

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 117/99

7.1.2000
Date of Decision:

Charan Singh Azad .. Applicant

Applicant in person .. Advocate for
Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri V.S.Masurkar for R 1 to 3 .. Advocate for
Shri R.K.Shetty for R-4 Respondent(s)

CORAM:

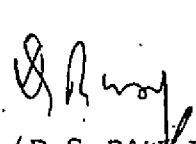
The Hon'ble Shri D.S.Baweja, Member (A)

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

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? ✓

(3) Library ✓


(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.117/99

Dated this the 7th day of January 1999. ²⁰⁰⁰ @

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

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

Charan Singh Azad,
Deputy Commandant General
Home Guards and Deputy Director
of Civil Defence, O/O the Commandant
General, Home Guards,
Old Secretariat Annexe,
M.G.Road, Fort, Mumbai.

... Applicant

Applicant in person.

V/S.

1. State of Maharashtra,
through the Chief Secretary,
Govt. of Maharashtra,
Mantralaya, Mumbai.
2. P.Subramaniam,
Chief Secretary
(Formerly Additional Chief
Secretary), Home,
Govt. of Maharashtra,
Mantralaya, Mumbai.
3. A.S.Inamdar,
Director-General of Police,
Maharashtra, Police Headquarters,
Old Council Hall,
Shahid Bhagatsingh Road, Mumbai.
4. Union of India
through the Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi.

5. S.M.Shangari,
Addl. Director General of
Police (Training),
O/O Director General of Police,
SBS Marg, Mumbai.
6. A.K.Agarwal,
Addl.Director General of
Police (Anti-Corruption),
Pandurang Bhokar Marg,
Worli, Mumbai.
7. R.S.Sharma,
Addl.Director General
of Police, Thane Range,
Thane.
8. K.K.Kashyap,
Addl. Director General of
Police and Commissioner of
Police, Pune City, Pune.

... Respondents

By Advocates Shri V.S.Masurkar
for Respondents No. 1 to 3
and Shri R.R.Shetty for
Shri R.K.Shetty for Respondent
No.4.

ORDER

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

Through this OA, the applicant has challenged his non selection to the post of Additional Director General of Police.

2. The applicant is a direct recruit to Indian Police Service (IPS) of 1967 Batch. The applicant at the time of filing the OA. was in the rank of Inspector General of Police (IGP) in the scale of Rs.18400-22400. The applicant is due for promotion to the next grade of Additional Director General of Police (ADGP). The applicant submits that prior to

August/September, 1998, there were 3 cadre posts of ADGP. Based on the cadre review by the Central Government, the cadre posts have been increased from three to seven. Consequently the non cadre posts in the rank of ADGP also could be operated upto seven posts by the State Government. A Departmental Promotion Committee (DPC) meeting was held in January/February, 1998 for consideration of eligible officers for promotion to the post of ADGP. It is understanding of the applicant that officers of 1967, 1968 and 1969 batch were considered by this DPC. The applicant apprehending that he has not been selected by this DPC and his juniors have been placed on panel has filed the present OA. on 9.2.1999.

3. When the matter was listed for the first time on 19.2.1999, by way of an interim order, it was provided that the respondents will not promote anybody to the post of ADGP in pursuance of the selection made by the DPC/Screening Committee meeting held in January/February, 1998 for a period of 7 days. However, on the subsequent date of listing on 26.2.1999, the respondents brought out that the promotion orders had been already issued on 18.2.1999 and the concerned officers have also taken over charge on 19.2.1999. The interim stay order was accordingly modified ^{stipulating} that promotions to the post of ADGP of the four officers (i.e. Respondents No. 5 to 8) will be subject to the final orders to be passed in the OA.

4. In the brief written statement filed by the respondents to oppose the admission of the OA. and for vacation of the interim stay order, it was disclosed that subsequent to Screening Committee meeting held on 7.1.1998 when 1967 Batch officers were considered, another Screening Committee^{meeting} was held on 20.4.1998 for the anticipated vacancies in which the officers of 1968 & 1969 Batch were considered. It was further disclosed that four officers of 1967 Batch placed on the panel by ^{the} Screening Committee meeting of 7.1.1998 were promoted as per order dated 11.1.1999 and four officers based on 20.4.1998 Screening Committee meeting were promoted as per order dated 18.2.1999. Consequent to the disclosure of these facts, the applicant filed an amendment application to implead the officers promoted as per the order dated 18.2.1998 as a party respondent and also to make additional averments to challenge the Screening Committee meeting held on 20.4.1998 and consequent reliefs have also been prayed for. This amendment application had been allowed. In the amendment application, the applicant has contended that Screening Committee meeting held in April 1998 in which the Respondents No. 5 to 8 were placed on the panel is ab initio void and bad in law.

It is because of the fact that additional posts of ADGP were created only by notification dated 7.8.1998 by the Central Government and therefore these posts could not be treated as anticipated vacancies in April 1998. Further, the officers who were^{meeting} overlooked in the January 1998 Screening Committee^{meeting} should have been also considered as a matter of right and the Rule of

waiting for earning two ACRs is an arbitrary provision in violation of Articles 14 and 16 of the Constitution of India. The applicant has also contended that the contention of the respondent No. 1 that the Respondents No. 5 and 8 had taken charge of the post of ADGP on 19.2.1999 before the grant of interim stay order needs to be gone into by the Tribunal in greater detail as these officers had been promoted at the same posts where they were earlier working by upgrading the posts which was beyond the power of the State Government.

5. The applicant has prayed for the several reliefs as under:-

A- originally in the OA. -

- (a) to declare that non selection of the applicant is illegal, arbitrary and bad in law.
- (b) to set aside the selection held for the post of ADGP and to hold fresh selection.
- (c) to supply the ACR Dossiers including ACRS Dossiers considered by the Screening Committee meeting along with records of all IGP's already promoted and likely to be promoted.
- (d) Tribunal to compare the ACRs of the applicant with ^{1968 &} that of 1967 Batch and those of 1969 batches proposed to be promoted.
- (e) Tribunal to ascertain the criteria followed by Screening Committee on which the merit selection was drawn and guidelines issued to the Screening Committee as these were not disclosed.

- (f) Tribunal may check the composition of the Screening Committee as it was faulty and contrary to the mandatory provision.
- (d) Tribunal to get record indicating the detailed reasons recorded by the Screening Committee for supersession of the officers who are not included in the panel.

B - Through amendment application -

- (a) Screening Committee meeting held in April 1998 be declared null and void and ^{to} set aside the selection of private Respondents No. 5 to 8.
- (b) to direct the respondents to reconvene the Screening Committee meeting of April, 1998 and consider the applicant also in that meeting.
- (c) The instructions that the overlooked officer has to wait for two more ACRs before he is considered again for selection be declared arbitrary and null & void.
- (d) to declare that Respondent No. 8 was ^{not} eligible for being considered by the April, 1998 Screening Committee.

6. The applicant has built his case on the following grounds :-

- (i) The applicant has a very meritorious and unblemished record of service till date. No adverse remarks have been conveyed to him at any time and therefore the inference is to be drawn that the applicant was fit for promotion. Any grading which does not entitle promotion to the applicant will be adverse and should have been conveyed before the same can be taken into account.

- (ii) The applicant claims that he had very good/outstanding gradings from the reporting officers. He has strong suspicion that the Accepting authority namely Shri P. Subrahmanyam has down graded the same. Down grading has not been conveyed to the applicant.
- (iii) The applicant has been issued several appreciation letters for his creditable performance. His name had been also recommended for the ^{President's} Police Medal consistently for several years for meritorious service by the Controlling authority. The applicant believes that this material was not placed before the Screening Committee.
- (iv) Screening Committee did not bother to verify the ACRs whether they were complete in all respects and whether the adverse remarks had been conveyed.
- (v) The constitution of the Screening Committee was not as per rules. Against 4 members required, there were only three members. The recommendations of such a Committee are accordingly illegal.
- (vi) The Screening Committee did not prepare the comparative merit statement of all the eligible officers including those who were found fit.
- (vii) Reasons for supersession of the seniors have not been recorded.
- (viii) Selection was to be based on the criterion of "on merit with due regard to seniority". The Screening Committee has not followed the same

and appears to have based on "merit only" as per the positive merit without any weightage to seniority.

- (ix) The entire selection is tainted by bias and malafides of the members of Screening Committee namely Shri P. Subrahmanyam, Chief Secretary (Respondent No. 2) and Shri A.S.Inamdar, DGP (Respondent No. 3) to select the juniors, Respondents No. 5 to 8, ignoring the seniors including the applicant. Since Shri P. Subrahmanyam had down graded the grading of the applicant as accepting authority, objective assessment of the performance reflected in ACRs ~~therefore~~ was not ~~expected~~ of him with due application of mind.
- (x) Selection held in April, 1998 is ab initio void and bad in law as there were no vacancies existing for promotion against which the committee was required to make recommendations.
- (xi) Selection of Respondent No. 8, Shri K.K.Kashap is illegal as he did not meet with eligibility of service condition of 30 years ~~at~~ the time of consideration by the Screening Committee.
- (xii) The Rule of waiting for further two ACRs before the overlooked officer can be considered for promotion is arbitrary, unreasonable, not rational and violates Articles 14 & 16 of Constitution of India. The applicant should have been reconsidered by the Screening Committee held in April, 1998.

7. The Respondent No.1, i.e. State of Maharashtra has filed first a brief written statement to oppose the admission of the DA. and grant of interim ^{stay} order and thereafter filed a detailed written statement giving parawise remarks including for the amendments allowed. The respondents have explained that prior to August/September, 1998, there were no cadre posts of ADGP and only at the time of restructuring of IPS cadre in August, 1998, the post of ADGP was included in cadre. In January, 1998, there were three anticipated vacancies ^{due to} superannuation and besides 4 additional posts were expected against the proposal of cadre restructuring pending with Central Government. Screening Committee was held on 7.1.1998, when the officers of 1967 Batch were considered. Against the seven anticipated vacancies, only 4 officers out of eight of 1967 batch were found fit. It was therefore necessary to hold another Screening Committee meeting which was held on 20.4.1998 when officers of 1968 & 1969 Batches were considered. In view of this, ^{the} contention of the applicant that there was only one vacancy at the time of Screening Committee ^{meeting} held in January, 1998 is not tenable. The statement of the applicant that his record was unblemish is refuted stating President's that mere recommendation of the name for ^{the} Police Medal by the immediate superior is not enough. His name was not recommended by the State Government. The respondent ^{No.1} has also strongly contested the submission of the applicant that he was given outstanding grading by the reporting officers which were down graded by the Chief Secretary. With regard to the selection process, the respondent ^{No.1} avers that the same was followed as laid

down in the guidelines issued by Ministry of Home as per OM. dated 4.9.1989. The composition of the Screening Committee was as per these guidelines and there was no infirmity in the same as alleged by the applicant. The allegations of bias and favouritism in favour of certain junior officers made against the Chief Secretary Shri Subrahmanyam and Director General and Inspector General of Police Shri Inamdar are totally baseless and denied in toto. Allegations made referring to the promotion of Mr. Jafa as ADGP are also baseless. Similarly, the allegation of giving 'outstanding' grading in ACRs of the Respondents NO. 5 to 8 by Chief Secretary Shri Subrahmanyam are without any basis as the entries in the ACRs depend upon the performance of each officer. As regards the contention of the applicant that any down grading of the grading even if "Good" and comes in the way of promotion has to be conveyed, the respondents contend that the applicant has not quoted the rules and any case law. The submission of the applicant that Respondent No. 8, Shri K.K. Kashyap was not eligible to be considered for promotion in April, 1998, as he had not completed 30 years of service is controverted by the respondent No. 1

The respondent^{No. 1} submits that for the post of ADGP in April, 1998 being ex-cadre, there was no specific provision in the guidelines issued as per OM. 4.9.1989 and since for the post of Director General of Police (DGP), the eligibility condition is 30 years of service, the State Government for the post of ADGP had decided to lay down 28 years of service. Shri K.K. Kashyap met with this requirement and therefore the contention of the applicant is not sustainable. With these submissions made in the written

statement, the respondent ^{No.1} has pleaded that the application is devoid of merits and deserves to be dismissed.

8. The applicant has filed rejoinder reply both for the brief written statement as well as the detailed parawise remarks in the written statement of the respondent ^{No.1}. While controverting the submissions of the respondent ^{No.1} the applicant has reiterated his grounds taken in the OA. with further elaborations on the same citing case laws. The applicant has further contended that since Shri Subrahmanyam, Chief Secretary and Shri A.S.Inamdar, Director General of Police have been made party respondent by name, they only can refute the allegations of malafide and bias, ^{and} Smt. A.A.Sakhalkar who has filed affidavit on their behalf is not competent to do so and her affidavit therefore deserves to be rejected.

9. Respondent No. 4 has not filed any written statement. Respondents NO. 2 & 3 have also not filed any written statement. Newly added private respondents No. 5 to 8 were issued notices but they have not filed any reply.

10. We have heard the arguments of the parties. The applicant was initially represented by a counsel but at the time of final hearing, the applicant argued in person. The applicant also furnished written arguments, a copy of which was given to the counsel of the respondents. Shri V.S.Masurkar and Shri R.K.Shetty represented Respondents No. 1 & 4 respectively.

Respondents No. 5 to 8 were neither present in person nor represented through a counsel.

11. The Respondent No. 1 made available the relevant record containing the ACRs folder, minutes of the various Screening meeting. Committee. The minutes of all the Screening Committees are in Marathi and therefore on direction, English translation has been furnished by the counsel of the Respondent No. 1.

12. The applicant appearing in person cited a large number of judgements of the Hon'ble Supreme Court and orders of the various Benches of the Tribunal in support of the various grounds advanced by him. These will be reviewed at the appropriate places when we will consider the grounds on merits subsequently.

13. Before we consider the grounds advanced by the applicant to make out a case that overlooking of the applicant for promotion to the post of ADGP is illegal, we will remind ourselves of the scope of judicial review in the matter of challenge of the proceedings of a Screening Selection/Committee as laid down by the Apex Court in a catena of judgements. Here, we reproduce the observations^{made} in para 12 from the judgement of the Hon'ble Supreme Court in the case of Dalpat Abasaheb Solunke vs. Dr.B.S.Mahajan :-

"... 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."

Relying on this judgement, their Lordships of Supreme Court in several subsequent judgements have reiterated what is held in para 12 above namely (a) Dr.Krishna Chandra Sahu vs. State of Orissa, 1995 (5) SLR (SC) 337. (b) Union of India vs. Samar Singh & Ors., 1996 SCC (L&S) 1443. (c) Durgadevi & Anr. vs. State of H.P. and Ors., 1997 SCC (L&S) 982. (d) Kudeep Chand vs. State of H.P. & Ors., 1997 SCC (L&S) 1121. Keeping in view the law laid down by the Hon'ble Supreme Court, we will now examine the grounds advanced by the applicant to find out if the selection under challenge is vitiated by any of the factors indicated by the Hon'ble Supreme Court namely illegality or material irregularity in the constitution of the Screening Committee, infirmities in the procedure followed by the committee or proved malafides affecting the selection and other associated issues.

14. The first ground and which is the main plank of the challenge of ^{applicant's} non promotion is that the proceedings of the Screening Committee are tainted by biased and malafide disposition of the members of the Screening Committee namely Shri P.Subrahmanyam, Chief Secretary and Shri A.S.Inamdar, DGP. Applicant has made both of them as party Respondent Nos. 2 and 3 by name. Notices were issued to them but both have chosen not to file any reply. The reply filed by Respondent No. 1 has however contested the allegations of bias and malafides against these two officers terming them as ridiculous, wild and baseless and has also given parawise remarks on the averments made in the OA. to support the allegations of bias and malafides. The law on the allegations of bias and malafides is well settled by the Hon'ble Supreme Court through several judgements. We refer to one such judgement ^{which is} ~~L~~ also relied upon by the applicant in the case of Express News Papers Pvt. Ltd. vs. Union of India, 1986 (1) SCC 133. In para 116, their Lordships have observed that when malafides and bias 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 court in such case would be constrained to accept the allegations remaining so unrebutted or unanswered on the test of probability. In the present case, the Respondents No. 2 and 3 have not filed any affidavit themselves as indicated earlier and rebuttal of allegations has been done by Respondent No. 1. In view of this and keeping in view what is held by Hon'ble Supreme Court in the case of Express

News Paper Pvt. Ltd., the allegations of bias and malafides should normally be taken as accepted subject to the test of probability to be applied by the court. Even if an affidavit is filed by a party against whom the allegations are made denying the same or asserting the absence of any bias or malafides in consideration of the case for promotion, it does not preclude the court from inquiring into the truth of the allegations made against the authority as held by the Apex Court in para 9 in the case of Pratap Singh vs. State of Punjab, AIR 1964 SC 72 cited by the applicant. It is because, it is easy to make the allegations but difficult to substantiate the same by adequate material on record. Burden of proof of malafides is heavy on the person who alleges it. In order to succeed on the ground of malafides, the petitioner is required to place before the court the circumstances which if not controverted would lead to the conclusion that the action taken was for extraneous considerations. Here we cite the judgement of the Hon'ble Supreme Court, AIR 1985 SC 551, K.Nagraj & Ors. vs. State of Andhra Pradesh. In para 36 of this judgement, the Apex Court has observed as under :-

" The burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof."

Keeping in view the above observations of the Hon'ble Supreme Court, we will now go into the material brought on record to

support the allegations of bias and malafides to identify whether the same passes the test of probability and provide demonstrable ground to infer bias and malafides.

The applicant has laid down the foundation for the allegations of bias and malafides in para 4 (1) to 4 (n) in the OA. The main points are :-

(i) Both Shri P.Subrahmanym and Shri Inamdar were ill-disposed towards the applicant because he belongs to minority community, i.e. Sikh community. The hostile attitude became more pronounced when Shri A.S.Samra, a Sikh officer became DGP and Shri P.Subrahmanyam was Addl. Chief Secretary (Home) at that time. After becoming Chief Secretary, he started working with vengeance against the applicant.

(ii) Shri Subrahmanyam while working as Addl. Chief Secretary/Chief Secretary down graded the outstanding gradings given by Secretary (Food & Civil Supplies) and Police Commissioner, Mumbai and confirmed by Reviewing authority while accepting the reports. While down grading entir^{es} for the applicant, he has given outstanding gradings to the other IGPs namely, Respondents No. 5 to 8. Shri Subrahmanyam and Shri Inamdar have been openly speaking against the applicant that he will not be promoted and his juniors will be promoted and retained at the same place of posting. Q

(iii) Since Shri Subrahmanyam down graded the grading of the applicant, as a Chairman of the Screening Committee, he was biased and influenced the other members of the Screening Committee to over-look the applicant for promotion.

(iv) Shri Subrahmanyam had been reminded several times by Shri A.S.Samra, DGP for calling meeting of the Screening Committee but he continuously declined because he knew that he will not be able to influence Mr. A.S.Samra as he could do ^{with} Shri Inamdar in overlooking the applicant as ^{there were} strained relations between Mr.A.S.Samra and Mr.Subrahmanyam. He therefore held the ^{meeting} Screening Committee ^{only} after retirement of Mr.A.S.Samra so that the officers of 1968 & 1969 batches could be also considered by him and promote them.

(v) Shri P.Subrahmanyam had favoured one Shri Jafa of 1967 batch who was himself doubtful of his promotion because of the connection of his brother who is also IAS officer with the Chief Secretary. Similarly, Shri O.P.Bali has been favoured by the Chief Secretary.

After careful consideration of the above averments laying down the foundation for the allegations of bias and malafides and perusal of the record, we fail to subscribe to the contention of the applicant. We find that ^{the} ~~the~~ allegations are based on insinuations and surmises and not on ^{firm} foundation of the

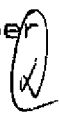
facts. The applicant except making general statements has not narrated any incidents or situations arising in official dealings with Shri P.Subrahmanyam and Shri A.S.Inamdar which may enable to draw even a hint of malafides and bias. We feel that averments made are more of a reaction as 'first blush' of the applicant after he came to know that his name has not been placed on the panel. The whole foundation of the allegations is that Shri Subrahmanyam was not on good terms with Shri A.S.Samra, DGP and since the applicant was close to Shri Samra, Shri Subrahmanyam wanted to wreck vengeance on him after retirement of Shri Samra. It is also stated that Shri Subramanyam had anti Sikh feelings. He also down graded the gradings of the reporting officers and reviewing authorities with a view to favour the juniors of the applicant and he had been openly telling that the applicant will not be promoted. These averments appear to suggest that applicant had reasonable apprehension that Shri Subrahmanyam will act malafidely against the applicant. In case it was so, then the applicant should have taken timely action to guard against the same by representing the matter to the competent authority. He would have requested that his case for promotion should be considered by other than Shri Subrahmanyam as Chairman of the Screening Committee. We do not find any averment to this effect in the OA. No material has been also brought on record. In fact ⁱⁿ his representation dated 27.10.1998 made to Chief Minister, when the applicant came to understand about his non promotion, there ^{are} ~~is~~ no such allegations. The representation

reads like an OA. and a large number of case laws have been cited on various possible grounds for his non promotion. The allegations of bias and malafides being the thrust of attack on the proceedings of Screening Committee, then this ground should have been also raised. Further we note from the record that contention of the applicant that Shri Subrahmanyam down graded the outstanding gradings of the reporting and reviewing authorities as accepting authority and thus he was member of the Committee with biased mind is not substantiated. We find that only for the report of 1997 Shri Subrahmanyam was the accepting authority while for the reports of 1995 & 1996 he was reviewing authority. The reports of 1995 and 1996 were firstly not with outstanding grading by the reporting officer and secondly Shri Subramanyam accepted the gradings without any change. Only in case of 1997 report which was reviewed by Shri A.S.Samra and consisted for two periods, Shri Subrahmanyam down graded the grading as accepting authority. This we will be dealing subsequently but for the present it is suffice to remark that for 1995 & 1996, Shri A.S.Samra was DGP and still Shri Subramanyam did not down grade the grading which he should have done if he was illdisposed towards the applicant. Further allegations that Mr.Subramanyam boasted the gradings of his juniors (Respondents No. 5 to 8) to over look applicant is difficult even to take note of. How the applicant could contend so in the absence of access to their reports and he cannot be a judge for their merit in comparison with his? These allegations are therefore baseless

and perhaps arising out of presumption of the reasons made by the applicant with regard to his non promotion. The allegation that Chief Secretary Shri Subrahmanyam avoided holding Screening Committee meeting till the retirement of Mr.Samra, DGP is also far fetched and is controverted by his own submission. The applicant has taken a plea that there was only one vacancy of ADGP and therefore April,1998 meeting could not be held. In such an event, how the Screening Committee could be held before the retirement of Shri Samra in 1997 for which he was putting pressure as per the knowledge of the applicant. In case of Shri A.S.Inamdar, there is no specific allegation against Shri Inamdar and he has been just bracketed with Shri Subramanyam. The applicant has not indicated that at any time he had worked with him as a colleague or under him when any incidents took place in official dealings which Shri Inamdar could carry and got opportunity on promotion as DGP to take revenge from the applicant. In the absence of any such details, it is difficult even to go into merits of such allegations. With these observations, we have no hesitation to conclude that on the material placed before us, we cannot sustain the allegations of bias or malafides against the Respondents No. 2 & 3. This plea accordingly deserves to be rejected.

15. The second group of grounds concerns the constitution of screening committee, assessment of vacancies and procedure for selection followed by the screening committee. The first ground taken in para 4 (k) of the OA. in this category is that the composition of the screening committee was defective as against the four Members, it comprised of only three Members. The applicant has submitted that the committee was required to be constituted of the following Members as per guidelines dated 4.9.1989 : - (a) Chief Secretary (b) a non IPS officer of a rank of Chief Secretary (c) Director General of Police and (d) an additional Member in case there is available who is holding independent charge of Home Secretary and in the rank of Additional Chief Secretary or Chief Secretary (rank not less than Additional Secretary to Government of India). Actually the screening committee comprised of three Members only namely, (a) Chief Secretary, (b) Director General of Police and (c) Additional Chief Secretary (Home, in the rank of Chief Secretary). This has been admitted by the respondents in para 15 of the written statement. The respondent No. 1 has however justified that the composition of screening committee with three Members was in accordance with the guidelines dated 4.9.1989. The Respondent No. 1 has stated that Additional Chief Secretary (Home) was a non IPS officer in the rank of Chief Secretary and was also holding an independent charge of Home Secretary. In this way, the respondent^{No. 1} contends that ^{Home Secretary} L therefore represented both the Members as required at (b) and (d) above and thus there

was no need for the fourth Member. Further, it is also submitted that there is no violation of the guide lines dated 4.9.1989 because firstly there is no specific mention about the composition of the screening committee for the post of ADGP being ex-cadre post and secondly the post of ADGP is below the rank of DGP. On careful consideration of the guidelines dated 4. 9.1989, we find it difficult to endorse the stand of the respondents. The first contention of the respondents is that guide lines dated 4.9.1989 do not lay down any composition of the screening committee for the post of ADGP as this post is not covered by these guidelines and therefore State Government is free to decide the composition of the committee. This contention does not stand to reasoning. Firstly, the post of ADGP is in a grade in-between DGP and IGP and therefore selection to this post cannot be of any standard lower than that for the post of IGP even if the post of ADGP was ex-cadre. Secondly, in the latest guidelines which was referred to during the arguments, the post of ADGP is included in the cadre, ^{and} the same composition of screening committee as for DGP and IGP has been laid down. Thirdly, the respondents have submitted that the selection has been done as per the guidelines dated 4.9.1989. Then, how for screening committee composition, the respondents could act differently. Fourthly, this contention is not supported by the record. On going through the minutes of the screening committee meeting held in January, 1998, it is noted that screening committee comprised of four Members which showed that the State Government was

following the guidelines dated 4.9.1989. The fourth Member was Addl. Chief Secretary (General Administration) but he was not invited to attend the meeting as was in the scale of Principal Secretary's rank. The second contention is that Additional Chief Secretary (Home) with independent charge and in the rank of Chief Secretary substituted for the non IPS officer in the rank of Chief Secretary and therefore he represented both the Members at (b) and (d) above and accordingly there was no need for the fourth member. We are not convinced by the logic advanced by the Respondent No. 1. After careful reading of para IV (A) of the guidelines dated 4.9.1989 ^{we find that} ~~and~~ the same does not admit the interpretation made by the Respondent No. 1. The 4th Member is to be Secretary (Home) on ex-officio basis in case he holds the independent charge and at least in the scale equivalent to Addl. Secretary to Government of India. If such an officer is available, he ~~has~~ to be necessarily a member of the committee. It does not mean that if such an officer is available in the rank of Chief Secretary, then there is no need for a non IPS officer in the rank of Chief Secretary as Member and he can substitute for both. It appears that from the minutes of the meeting of January, 98 meeting ^{that} ~~there~~ was a standing screening committee designated as screening committee No. 3 for consideration of promotions to the post of IGP & ADGP. The screening committee has recorded in the minutes of the meeting held on 7.1.1998 that earlier the Addl. Chief Secretary (Services) General Administration is one of the member  of the screening committee

and the present officer is only in the rank of Principal Secretary, the question of inviting him to attend the meeting did not arise. We fail to understand as to how the committee could have taken such a decision. It is within the domain of the authority who is competent to accept the recommendations of the committee to make any changes in the constitution of the committee. If the fourth member nominated on the screening committee was not competent to be member, then the matter should have been placed before the competent authority to nominate another officer to comply with the constitution of the committee as per the guidelines dated 4.9.1989. Dealing file made available does not reveal any such action being taken. The committee is not competent to take such decision. On going through the minutes of the meeting held during April, 1998, we find same situation and here also the fourth member was not invited to attend meeting as being in the lower rank. In the light of these observations, we have little hesitation to conclude that constitution of the screening committee was not as per guidelines dated 4.9.1998. The proceedings of such an illegal committee accordingly cannot be sustainable. In this connection, we refer to order of the Tribunal in the case of S.S. Darbari vs. Union of India, 1996 (2) CAT SLJ 701. In this ^{case} also the issue ^{was} under challenge with regard to non promotion of an IPS officer from the post of DIG to IGP. The screening committee comprised of 3 members as against 4 members as laid down as per the guidelines. The Bench held that the constitution of the

screening committee suffered from the infirmity of being illegal, that is the same view we have taken above and declared that the selection is vitiated on this score. Further as held by the Hon'ble Supreme Court in the case of Dalpat Abasaheb (supra) and extracted in para 13 above, Judicial interference is warranted in case the constitution of the selection/screening committee suffers from the vice of material irregularity/illegality.

16. The second ground connected with proceedings of the screening committee is that the Respondent No. 8, Shri K.K.Kashhyap was not eligible to be considered in April, 1998 meeting as he had not completed 30 years of service as required for the post of ADGP. The Respondent No.1 has strongly contested this and has stated that the post of ADGP in April, 1998 was ex-cadre and therefore no criterion for the years of service for eligibility had been laid down in ^{the} guide lines dated 4.9.1989. It is further added that since the post of ADGP is below DGP and above IGP, State Government had laid down the criterion of 28 years of service keeping in view 30 years for the post of DGP as laid down in the guidelines dated 4.9.1989 and this criterion is being followed for several years now. On careful consideration of these averments and after going through the minutes of the Screening Committee meetings, we agree with the explanation of the respondents. We find that ^{the} criterion of 28 years was followed in 1996 also when the officers of 1967 batch had been considered. In fact, it is noted that this norm ^{is} being followed since 1991

onwards. Thus, we conclude that the criterion laid down by the State Government was 28 years and not 30 years as contended by the applicant. Accordingly, the applicant cannot question the eligibility of Respondent No. 8 for consideration for the post of ADGP in April, 1998 meeting if he had completed 28 years of service.

17. The third ground challenging the proceedings of the screening committee is that the committee has not considered the material documents/record to assess the fitness of the applicant.

The applicant has stated that during his service period he has received a large number of appreciation letters from the various authorities and his name had also been recommended on several occasions during the last 10 years for President's Police Medal for meritorious services. The applicant's allegation is that this material has not been taken into consideration and the committee has deliberately overlooked the same on account of bias of the members. He has further stated that if this record was taken into consideration, the committee would have taken the correct view in assessing his fitness. We find that ^{the} applicant has brought on record some appreciation letters as well as the citations proposing his name for President's Police Medal. During hearing, the applicant also handed over one more bunch containing the appreciation letters and the citations in addition to what had been brought on the record. The Respondent No. 1 has contested this and the counsel for the respondents during

arguments submitted that mere recommendations for the Medal are not enough and such material cannot be placed before the committee until and unless President's Police Medal is awarded ^{then} and this fact will be placed before the committee. The applicant also drew our attention to All India Services (Confidential Rolls) Rules, 1970 to support his point. On going through these Rules, we note that in pursuance of clause (b) of Rule 2, Central Government has laid down documents to be included in the confidential roll as defined in this clause. As per these instructions, among other documents and items, the ^{of} Letters of appreciation/Resolution issued by the Government to a member of All India Services, record about any medals, award etc. awarded to him in recognition of his service are to be part of confidential rolls. Accordingly, the proposals for award of President's Police Medal for the applicant could not be part of the confidential roll as no Medals were awarded in pursuance of the same. As regards the appreciation letters only those which are issued by the Government are to be part of the confidential roll. The applicant has not ^{given} specific details of such letters. From perusal of the letters of appreciation brought on the record, we do not find that all the letters had been issued by the Government. In the background of these observations, we are not persuaded by the contention of the applicant and do not find any substance in the same. However, we find that some appreciation letters are enclosed with reports of different years and mentioned in the reports against item 3 of Part placed before the committee. In any case, we do not find any II

infirmary as brought out by the applicant that the material relied upon by the applicant was ^{not} required to be placed before the committee ^{it was} as ~~not~~ meeting with the provisions of clause (b) of Rule 2 as discussed above.

18. Fourth ground connected with the screening committee proceedings is that screening committee held in April, 1998 is ab-initio void as there were no vacancies against which the committee was required to make recommendations. The applicant has further stated that the posts under Cadre restructuring were sanctioned only by the order dated 7.8.1998 of the Government of India. Even for the January, 1998 meeting, there was only one vacancy which occurred due to promotion of Shri R.H. Mendonça, Commissioner of Police, Mumbai to DGP grade. The Respondent No. 1 has however contested this stating that the meeting in April, 1998 was ^{held} keeping in view the anticipated vacancies. for going into the merits of this ground of the applicant, we will ^{here} briefly state the position of the assessed vacancies as revealed from the minutes of the Screening Committee meetings of January, 1998 and April, 1998 and also the submissions made in the written statement.

The Screening Committee in the meeting of January, 1998, has assessed the vacancies as under :-

(a) Future vacancies - Retirement of Shri A.S. Inamdar on 30.11.1998, Shri G.C. Verma on 30.6.1999 and Shri R.H. Mendonca on 30.9.1999.

(b) Though the availability of the vacancies due to retirement will require some time, but in pursuance of recommendations of Fifth Pay Commission, Central Government has taken decision to include the post of ADGP in the IPS cadre and to sanction 7 posts for Maharashtra cadre. At present there are 4 posts of ADGP out of which 3 posts are proposed to be made as cadre posts. Taking into consideration 7 proposed posts including 3 available posts, 4 additional posts will be available in the next few months. Since to fill up these posts, no select list is available, it is necessary to draw a new select list.

In the screening committee meeting held in April, 1998, vacancies position has been recorded as below :-

The select list proposed in January, 1998 meeting has been submitted for Government's approval. In view of proposed restructuring under Fifth Pay Commission, Central Government has proposed 7 cadre posts of ADGP out of existing 4 posts of ADGP, 3 posts are proposed to be cadre posts. Thus excluding 3 available posts, 4 additional posts would be available in next few months. Further, a proposal for creation of some non cadre posts (minimum 5) to remove stagnation in the IPS cadre is under consideration. So by considering all the posts which are likely to be available, the select list for promotion to the post of ADGP is to be prepared.

In the written statement in para 10, it is submitted that in January, 1998, 3 vacancies were expected due to superannuation. Besides the proposal of restructuring of the IPS cadre was under consideration by Central Government since July, 1997 and four additional posts were likely to be available. Thus in all 7 vacancies were anticipated. Since in the screening committee meeting held on 7.1.1998, only four officers were found suitable for promotion, it was considered necessary to have another screening committee meeting and hence meeting on 20.4.1998 was held when the officers of 1968 & 1969 Batches were considered.

Since in the written statement, the details of the vacancies were not brought out clearly, the counsel of the respondent No. 1 was asked to furnish the details of the vacancies considered for ^{various} ~~the~~ ^{and} meetings. He made available the details as under :-

	Existing vacancy	Anticipated
Screening Committee meeting - 7.1.1998	Nil	3 due to superannuation on 30.11.98, 30.6.99 & 30.9.99. 4 new posts anticipated due to cadre restructuring, i.e. 3 + 4 = 7
Screening Committee meeting - 20.4.1998	Nil	(7-4) - 3 due to super- annuation. 5 - posts anticipated in view of proposal to create 5 ex-cadre posts to remove stagnation.
Screening Committee meeting - 14.5.1999	Nil	One post kept for Shri Bali whose case kept open in the meeting held on 7.1.1996.

Screening Committee
meeting - 27.9.1999

Nil

Creation of 2 non cadre
posts.

From the above details, it emerges that the Respondent No.1 has taken altogether different stand in the written statement to justify the holding of April,1998 meeting stating that this was in continuation of the January,1998 meeting. The minutes of the meeting held in April,1998 record altogether different reasons requiring the holding of this meeting. Keeping the above details in focus, we will now examine whether the action of the respondents in holding April,1998 meeting can be legally sustainable. However, before going into this issue, we cannot help but to record our astonishment at the usual procedure followed for assessment of the vacancies for selection. On going through the screening committee meeting file of April,1998, there is nothing on the record to show ^{that} the assessment of the vacancies for which the selection committee was required to meet had been done before hand. It is only in the minutes of the screening committee, the assessment of the vacancies has been discussed and recorded. This shows that decision for the assessment of the vacancies was taken by the screening committee. In the absence of any rules cited otherwise, we are not able to comprehend that assessment of the vacancies is within the competence of the screening committee. The screening committee is required to assess the suitability for promotion of the eligible candidates as per the laid down criteria and rules and make recommendations for the same for consideration of the competent authority. The

list of the eligible candidates for the vacancies to be filled up is to be decided first and then advised to the screening committee. It is within the domain of the competent authority to approve the assessment of the vacancies and then direct to screening committee to make recommendations to fill up the same. We do not find that any assessment of the vacancies was done ^{before hand} and ^{taken} approval of the competent authority. We find that the same procedure has been followed in the case of January, 1998 meeting. It appears that Chief Secretary as the Chairman of the screening committee has played dual role acting as member of the committee and also Head of the administration and could take decision with regard to the vacancies. The assessment of the vacancies cannot be left to the screening committee as in such a situation, the possibility of arbitrary and motivated assessment cannot be ruled out. On going through the guidelines dated 4.9.1989, we find that there is ^{specific} no ^{however} provision made with regard to assessment of vacancies. Here, ^{however} we refer to the instructions laid down by the Department of Personnel and Training as per O.M. dated 10.4.1989 on "Departmental Promotion Committees (DPCs)" "Functions & Composition". In para 4.2.1 of this O.M., it is laid down that ^{proposal} for holding DPC ^{proposal} is to be put up as per proforma at Annexure-I. Against items 3 & 4 of this proforma, details of the vacancies are required to be placed before the DPC. Though these instructions may not directly apply to the selection under challenge, but we have referred to the same to support our contention that it is not the role of the screening committee to assess the vacancies first and then hold its meeting. The

instructions of Department of personnel & Training demonstrate the general rules to be followed in the matter of selections by the DPC even if there are no specific rules. In the light of these remarks, we strongly disapprove the method followed in assessment of the vacancies by the screening committees. We have made these observations in the context of our subsequent deliberation on this issue to demonstrate that the assessment of vacancies was arbitrary and motivated with a view to promote officers of particular batches. We also hope that State Government will take note of this for taking remedial steps.

After making the above observations, we will now consider whether the holding of April, 1998 meeting can be held legal. The respondents have not brought out the rules under which the assessment of the vacancies was done. The respondents have admitted that selection was governed by the 4.9.1989 guidelines. Therefore, we will look into these guide lines for answer to this question. On going through these guidelines, we find that there is no specific para covering the issue of assessment of vacancies. However, para IV (D) (ii) throws light on this issue. Para IV (D) (ii) lays down that fresh panel will be prepared as soon as all the officers of earlier panel have been provided for. It is further provided that those who have been empanelled for promotion but not yet promoted after two years are to be screened again. It is also stipulated that those of the officers not included in the panel ^{to be} are reconsidered after scrutiny of two more reports. In para IV (e) (iii), it is laid down ^{that} the completion of requisite years' service for eligibility and to be within zone of

consideration will be 1st day of July of relevant year. These provisions point out that the screening committee meeting should normally^{be} held after 1st July. This date is presumably fixed taking into account that confidential reports of the earlier year ending March would be available by that time. It is also obvious that the vacancies should be assessed for a period of two years firstly as the selected officers could remain on the panel for two years without any review of their assessment for fitness and secondly because the officers who are over looked could be considered only after earning two more confidential reports. In view of this position emerging from 4.9.1989 guide lines, it is not understood as to why Jan, 1998 was chosen for holding the screening committee meeting when there were no likely vacancies available due to superannuation in the near future as recorded by the screening committee. The meeting was held solely because 4 vacancies under cadre restructuring of IPS by the Central Government were anticipated, conceding that this anticipation was established by subsequent sanction of 7 cadre posts which made available 4 additional posts and the panel was required to be kept ready to effect promotions as soon as posts are sanctioned, but the anticipated vacancies could not be taken as meant only for 1967 Batch. As per guide lines dated 4.9.1989, zone of consideration was to comprise of all those who had completed 28 years of service. But the minutes of meeting of January, 1998 do not reflect this and it just considered only 1967 batch though the officers of subsequent batches had also completed 28

years at that time. It appears that in January, 1998 meeting, the vacancies were assessed just with a specific purpose to promote a certain number of the officers of 1967 batch and to make line clear for consideration for the next Batches. It is further intruding to note as to why four officers were placed on the panel against 4 vacancies when case of one officer was kept open pending consideration of his representations against adverse remarks. The committee had not indicated the vacancy ^{to be} kept for this officer in case he is found fit by the review screening committee meeting. In fact, it was so as this officer was considered fit by the screening committee meeting held on 14.5.99 and has been promoted against the subsequent vacancy. In the face of this position of January, 1998 meeting, the holding of April, 1998 meeting just after 3 months out of schedule is un-understandable. This meeting has been held simply stating that five ex-cadre posts may be sanctioned by the State Government after 7 cadre posts are sanctioned by the Central Government. The screening committee has not disclosed any details about likely sanction of these posts and as to when the proposal was frame. It is also not disclosed that the competent authority directed to hold the screening committee meeting indicating the sanction of additional non cadre posts. The file made available is also silent on this aspect. If both the meetings held in January, 1998 and April, 1998 were based on the anticipated vacancies, then splitting into independent meetings was not warranted. All the anticipated vacancies should have been assessed for January, 1998 meeting and the officers could

have been considered batch-wise as per the guidelines. The stand taken in the written statement reflects the correct action which was required to be taken. However, as deliberated above, this stand is not born by the facts as revealed after the perusal of the screening committee's minutes of meetings. Holding of the screening committee meeting has been as a rolling plan by assessing vacancies in piece^{meal} suiting the objective to be achieved. In the light of these observations, holding of a separate screening committee meeting in April, 1998 with independent assessment of vacancies cannot be held as valid. All the 12 vacancies (7 of January, 1998 and 5 of April, 1998 meetings) are to be treated as one lot and to be considered as part of vacancies for January, 1998 meeting and selection to be re-done.

19. The fifth ground of infirmity concerning the proceedings of the screening committee deliberations is that the committee followed the criterion of "positive merit" without regard to seniority when the selection was required to be based on the criterion of "on merit with due regard to seniority". On referring to the guidelines dated 4.9.1989, we note that the following procedure is prescribed with regard to method of selection in para IV(c) (i) & (ii) :-

(i) Selection should be based on merit with due regard to seniority as provided in sub rule 2 A of Rule (3) of the Indian Police Services (Pay) Rules, 1954.

(ii) Suitability of officers to hold super-time scale may be judged by evaluating their character roll record as a whole and general assessment of their work.

Sub rule 2 A of Rule 3 of Indian Police Service: (Pay) Rules, 1954 reads as under :-

"Appointment to the Selection Grade and to posts carrying pay above the time scale in the Indian Police Service shall be made by selection on merit with due regard to seniority."

Thus the suitability of the officers for promotion is to be adjudged on the criterion of "merit with due regard to seniority". We note from Indian Police Services (Pay) Rules, 1954 that Sub-Rule 2 A in Rule 3 has been inserted as per notification dated 21.11.1968. In this connection, we refer to the judgement of Patna High Court in the case of N.P. Mathur vs. State of Bihar (FB), AIR 1972 Patna. ¹⁹³ In this ^{case} the issue related to promotion to the post of Chief Secretary belonging to Indian Administrative Service (IAS). The promotion to the post of Chief Secretary was challenged by those who were senior but not promoted referring to provisions of the same Sub-Rule 2 A in Rule 3 as for IPS referred to earlier among other grounds for challenge. Para 46 of this judgement gives the back ground leading to the insertion of Sub-Rule 2 A. It states that Sub Rule 2 A was inserted as consequence to the observations made by the Hon'ble Supreme Court in the case of Sant Ram Sharma vs. State of Rajasthan, AIR 1967 SC 1910. While dealing with promotions to selection grade in IPS cadre, the Hon'ble Supreme Court ^{in this judgement} held as under :-

"..... having regard to the basic principle that these posts above senior scale are selection posts, appointments to which should be made primarily on consideration of merit, seniority being regarded only where other qualifications are practically equal and formulate appropriate procedure for selecting officers primarily on merit before appointment on such posts in the All India Service Cadre of the State."

In the light of the above observations of the Hon'ble Supreme Court, the Notification dated 21.11.1968 inserting Sub Rule 2-A in Rule 3 was issued. In the judgement of N.P. Mathur the Hon'ble High Court has gone into the interpretation of sub Rule 2 A and in para 24 it is held as under :-

" It is agreed on all fours that the post of Chief Secretary is a selection post from the officers in the super time scale of pay and it is also agreed that Rule 3 (2A) of the Pay Rules applies. In those circumstances, it is clear that selection to the post of Chief Secretary will depend on merit Irrespective of seniority. In my opinion the principle laid down by their Lordships of Hon'ble Supreme Court in Sant Ram Sharma's case (AIR 1967 SC 1910) makes this portion clear."

Similar issue has been examined subsequently in the case of Union of India vs. M.L.Capoor, AIR 1974 Supreme Court 87. The matter related to selection to IPS & IAS cadres from State cadres under Service Indian Administrative and Indian Police Service (Appointment by promotion) Regulations 1955. Among other issues, the Regulation 5(2) reproduced below and similar to Rule 3 (2A) of IPS Pay Rules was under scrutiny:-

5 (2) " The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority."

5 (3) " The names of the officers included in the list shall be assigned in order of seniority in the State Civil Service provided that any junior officer who in the opinion of the committee is of exceptional merit and suitability higher than that of officers senior to him."

The matter was first challenged before the High Court. High Court interpreted the above Regulation 5(2) implying that seniority is the decisive factor in according promotion under these regulations. Further, if only senior is found unfit, then junior can be thought of for inclusion in the select list. Against ^{this} decision an appeal ^{filed} was by the Government before the Hon'ble Supreme Court stating that this ruling made by the Hon'ble High Court minimises the importance of the merit. The reasoning behind the view held by the High Court is summarised in para 21 of the judgement and reproduced below :-

"21. The Division Bench had held "merit and suitability" to be a sort of an admission test for a place on the select list just as the conditions for eligibility laid down in Regulation 4 operated as a test operating at the out-set for inclusion in the list of eligible persons. Furthermore, it held that, even in judging "merit", seniority was the most important consideration in cases of promotion and that this followed from the requirement of Regulation 5 (2) that it be given due regard. It held that, after satisfying a minimum standard of individual merit and suitability for inclusion in the list, comparable to pass marks at an examination, in which seniority played the dominant role, seniority also determined the order on the list according to which the officers selected were to be promoted to the All India Services."

..40/-

The Hon'ble Supreme Court after analysing the reasoning of the High Court did not endorse the interpretation of Regulation 5(2) by the High Court and held as under in para 22 :-

"22. Thus, we think that the correct view, in conformity with the plain meanings of words used in the relevant rules, is that the "entrance" or "inclusion" test, for a place on the select list is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor. A simple reading of the Regulation 5(2) clearly indicates this to be the correct view."

In para 48 of this judgement, the earlier judgement of Patna High Court AIR 1972 Patna 93 has been also referred to and what is held in judgement has been reproduced which we have also earlier extracted thereby conferring the view held by the Patna High Court. In para 37, it is held as under :-

"37. And, when Regulation 5 (2) says that the selection for inclusion in the list shall be based on merit and suitability in all respects with due regard to seniority, what it means is that for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or, if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

What comes out of the above deliberations is that in selection with the criterion "on merit with due regard to seniority" merit is the governing consideration and the seniority is to have secondary role. On going through the minutes of the screening committee, we note that for determining merit, the committee had fixed the Bench mark of 'Very Good' and all officers who are assessed to have this grading based on the review of the record have been declared fit for promotion and placed on the select list in order of seniority. The committee has not done any further categorisation by comparing merit among those who had the Bench mark of 'Very Good' perhaps on the consideration that after having merit at Bench mark, the seniority has to be given due consideration.

In view of these observations with regard to the procedure followed by the screening committee and the law laid down by the Hon'ble Supreme Court, we do not find any merit in the contention of the applicant.

20. The sixth ground of the applicant is that it is his understanding that reasons for overlooking the applicant have not been recorded by the screening committee. In the guidelines dated 4.9.1989 in para IV (c) (v), it has been prescribed as under :-

"Detailed reasons for suppression may be kept on record in the case of officers who are not included in the panel or who do not figure in the panel in the order of their seniority in the IPS."

It is thus clear that the screening committee is required to record detailed reasons for overlooking any officer. On going through the minutes of the meeting of the screening committee held on 7.1.1998, we find that the committee has recorded as under for non selection of applicant :-

" As the remaining two officers S/Shri C.S.Azad and U.D.Rajwade were not fulfilling the minimum criteria required for the promotion to the rank of Additional Director General of Police, committee recommended them unfit for promotion for the rank of Additional Director General of Police."

On mere reading of the above, it is obvious that what the committee has recorded is the conclusion reached and not the reasons which led to this conclusion. The committee is required not only to record reasons but detailed reasons. This would imply that committee is required to analyse the record and determine their assessment of the same with reference to the Bench mark laid down by the committee and state as to how he is not considered fit keeping in view the criterion followed. Thus the committee has violated the provisions of para IV (c) (V) of the guidelines. Here we refer to the judgement in the case of Union of India vs. M.L.Capoor, AIR 1974 SC 87, where the same issue had been gone into with reference to Regulation 5(5) of Indian Police Service/Indian Administrative Service (Appointment by Promotion) Regulations. Regulation 5(5) reads as under :-

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

The Hon'ble Supreme Court quashed the selection under challenge on several grounds which also included that the reasons for supersession had not been recorded. Hon'ble Supreme Court has observed as under in para 28 :-

"28. 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 on 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."

also

In the present case ^{also} as indicated earlier, we do not find that any reasons have been recorded except stating a 'stock reason' which is nothing but the conclusion arrived by the committee without disclosing the basis for the same. In the result of these observations, ^{we are compelled to conclude that} non selection of the applicant gets vitiated on this account.

The applicant has also cited following two orders of the Tribunal to support this ground :-

(a) S.S.Darbari vs. Union of India & two others, 1996 (2) CAT SLJ 701. This case also relates to promotion to the post of IGP in IPS cadre and the same guidelines dated 4.9.1989 had been relied upon. One of the ground taken for challenge was non recording of reasons for supersession of the applicant as required as per para IV (c)(V) of the guidelines. The Bench found that the committee¹ except just stating that the applicant was not found suitable for the promotion, did not record any reasons. The Bench held that proceedings of the screening committee get vitiated on this account.

(b) Vasant Waman Pradhan vs. State of Maharashtra, 1991 (1) SLJ 257. Here also non selection of IPS officer to IGP grade was under challenge with reference to IPS (Pay) Rules 1954, Rule 3 (2A). The scrutiny of the minutes of the meeting revealed that no reasons were recorded for overlooking the applicant. Relying upon what is held in the case of Union of India vs. M.L.Capoor by the Hon'ble Supreme Court, AIR 1974 SC 87 (supra), the Bench has concluded that non recording of the reasons by the committee was in violation of the guidelines and therefore constitutes serious infirmity resulting in vitiating the proceedings of the screening committee. Both the above referred cases endorse our conclusion taken earlier and we are in respectful agreement with what is held in these two orders.

21. The seventh ground taken in challenging the proceedings of the screening committee meeting is that the committee did not prepare the comparative merit statement of all the eligible officers including those who were found fit. We have gone through the screening committee's minutes of meeting and the relevant file as made available and find that no comparative analysis of the merit of the eligible officers is on record. We therefore presume that no such record was compiled by the committee. Each committee member has just indicated the grading against each officer as 'Good' or 'Very Good' with no supporting comparative assessment of the performance. We fail to understand as to how each member has come to the same conclusion with regard to overall assessment. Further, the minutes of the meeting neither disclose as to how many years of ACRs were taken into account nor the other record considered. The whole proceedings gives an impression that the members of the committee have acted in a mechanical way by just looking at the final gradings without going ^{through} at the reports on record as required. The guidelines dated 4.9.1989 in para IV (C) (ii) lay down "suitability of the officers to hold supertime scale posts may be judged by evaluating their character roll record as a whole and general assessment of their work." We have earlier deliberated in detail the significance of the criterion of determining suitability "on merit with due regard to seniority". As held by the Hon'ble Supreme Court, this criterion envisages competition and comparison of merit. Therefore preparation of the comparative

merit statement of the eligible candidates was imperative to arrive at the fitness ^{of each} ~~for~~ being placed on the panel. Such a statement will show application of mind of the members of the committee and ^{also} ~~reveal~~ as to how they were guided in arriving at a particular conclusion. Such an action assure that the committee has considered the eligible candidates in an objective and impartial manner. In this connection, we refer to the order in the case of Vasant Waman Pradhan vs. State of Maharashtra, 1991 (1) SLJ 257 cited by the applicant where same issue was raised in respect of promotion to the post of Special IGP in IPS cadre. Referring to Rule 3 (2A) of IPS (pay) Rules, 1954, the Bench has held that preparation of the comparative statement was necessary relying on the order of the Principal Bench in the case of Kohli vs. Union of India, 1988 (1) SLJ (CAT) 273 which in turn relied upon the judgement of the Hon'ble Supreme Court in the case of Parvez Quadir vs. Union of India, 1975 SLJ 150 (SC). In the light of these deliberation, we find merit in the contention of the applicant and the recommendations of the screening committee are vitiated for this ground of challenge.

22. Now, we come to crux of the issue under challenge that is non declaring of applicant fit for promotion by the screening committee. The applicant in this connection has made a three pronged attack with regard to confidential reports, namely (a) No adverse remarks have been conveyed at any time. Uncommunicated adverse remarks/gradings ~~if~~ any which have blocked the promotion

of the applicant could not be taken into account by the screening committee. (b) The screening committee has failed to check up to see whether the ACRs were complete in all respects and the adverse remarks had been conveyed. (c) Applicant understands that in some of the reports, the Reporting/Reviewing authority had given 'very good/outstanding' gradings but the same have been watered down by the Reviewing /Acceptance authority.

23. Taking the first ground, the applicant has contended that he had unblemished record of service as nothing adverse had been conveyed to him at any time. The applicant got his last promotion as IGP in 1993 in his own turn. Further ^{in view of} recommendation of his name for President's Police Medal for several years and being the recipient of large number of appreciation letters, the applicant presumes that his performance was 'outstanding'. In view of this, he could not have been over looked for promotion. As regards the appreciation letters and the proposals for President's Police Medal, we have already deliberated their significance in evaluation of the performance of the applicant by the screening committee earlier and this aspect therefore need not be dwelt upon again. The respondents have admitted that no adverse remarks have been conveyed at any time. The counsel for the Respondent No. 1 however contended that applicant is governed by All India Services (Confidential Rolls) Rules, 1970. Rule 8 of these Rules, ^{provides that} adverse remarks if any complying with the provisions of Rule 8 only are to be conveyed. The counsel further submitted

that since there were no adverse remarks, the question of communication did not arise. The counsel for the respondents also emphasised that in Rule 8, there is no provision that if the grading which is not adverse but is below the Bench mark required for fitness for promotion needs to be conveyed. He further argued that even if no adverse entry is communicated, it does not imply that ^{the} applicant was fit for promotion as the selection is based on merit and applicant was not found to secure the Bench mark required to be declared fit for promotion by the screening committee. The applicant on the other hand strongly reacted to these submissions of the Respondent No. 1 stating that any performance grading which is not good enough to declare the officer fit for promotion by the screening committee as per the norms laid down for selection is an adverse entry and is required to be conveyed so that officer concerned is aware of deficiency in his performance, being below the bench mark and strive to improve his performance. He further argued that such an adverse grading, if not communicated deserves to be ignored and cannot be taken into account for considering the fitness of an officer. The applicant further contended that since the applicant has not been found fit for promotion, he understands that in some of his reports, gradings are below the Bench mark and therefore his submissions have merit and the selection proceedings are vitiated.

The applicant has cited the following orders of the Tribunal in support of his contention that conveying the grading which is below the Bench mark is necessary as the same is an adverse entry:-

(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.

(e) OA.125/92, Bhaktadas Roy vs. Union of India of
Mumbai Bench decided on 18.2.1993.

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 Fuji vs. State of Punjab.

Bhaktadas Roy vs. Union of India decided by Mumbai bench as per order dated 18.2.1993 in OA.125/92, relying upon the decision of Jabalpur Bench in the case of Jugal Kishore, held

that the 'Good' gradings which were below the bench mark of 'Very Good' were adverse entries. In view of the non communication of the same, the direction was given to hold review DPC ignoring the reports which contained uncommunicated 'Good' gradings.

In Udai Krishna's case, similar view as in the above referred two orders 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, ^{Case} relying upon the orders in case of Udai Krishna, Jugal Krishna 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 ^{as} adverse assessment ^{was} without any notice to the applicant.

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 deficient performance by the DPC will not be fair and just and violates 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 ^{promotion} him/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. 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 that in the report of 1995, the reporting officer has given 'Good' grading which is endorsed by the reviewing and the accepting authority. On going through the report, though we may enter ~~in~~ some reservations about overall grading which perhaps is not corresponding to the remarks against the various other items in the report based on which the final grading should be arrived at, but we do not intend to enter into merit of this issue as it is for the competent authority to judge and record the overall grading. Further, this is not the matter under challenge before us. 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 "Very Good" grading of the earlier year. Such an adverse entry should have been conveyed in view of the law laid in the cited judgements.

24. 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 earlier in ²² paragraph No. 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 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 also relied upon by the applicant *during hearing :-*

- (a) Gurdial Singh Fijji vs. State of Punjab
1979 (1) SLR 809.
- (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.Nambuderi

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, in the case of Brij Mohan Chopra it is held that adverse report in confidential roll can not 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, ^{the} was that 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 Bandyath Mohapatra in para(6) the Apex Court has held that if adverse remarks are conveyed to ^{employee} an 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.Nambudari 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 deliberation of committee do not even indicate that the committee had noted this infirmity in the ACR of 1995.

25. We must now take up the strong objection raised by the counsel of the respondents for placing reliance upon 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) Rules, 1970". Therefore, in his opinion any challenge of the matter with regard to confidential reports of All India Service 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 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."

..57/-

It is clear from this explanation that any difficiency 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 difficiency 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 laid down by the Hon'ble Supreme Court of law 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.

26. The second ground taken by the applicant with regard to the confidential reports is that it is applicant's understanding that in respects of some of his reports, the Very Good/Outstanding gradings given by the reporting officer have been down graded by the reviewing/accepting authority. He had mentioned in particular the down grading done by Shri P.Subramaniam as reviewing/accepting authority in respect of reports initiated by Secretary (Food & Civil Supplies). After going through the confidential rolls of the last 10 years, we find that down grading is only in respect of the following years :-

<u>Year</u>	<u>Reporting</u>	<u>Reviewing</u>	<u>Accepting</u>
<u>1991</u>			
(a) April 90-July 91	Very Good	Good+	-
July 90-March 91	Very Good	Good+	-
<u>1997</u>			
(b) 28.6.96-2.12.96	Very Good	-	-
3.12.96-31.3.97	Outstanding	Outstanding	Good

The reports for the years 1995 & 1996 were written by the Secretary (Food & Civil Supplies) as reporting officer. In 1996 report, good grading of the reporting officer was upgraded to Very Good by the reviewing authority (Shri P.Subramaniam) which was accepted by the accepting authority for 1996. 1995 report does not appear to have been accepted, but reviewing authority has endorsed the grading of the reporting officer. Thus the apprehension of the applicant that the Very Good/Outstanding gradings given by the Secretary (Food & Civil Supplies) have been down graded by Shri P.Subramaniam is unfounded. Further, we note that review authority in case of 1991 report has not recorded any reasons and simply recorded Good+ grading inspite of the fact of seconding his agreement for assessment of the reporting officer against item 3 of part V of confidential report. For down grading of the grading in the year of 1997, the accepting authority has recorded "I do not agree with either of the reports. A Good officer' with^{out} indicating any reasons as to why he does not agree with the reporting/reviewing officers. No reasons for the disagreement have been recorded.

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 which lay down 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 sums up the view point of the Hon'ble Supreme Court.

M.A.Rajasekhar Para 4

" It is now 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 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 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 a direct or personal knowledge of the performance of the official being reported upon and is expected to accept to 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

recorded. These reasons should reflect his personal knowledge about the performance of the concerned officer and ^{should 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 indication ^{of} 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 such a 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 his 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) Arvind Balkrishna Bhangre vs. State of Maharashtra

1996 (2) SLJ 431.

This is also the case of All India Services Officer (IFS). The reviewing authority did not accept the 'Good' grading recorded by the Reporting officer and made adverse grading. Neither reasons were recorded for the same nor the adverse grading was communicated. The Bench has held that such adverse entry cannot stand and the same is to be ignored for consideration of the applicant for promotion.

(c) 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.

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

In this case also 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 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 is 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 cannot be sustained. Further any down grading if it comes in the way of

the officer being reported^{upon} 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). 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 held earlier in paras^{8 23} 22 based on the law laid down by the Hon'ble Supreme Court.

27. In view of what is deliberated^{by us} in paras 22, 23 and 25 above, we find substance in the third ground of the applicant in assailing the proceedings of the screening committee that the committee did not apply its mind to see that ACRs were complying with the laid down rules and the adverse entries had been conveyed before taking into account the uncommunicated adverse gradings/entries to determine the fitness of the applicant in comparison with others.

28. Last contention of the applicant is that the rule of reconsideration of the case of the officer overlooked for promotion only after earning two more ACRs is irrational, unreasonable and offends the Article 14 & 16 of the Constitution of India. The applicant therefore has sought relief of declaring this rule null and void. The applicant has made prayer of this relief in the background that his case should have

been reconsidered by the meeting held in April, 1998 when his juniors were considered as one more report was available by then. Since we have recorded our finding earlier that holding of April, 1998 meeting was illegal and suffered material irregularity and all the assessed vacancies should have been included in the vacancies assessed for January, 1998 meeting, We do not consider it relevant to go into merits of this prayer. Accordingly, the issue is kept open with^{out} expressing any further opinion on merits.

29. In the light of the above deliberations, we conclude that some of the grounds advanced by the applicant assailing his non selection have merit and the screening committee meetings of January, 1998 and April, 1998 are vitiated because of the following infirmities :-

(a) Constitution of the screening committee was illegal and^{is} suffering from patent irregularity as not complying with the laid down guidelines. (b) Non conveying of the grading below the bench mark. (c) Down grading of the gradings of the reporting/reviewing authority by the review/accepting authority without recording any reasons for the same. (d) Non recording of the detailed reasons by the screening committee for supersession of the applicant. (e) Non preparation of comparative merit statement of all the eligible candidates.

30. Now the question which begs consideration is that what direction should be given in the light of the above 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 January, 1998 and the same deserves to be quashed on account of these infirmities. However, we find that the applicant has not sought quashing of this selection and only has challenged his non promotion and sought relief of his promotion. Further, four officers of 1967 batch had been placed on the panel and all the four officers are senior to the applicant and have been since promoted before the present OA. had been filed. The applicant has not made them as party respondent presumably that these officers were senior to the applicant and the applicant could not seek claim of promotion overlooking him. However, since the constitution of the committee was patently irregular, we will have to provide that the promotion of 4 seniors of the applicant of 1967 batch will be provisional subject to the outcome of review Screening Committee meeting to be held as directed subsequently.

(b) As held by the Hon'ble Supreme Court in the case of Dalpat Abasaheb Solunke's case (supra) ^{extracted in} para 13 above, the Court can interfere with decision of the selection committee only on grounds such as illegality or patent material irregularity on the constitution of the committee or its procedure vitiating the selection. 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 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) Gurdayal Singh Fijji vs. State of Punjab
1979 SCC (L&S) 197.
- (ii) State of Bihar & Ors. vs. Bateshwar 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
& Ors. 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 as per our findings recorded above.

31. We, therefore, conclude based on the above deliberations that the OA. deserves to be allowed with the following directions

1. Proceedings of the Screening Committee meeting held on 7.1.1998 are set aside. A review Screening Committee for the same will be held. Till the recommendations of review Screening Committee are accepted, the promotion of the 4 seniors of 1967 batch selected earlier will be provisional. In case they are selected, then their promotion will relate back to the date of original promotion.

2. Holding of the Screening Committee meeting on 20.4.1998 is set aside and consequently the recommendations of the Screening Committee and promotions of Respondents No. 5 & 8 are also quashed.
3. The vacancies assessed for holding Screening Committee meeting on 20.4.1998 will be treated as part of the assessed vacancies for 7.1.1998 meeting. Review Screening Committee meeting will be held for the total vacancies for all the eligible candidates including the applicant as per the guidelines dated 4.9.1989, following the same Criteria as earlier followed by the committee on 7.1.1998.
4. Adverse entries in the confidential reports of the applicant of 1997, 1995 and 1991/as held above will be ignored for considering the case of the applicant for promotion by the review Screening Committee.
5. The review committee will ensure that all procedural infirmities as detailed earlier in Screening Committee meeting of 7.1.1998 will be kept in view and the review screening committee will ensure compliance of the rules and the observations made in the order.

6. The applicant if found fit for promotion by the review committee as directed, ^{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 consequential benefits including seniority and the payment of arrears as become due with promotion from 19.2.1999.
7. The promotion of Respondents No. 5 to 8 will remain provisional subject to the outcome of the review Screening Committee meeting. If they are found fit for promotion, then their earlier promotions which were subject to the outcome of the OA. will be treated as regular from the original dates of promotion depending upon the vacancies available.
8. The compliance of the order shall be done within a period of three months from the date of receipt of the order.
9. No order as to costs.

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

MEMBER (J)

mrj.

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

MEMBER (A)