respondent No. 1 however contended that the writing of the confidential rolls in case of All India Services' officers is governed by the statutory ^{rules} titled

"All India Services (Confidential Rolls) Rules, 1970 and according to these rules, adverse remarks if any complying with the provisions in Rule 8, are only to be conveyed. Since there were no adverse remarks in the confidential roll, the question of communication of the same did not arise. The counsel of Respondent No. 1 further emphasised that in the Rule 8, there is no provision that any grading which is not adverse but below the grading required for being declared fit for promotion needs to be conveyed. The counsel of Respondent No. 1 also contended that apart from the provisions of Rule 8, even if there is no adverse entry, it does not mean that the applicant was fit for promotion as the selection is based on merit and the applicant was assessed to have not reached Bench mark grading required for declaring fit for promotion by the Screening Committee. The applicant, however, strongly contested these submissions of the Respondent No. 1. The applicant submits that in case there was no adverse remarks in the confidential rolls, how come then the applicant was not promoted. The applicant stated that answer to this question may be that applicant has 'good' grading in case of some confidential rolls. It is further added by the applicant that if the yard stick for promotion was "very good" as contended by the Respondent No. 1, then 'good' grading was not enough to make the applicant fit for promotion. In such a situation, the applicant takes the plea that 'good' grading tantamounts to adverse grading as it comes in the way of promotion. This adverse entry without communication to the applicant cannot be taken into account for determining his fitness for promotion.

The applicant has cited the following orders of the Tribunal to fortify his submissions :-

- (a) Juggal Kishore Goyal vs. Union of India decided on 17.5.1989 by Jabalpur Bench in OA.29/1988.
- (b) Girja Shankar Misra vs. Union of India (1996) 34 ATC 43.
- (c) Udai Krishna vs. Union of India (1996) 33 ATC 802.
- (d) G.Chenlamalam vs. Union of India (1998) 37 ATC 354.

These orders are briefly reviewed as under :-

Jabalpur Bench in the case of Jugal Kishore Goyal first time took the view that deterioration in grading 'Good' only below the bench mark should have been conveyed to the applicant and since it has not been conveyed, the DPC should have taken this aspect into consideration as if this was uncommunicated as such adverse remarks are to be ignored in terms of Supreme Court's judgement in the case of Gurdial Singh Fijji vs. State of Punjab.

In Udai Krishna's case, similar view as in the above referred order has been taken stating that remarks which have potential of adversely affecting career of an employee are adverse and such remarks have to be communicated to the employee.

Gradings of an employee 'Good' or 'Average' if are below the bench mark of 'very good', are adverse remarks and should have been conveyed before being considered by the DPC.

Girja Shankar Misra's case has been decided relying upon the order of Jabalpur Bench in the case of Jugal Kishore Goyal and holding the same view.

In G.Chankamalam's case relying upon the orders in case of Udai Krishna, Jugal ~~Kishore~~ Goyal and Bhakata Roy, the Bench has held that if the applicant was found below the bench mark prescribed for promotion, then such a grading was an adverse entry. In view of non communication of such an entry, the supersession of the applicant considering the adverse gradings was arbitrary and denial of natural justice by giving adverse assessment was without any notice to the applicant.

In addition to the cited orders by the applicant that this Bench in the case of Bhaktadas Roy vs. Union of India decided on 18.2.1993 in OA.125/92 has taken the similar view relying upon the order of Jabalpur Bench in the case of Jugal Kishore Goyal.

Earlier a view has been taken that even an 'average' grading was not adverse and there was no need to convey the same to an employee. However, this judicial view has undergone a sea change of late when a number of cases came up challenging non promotion where it was noticed that nothing adverse had been conveyed at any time but still the employee was assessed as not fit for promotion by the DPC. It was revealed that though the

employee did not have any adverse remarks in his reports, but the gradings were less than the bench mark prescribed for promotion and thus not found fit for promotion. Such a situation defeats the very purpose and objective behind maintaining the ACRs which are meant for assessing performance of an employee for further advancement in career. If the performance in the reports is such that it is below the bench mark, and comes in the way of an employee for promotion which is normal expectation in career advancement, the employee is required to ^{be} made aware of the same to take note of such a performance grading for improvement. Without making employee aware of deficiency in his performance, consideration of such difficient performance by the DPC will not be fair and just and ^{will} violate the principles of natural justice. In this back ground a consistent view in the cited orders has been taken that 'average' or 'good' grading though not per-se adverse would assume the character of adverse remarks if the same comes in the way of promotion when the bench mark prescribed is 'Very Good' for being declared fit for promotion. Such an adverse assessment, requires to be conveyed to an employee to make him aware that his assessed performance in ACRs is not likely to earn him promotion when his turn comes for consideration. We are therefore in full agreement with the view taken in the above cited orders. This view is also fortified by what is held by the Hon'ble Supreme Court in the case of U.P. Jal Nigam vs. State of U.P., JT 1996 (1) SC 641. Though in this case, the main issue was whether any fall in grading was required to be conveyed but

their Lordships have emphasised that any grading which may come in the way of promotion is an adverse entry and needs to be conveyed. Similarly, for fall in grading, the competent authority should record reasons for the same and such an entry should be conveyed. It will be pertinent to mention here, the observation of the Hon'ble Supreme Court "..... even a positive confidential entry in a given case can perilously be adverse....."

In the present case, on going through the record, we find in the report of 1995, grading is as under :-

<u>Year</u>	<u>Reporting</u>	<u>Reviewing</u>	<u>Accepting</u>
April-Oct.1994	Outstanding	-	-
Oct.94-March 95	Good	Good	Good

However, the entry deserves to be declared as adverse firstly it is below the bench mark and secondly there is fall in the grading as compared to the "outstanding" grading of the earlier year. Such an adverse entry should have been conveyed in view of the law laid down in the cited judgements.

14. After recording our finding that the grading which is below the bench mark is an adverse entry and is required to be conveyed, the question that arises now is whether such an entry if uncommunicated deserves to be ignored by the screening committee. Out of 4 orders cited in the earlier paragraph, we note that in two cases "Udai Shankar and G.Chenkamalam", the

direction was given to convey the adverse entry to give an opportunity to the applicant to make representation against the same. The competent authority ^{is required} then to review the grading based on the representation and if the grading is upgraded, then a review DPC should be held. In the other three orders, the view has been taken that uncommunicated adverse entry is to be ignored and a review DPC to be held. After careful consideration of the matter, we are inclined to endorse the latter view. We are fortified to take this view by the following judgements of the HOn'ble Supreme Court, some of which have been referred to in the cited orders and one of them also relied upon by the applicant during hearing :-

- (a) Gurdial Singh Fijji vs. State of Punjab
1979(1) SLR 809.(cited by the applicant)
- (b) Brij Mohan Chopra vs. State of Punjab
1987 (3) SLJ
- (c) The State of Haryana vs. P.C.Wadhwa & Ors.
1987 (2) SLJ 162.
- (d) Union of India vs. E.G.Nambudiri
1991 SC SLJ 1953
- (e) Baidyanath Mahapatra vs. State of Orissa
1989 SC SLJ 13.

In the case of Gurdial Singh Fijji, Hon'ble Supreme Court has held in para 17 as under :-

" The principle is well-settled that in accordance with the rules of natural justice, an adverse report in confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified."

Relying upon the judgement in the case of Gurdial Singh Fijji and Aman Kant Chowdry vs. State of Bihar, 1984 (2) SLR 299, it is held in the case of Brij Mohan Chopra that adverse report in confidential roll cannot be acted upon to deny promotion unless it is communicated to the person concerned.

The judgement in the case of P.C.Wadhwa dealt primarily with the competence of the Home Secretary empowered by the State Government to write the report of an IPS officer. One among the several grounds of challenge was that the adverse remarks were conveyed after a period of more than 2 years. Hon'ble Supreme Court in para 13 has held that the delayed communication of the adverse remarks loses the purpose of the adverse remarks and therefore do not approve of the inordinate delay.

In the case of Bandyanath Mohapatra in para 6, the Apex Court has held that if adverse remarks are conveyed to an employee after several years, the object of communication of the adverse entries is defeated.

Relying upon their earlier judgement in the case of Gurdial Singh Fijji, the Hon'ble Supreme Court in their judgement of Union of India vs. E.G.Nambudiri have reiterated in para 6 "An adverse report which is not communicated to the Government servant or if he is denied the opportunity in making representation to the superior authority cannot be considered against him.

Keeping in focus the view held by the Apex Court in the above cited judgements, any direction at this late stage to direct the Respondent No. 1 to convey the adverse grading for the report of 1995 will be an empty formality. It will be firstly unfair to the applicant to make an effective representation at this late stage and secondly the concerned authorities may not be available to consider such a representation. We therefore have no hesitation to hold that the screening committee should have considered the case of applicant for promotion by ignoring the adverse grading for the report of the year 1995. However, we find that ^{the}deliberations ^{the}of ^{the}committee do not even indicate that the committee had noted this infirmity in the ACR.

15. The fourth ground of attack is that fall in grading if any has not been advised to the applicant and same could not be taken into account for consideration of his promotion. The respondents in the written statement in para 19 have taken the plea while controverting this contention that writing of ACR by

the Reporting/Reviewing and accepting authorities is a part of process and it is the final approval of the accepting authority which is the relevant assessment. It is further submitted that the applicant has not made out any such case to establish that he was purposely down graded by any of the authorities for any particular year or years.

On going through the ACRs, we note that in the year 1994 report, the grading was "outstanding"^{given} by the reporting officer and the same was endorsed by the reviewing authority. However, in the year 1995, the same reporting authority has given "Good" grading and is endorsed by the same reviewing authority and then accepted by the accepting authority. No reasons for sudden fall in the grading have been recorded by any of the authorities. Referring to the judgement of the Hon'ble Supreme Court in the case of U.P.Jal Nigam (supra) and relied upon by the applicant, this down grading ^{have} Should been supported by recording of reasons and should have been conveyed. But from the ACR folder, we find no such conveying has been done. Thus from this angle also the "Good" grading for the year of 1995 should have been conveyed to the applicant.

16. We must now take up the strong objection raised by the counsel of the respondents for placing reliance on the various orders of the Tribunal relating to the confidential reports cited by the applicant. He argued that the cited orders deal with the

matters of confidential reports of the Government servants and not officers of All India Services. In respect of Government servants, no statutory rules for writing confidential reports have been laid down exercising power under the Article 309 of the Constitution of India. Writing of reports is being guided only by the administrative instructions. He further added that in case of All India Service officers, the specific rules under the Act have been laid down titled "All India Services (Confidential(Rolls) Rules, 1970". Therefore, in his opinion any challenge of the matter with regard to confidential reports of All India Services officers is to be subjected to judicial review keeping these rules in view. After careful consideration of these submissions, we are not impressed by the same. Rule 8 (1) of the Confidential Roll's Rules only lays down that adverse remarks are required to be conveyed. There is explanation below Rule 8 which states as under :-

"For the purpose of these rules, an adverse remarks means a remark which indicates the defects and deficiencies in the quality of the work or performance but does not include any word or words in the nature of counsel of advice to the officer."

It is clear from this explanation that any deficiency in performance is an adverse remark. As held earlier, an assessment of "Good" grading which is below the bench mark is not enough to make an officer fit for promotion. Such a grading signifies a deficiency in the performance as every officer is expected to put his best foot forward and get his promotion in turn. Thus what is held in the cited judgement is nothing else but only an

interpretation of the Rules. Further, adverse remark has been defined only as a general term and scope of the same is being gone into by the Tribunal and the Supreme Court. Any principle of law laid down by the Hon'ble Supreme Court with regard to conveying of adverse remarks will equally apply to statutory rules. With these considerations, we are unable to find any substance in the objection raised by the counsel of the respondents.

17. The fifth ground advanced by the applicant is that it is the fear of the applicant that "outstanding" grading assessed by the reporting/reviewing authority might have been down graded by the reviewing/accepting authority due to bias against the applicant. It is further contended that down grading of the grading ^{if any} was not communicated and in the absence of communication of such a down grading ^{the same} has to be ignored while assessing merit. Since the applicant had no access to the ACRs, and inspection of the ACRs was not allowed, we have gone through the ACRs of the last 10 years and find the position as under :-

<u>Year</u>	<u>Reporting</u>	<u>Reviewing</u>	<u>Accepting</u>
<u>1996</u>			
1.4.95 to 31.10.95	Very Good	Good	
<u>1997</u>			
1.4.96 to 30.11.96	Outstanding	-	-
1.12.96 to 31.3.97	Outstanding	Very Good	Good

We further note that no reasons have been recorded for down grading either by the reviewing authority or accepting authority. The reviewing authority inspite of recording against item 3 of part V of the report that he agrees with the assessment of the reporting officer has disagreed with the same while giving the final grading without recording any reasons for the same.

The purpose and objective behind writing annual confidential reports (ACR) and the responsibility devolving on the various authorities involved in the process of writing of ACRs has been gone into by the Apex Court in the several judgements. Here we refer to a few of such judgements to convey the view point of the Apex Court as under :-

- (i) Swatantra Singh vs. State of Haryana & Ors.
1997 SCC (L&S) 909.
- (ii) Union of India & Ors. vs. E.G.Nambudiri
1991 SC SLJ 19.
- (iii) State of U.P. vs. Yamuna Shanker Misra
(1997) 4 SCC 7 -
- (iv) M.A.Raja Sekhar vs. State of Karnataka & Anr.
1998 SCC (L&S) 574.

We reproduce extracts from some of these judgements which sum up the view point of the Hon'ble Supreme Court.

M.A.Rajasekhar Para 4

" It is no settled law that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent."

Swatantar Singh Para 5

" It is true that in view of the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse remarks is to afford an opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence."

As held by the Hon'ble Supreme Court in the cited judgements above, the officers writing the ACR are expected to show objectivity, impartiality and ^{to} make fair assessment without any prejudice whatsoever with highest sense of responsibility. This view point of the Apex Court repeatedly reiterated in various judgements has been incorporated in the 'Instructions' enclosed with the format of ACR laid down by the Government and

relied upon by the applicant during the hearing. We reproduce here Instruction No. 1 :-

" The confidential Report is an important document. It provides basic and vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the Reporting Authority, the Reviewing Authority and the Accepting authority should, therefore, undertake the duty of filling out the form with a high sense of responsibility."

In the process of report writing, it is the reporting officer who has intimate contact with the official being reported upon and he is the best judge for his performance appraisal and to present truest possible picture of the appraisee. It is because of this in para 7 of the 'Instructions' referred to earlier, it is laid down that performance appraisal should be a joint exercise between the officer to be reported upon and the Reporting Officer. Next in the process is the Reviewing authority who may not be in direct contact with the official but is expected to have fair knowledge about the performance of any officer ^{working under him} being the Head of Office/Department. He is in a position to ensure that the reporting authority has made the assessment of the performance with due care and attention. The Accepting authority is ^{not} normally expected to have direct or personal knowledge of the performance of the official being reported upon and is expected to accept ^{however} endorse the appraisal of the reviewing authority. It is no doubt ^{conceded} that the reviewing

authority and the accepting authority have a right to differ with the performance appraisal of the reporting officer. They may upgrade or down grade the same. But considerable restraint and sense of responsibility is called for in exercising this right as brought out earlier. If the reviewing/accepting authority does not agree with the assessment of the grading of reporting/reviewing authority and is of the opinion that the grading is over rated and requires in his opinion to be down graded, then for such an action detailed reasons are required to be recorded. These reasons should reflect his personal knowledge about the performance of the concerned officer and be cogent enough to justify the downward grading of the performance. A caution is all the more required if the down grading is such that the same will be adverse and come in the way of promotion of the officer being reported upon. He just cannot write 'I do not agree' and then indicate the down grading. Such an action will reflect only an autocratic, arbitrary and biased attitude and indicate non application of mind on the performance appraisal made by the reporting/reviewing authority. Recording of the reasons is imperative for fair and just action and if the report is challenged, the mind of the authority concerned is known for down grading the entry. Thus such down grading of the assessment without recording reasons is not sustainable and deserves to be ignored. As brought out earlier, in the report of 1991, the review authority has down graded the grading from 'Very Good' to 'Good+' and in the report of 1997, the accepting authority has

watered down the grading from "Outstanding" to "Good" without recording any reasons to support their assessment. In view of what is discussed earlier, these down gradings cannot be sustained as they have come in the way of the applicant in assessing his fitness for promotion to the post of ADGP.

The applicant has cited the following four orders of the Tribunal in support of his contention :-

- (a) Mohan Gupta vs. State of M.P. & Ors.
1994 (1) ATJ 95.

This is the case of an IAS officer. The reviewing authority had down graded 'Very Good' grading given by the reporting officer without recording any reasons. Bench held that such down grading had to be ignored and directed to hold review DPC to consider the case of the applicant for promotion

- (b) Thanhawla vs. Union of India
(1998) 37 ATC 601.

This is a case of IAS (Appointment by promotion) Regulations 1955 from the State service. Here also the down grading of the grading given by the reporting authority was done by the review authority in case of one report and by the accepting authority in the case of another report without

recording any reasons for the same. The Bench held that lowering of grading without any reasons being recorded is not sustainable relying upon the judgements of the Hon'ble Supreme Court in the case of (a) State of U.P. vs. Yamuna Shanker Misra, (1997) 4 SCC 7 and (b) U.P.Jal Nigam vs. State of U.P. (1996) 2 SCC 363 and (c) State Bank of India vs. Kashinath Kher, AIR 1996 SC 1328.

(c) Udai Krishna vs. Union of India, (1996) 33 ATC 802.

In this case also ^{one of} the issue involved was with regard to down grading of the grading by the accepting authority. The Bench has held that the accepting authority should have given specific reasons for disagreeing with the grading given by the reporting/reviewing authority. Further the down graded grading should have been communicated to the applicant, because these were adverse remarks. The order of Mohan Gupta vs. State of M.P. (supra) reviewed at (a) above has been ^{also} relied upon.

We are in respectful agreement with what is held in the above cited orders. In the present case the situation is the same as in the cited orders as deliberated earlier. Our finding recorded above are supported by what is held in the cited orders. In view of this fact situation, we are compelled to conclude that lowered down gradings in the reports of 1991 & 1997 without recording reasons cannot be sustained. Further any down grading (in this case the Good grading) which comes in the way of the officer

being reported for being promoted, then such lowering down of the grading is an adverse entry and is required to be conveyed in view of the law laid down by the Hon'ble Supreme Court in the case of U.P.Jal Nigam (supra) and earlier deliberated in para 12.3 In the present case, the confidential rolls made available do not show conveying of these down gradings to the applicant. Therefore these gradings are to be ignored while considering the case of the applicant for promotion to the post of ADGP as we ^{have} held earlier in para 13 based on the law laid down by the Hon'ble Supreme Court.

18. The applicant in the rejoinder reply as stated earlier has taken ^{the following} additional grounds :-

(a) Though the Screening Committee meeting was held on 20.4.1998 but the recommendations were acted upon only on 18.2.1999. The applicant submits that recommendations were not being accepted by the competent authority as he was not satisfied the way in which the certain recommendations were made. However, suddenly with the change in Government on 1.2.1999 in a great haste, the recommendations were accepted and promotion orders were issued on 18.2.1999. The applicant alleges that sudden acceptance of the recommendations of the Screening Committee was as a consequence of some vested interest who wanted to ensure that the applicant did not get his promotion. The applicant therefore has made ^a prayer that Tribunal should call for the records and examine the veracity of the submissions of the applicant.

(b) Government of India has issued fresh guide lines dated 15.1.1999 ^{for} ~~regulation~~ ^{of} ~~promotion~~ by selection of IPS cadre. This letter was received by the Respondent No. 1 on 18.1.1999. The promotion orders were issued on 18.2.1999. The guidelines dated 15.1.1999 have made significant change with regard to criteria of promotion ^{which} ~~has been modified to the~~ ^{extent that} ~~no~~ bench mark has been prescribed and even 'good' service record is enough for the purpose of promotion. Since the new guidelines had come into operation on 15.1.1998, acceptance of the recommendations of the screening committee held on 20.4.1998 as per the guidelines dated 4.9.1989 and issue of the promotion orders thereof dated 18.2.1999 is illegal, null and void and deserves to be struck down.

Though the applicant has taken these two grounds in the rejoinder reply and also argued on the same during the hearing, but has not made any amendment in the OA. and consequently modify the reliefs prayed for. As regards the ground (a), we do not consider that same is relevant to the issue under challenge. The fact is that the applicant had not been found fit for promotion by the screening committee and the same has to be gone into on merit keeping in view the relevant rules governing selection and the infirmities pointed out by the applicant. In respect of new guidelines, the applicant has not made any prayer that the review screening committee meeting should be held based on the new guidelines dated 15.1.1999 as all the grounds have been advanced with reference to 4.9.1989 ^{guidelines.} In view of this, we decline to go into merits of these grounds.

19. In the light of the deliberations in the earlier paras above, we come to the conclusion that the screening committee meeting on 20.4.1998 is vitiated on account of the following infirmities :-

(a) non consideration of the relevant material.

(b) Non conveying the adverse entries which were below the bench mark.

(c) non communication of the fall in grading.

(d) down grading of the grading by the reviewing/accepting authority without recording any reasons.

20. Now the question which begs consideration is that what direction should be given in the light of the infirmities stated above. For this, the matter needs to be looked at from two angles :-

(a) We find serious infirmities in holding of selection by the screening committee held in April, 1998 and the same deserves to be quashed on account of these infirmities. However, we find that the applicant has not sought quashing of the entire selection and only has challenged his non promotion and sought relief of his promotion. Further, four officers of 1968 & 1969 batch who had been placed on the panel have been since promoted before the present OA. had been filed. The applicant has not made them as party respondent. With this fact situation, we are constrained not to quash the entire selection. However, in case of OA.NO.117.99, Charan Singh Azad vs. State of Maharashtra & OA.NO.120.99 in case of B.N.Mishra vs. Union of India, we have quashed the entire selection as per the Screening Committee meeting held on 20.4.1998 for different reasons.

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(b) As held by the Hon'ble Supreme Court in the case of Dalpat Abasaheb Solunke vs. Dr.B.S.Mahajan, 1997 SCC(L&S) 982 in para 12 and extracted below, the Court can interfere with decision of the selection committee only on grounds such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection :-

"... It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

 We have earlier concluded that there are several such infirmities which vitiate the selection. Therefore, judicial interference is called for. But what should be the nature of interference. Though in some cases the Court/Tribunal has taken upon itself to direct promotion of the petitioner applicant, considering the peculiar facts and circumstances of the

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case but the general law laid down by the Hon'ble Supreme Court is that Tribunal cannot give direction for promotion which is to be done on merit for which Screening Committee is the competent body. It can only direct to reconsider the case. We cite here a few such judgements :-

- (i) Gurdiyal Singh Fijji vs. State of Punjab
1979 SCC (L&S) 197.
- (ii) State of Bihar & Ors. vs. Baleshwar Sharma
1997 SCC (L&S) 975.
- (iii) State Bank of India vs. Moh.Mynuddin
1987 SCC (L&S) 464.
- (iv) Union Public Service Commission vs. Hiranyalal Dev
1988 SCC (L&S) 484 (1988) 2 SCC 242.

Here we reproduce as under an extract from the case of Hiranyalal Dev & Ors. from para 5 :-

" The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as "outstanding", "very good", "good" etc. This function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested into the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the tribunal itself was exercising the powers of the Selection Committee,

as has been done which is evident from the passage extracted from paragraph 16 of the judgement :

We have also gone through the C.C.Roll, of the two juniors officers, respondents 11 and 12 for the same period of five years including 1982-83. We are of the definite view that there is absolutely no reason after expunction of the adverse remarks to hold that the applicant deserved a lower classification than these two respondents, who were junior to him.

The proper course to adopt was the course which was indicated by this Court in *Gurdial Singh Fiji v. State of Punjab*, wherein this Court directed that the case of the appellant be considered afresh by the Selection Committee indicating the broad framework within which the Committee should act and the preliminary steps the government should take in order to facilitate the Committee's task."

In view of the law laid down by the Hon'ble Supreme Court, we remand the case back to hold review Screening Committee taking care of the infirmities which have vitiated the earlier meeting. We are unable to accept the request of the applicant that Respondent No. 1 be directed to promote the applicant straight away.

21. In the result, we allow the OA. with the following directions :-

(a) The recommendations of the Screening Committee meeting held on 20.4.1998 in respect of the applicant are set aside.

(b) The applicant's case for promotion shall be considered by the review Screening Committee ignoring the adverse



gradings in the confidential rolls of the various years as brought earlier in para 12,13,14 and 16 above in the ACRs of 1995, 1996 and 1997.

(c) If the applicant is found fit for promotion by the review Screening Committee meeting, then he will be deemed to have been promoted from the date his junior is promoted, i.e. 19.2.1999. He will be entitled for all the consequential benefits including seniority and the payment of arrears as become due with the promotion from 19.2.1999.

(d) The directions given in the OA.NO.117/99 Charan Singh Azad vs. State of Maharashtra and OA.NO.120/99 B.N.Misra vs. Union of India shall be kept in view when holding review Screening Committee meeting.

(e) The compliance of the order to be done within a period of three months from the date of receipt of the order.

(f) No order as to costs.

S.L. Jain
(S.L.JAIN)

MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)

MEMBER (A)

mrj.