

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 120/99.

Dated: 7. 1. 2000

Baidya Nath Mishra

Applicants.

Shri P.A.Prabhakaran

Advocate

Applicants.

Versus

Union of India & Ors.

Respondent(s)

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

Advocate for

Respondent(s)

CORAM :

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

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.120/99

Dated this the 7th day of January 2000.

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

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

Baidya Nath Mishra,
Special Inspector general of Police
and Director Vigilance & Security,
Maharashtra State Electricity Board,
Hongkong Bank Bldg., 3rd Floor,
M.G.Road, Fort, Bombay.

...Applicant

By Advocate Shri P.A.Prabhakaran

V/S.

1. Union of India through
Secretary,
Ministry of Home Affairs,
South Block, New Delhi.
2. State of Maharashtra through
The Chief Secretary,
Government of Maharashtra,
Mantralaya, Bombay.
3. Shri Surendra Mohan Shangari,
Addl.Director General of Police
(Training & Special Unit)
M.S.POLice (H.Q),
Near Regal Cinema, Mumbai.
4. Shri A.K.Agarwal,
Addl.DGP, Anticorruption Bureau,
Madhu Industiral Estate,
5th Floor, Lower Parel, Mumbai.
5. Shri Ranjit Singh Sharma,
Commissioner, CID (Intelligence),
Maharashtra State Police (HQ),
Near Regal Cinema,
Colaba, Mumbai.

6. Shri K.K.Kashyap,
Commissioner of Police,
Pune.

... Respondents

By Advocates Shri R.K.Shetty
for Respondent No.1 and Shri
V.S.Masurkar for Respondent No.2.

O R D E R

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

This OA. Has been filed by the applicant challenging his non promotion to the post of Additional Director General of Police.

2. The applicant after being selected to Indian Police Service in 1967 Batch joined cadre of Maharashtra State on 28.8.1967. After earning various promotions in the course of time, he was promoted to the post of Special Inspector General of Police (Spl.IGP) in May, 1993. Since 7.6.1993, he is on deputation with Maharashtra State Electricity Board. The applicant has become due for promotion to the grade of Additional Director General of Police (ADGP). One of the officers of 1967 Batch allotted to Maharashtra cadre, the applicant is 9th in the seniority list. The applicant came to know from the News paper

report on 18.2.1999 that juniors to the applicant from the subsequent 1968 and 1969 batches have been promoted as ADGP, overlooking the applicant. Coming to know of this, the applicant immediately filed the present OA. on 19.2.1999 challenging the promotion of the juniors who have been made party respondent No.3 to 6.

3. As per order dated 19.2.1999, an interim stay order was granted laying down that Respondent No. 2 shall not ~~make~~ any promotion to the post of ADGP for a period of 7 days from today. However, subsequently on 26.2.1999, the Respondent No. 2 brought out that the promotion orders had been already issued on 18.2.1999 and the incumbents, i.e. Respondents No. 3 to 6 have already taken over charge on the promoted posts on 19.2.1999. In view of this, the earlier order dated 19.2.1999 was modified by way of fresh order that promotion of the four officers (Respondents No. 3 to 6) will be subject to the final order to be passed in the OA.

4. During the pendency of the OA., the applicant has since been promoted from 1.10.1999. In view of this development, the applicant filed a Misc. Application seeking amendment in OA. in respect of the grounds for challenge of his non promotion and the relief prayed for. This amendment application was allowed. The applicant's claim is now for promotion dating back when his junior has been promoted on 19.2.1999.

The applicant has built his case on the following grounds

:-

(a) The screening committee meeting held on 7.1.1998 is vitiated for insufficient number of members as prescribed in the guidelines dated 4.9.1989.

(b) The applicant has not been communicated any adverse remarks in his career and therefore he has been illegally declared unfit to be appointed on the post of ADGP. Therefore, the recommendations of the Screening Committee meeting held on 7.1.1998 are illegal and deserve to be set aside.

(c) Proceedings and recommendations of the Screening Committee held on 20.4.1998 be held illegal and quash the same as there was no reason or ground to hold this meeting as the panel drawn on 7.1.1998 had not exhausted and it continued to hold and ^{had} two years^{not} passed in terms of para IV (D) of the guidelines.

(d) Respondents No. 3 to 6 have been illegally and irregularly empanelled as they had not put in 30 years of service in IPS.

(e) In the revised guidelines, the Respondent No. 1 has clarified the concept of Screening Committee in para 7.2. Grading is to be given as 'fit' or 'unfit' and without any benchmark. Screening Committee is distinct from the Departmental Promotion Committee.

5. With the above back ground the applicant has sought the following reliefs :-

(a) To set aside the recommendations of the Screening Committee meeting held on 7.1.1998.

(b) To set aside the recommendations of the Screening Committee meeting held on 20.4.1998.

(c) To hold that Screening Committee meeting could not hold the applicant 'unfit' and overall grading of the applicant could not have been ever below 'good' at least.

(d) If the applicant has been held 'unfit' due to any uncommunicated adverse remarks in the ACRs, then such remarks to be quashed and direct the Respondent No. 2 to hold review Screening Committee meeting ignoring such remarks.

(e) In the event the applicant has been graded less than 'very good' or 'high grading', then in the absence of any intimation to the applicant of the same, the proceedings of the Screening Committee meeting be declared null and void and set aside. The applicant be promoted from the date his junior was promoted.

(f) declare that the applicant is entitled for all consequential benefits including qualifying service, arrears of pay and allowances with effect from 18.2.1999 when his junior was promoted.

6. The Respondent No. 2 first filed a brief written statement to oppose the admission and for vacation if interim stay order. Subsequently detailed written statement giving parawise remarks has been filed. The Respondent No. 2 has also filed reply to Misc. Application proposing amendment in the OA.

which was allowed as stated earlier. The Respondent No. 2 has submitted that the Screening Committee was constituted of three members as per the guide lines dated 4.9.1989 laid down by the Government of India and there was no illegality. In the Screening Committee meeting held on 7.1.1998, the applicant was considered along with the other officers of 1967 batch. This committee did not consider the officers of subsequent batches as alleged. The applicant was not found fit by the committee following the guide lines dated 4.9.1989 which stipulate stricter standards for selection. The Screening Committee recommended those officers for promotion who were assessed as 'very good'. Although there were no adverse remarks in the ACRs of the applicant, but the applicant was not assessed as 'very good' by the Committee. Applicant has only a right for being considered as per seniority and this was done and therefore supersession of the applicant is legal and proper. As regards holding of subsequent Screening Committee meeting on 20.4.1998, it is stated that the same was held as some vacancies were expected under the proposed cadre restructuring in pursuance of Fifth Pay Commission recommendations. As per the guidelines, the superceded officer is to be considered after earning two more reports and accordingly he was not considered by the Screening Committee ^{meeting} held on 20.4.1998. After earning of two more ACRs, the applicant was considered again by the meeting held on 27.9.1999 and the applicant was found fit and accordingly promoted on 30.9.1999. In view of these submissions, the respondents contend that the applicant has no case and the OA. deserves to be dismissed.

7. The applicant has filed rejoinder reply controverting the submissions of the respondents while reiterating the grounds taken in the OA. ^{and} further elaboration of the averments with ^{case} laws has been done. These will be referred to at appropriate places while going into merits of the grounds advanced.

8. The Respondent No. 2 has filed supplementary written statement refuting the averments in the rejoinder reply maintaining his stand on the various grounds in the written statement.

9. Respondent No. 1 has not filed any written statement. The Respondents No. 3 to 6 who were issued notices have neither filed a reply nor were represented by a counsel.

10. We have heard Shri P.A.Prabhakaran and Shri V.S.Masurkar, learned counsel for the applicant and respondents respectively. The respondents have made available the original record of the confidential rolls and the minutes of the Screening Committee meetings.

11. The counsel for the Respondent No. 2 raised objection at the outset that since the applicant has been already promoted, the OA. has become infructuous. He further argued that the applicant has accepted his promotion from 1.10.1999 without any prejudice and he cannot raise the issue of non promotion from

19.2.1999 now. He also contended that new prayers have been added through the amendment application and the same cannot be allowed after his promotion. The counsel for applicant while reacting to these submissions stated that his original claim is for promotion from 19.2.1999 when his junior had been promoted and his subsequent promotion from 1.10.1999 does not wash away his claim. We have carefully considered the arguments of the counsel for the respondents and do not find any substance in the same. Firstly the applicant had been allowed amendments for his grounds of challenge through Misc. application No. 280/99 on 16.4.1999 before his promotion on 1.10.1999. Secondly, the promotion of the applicant from 1.10.1999 is a subsequent event during the pendency of the OA. This will not have any effect on the relief prayed for in the OA. for promotion from the date his junior has been promoted. This was the date when the promotion was due to the applicant but he was overlooked. This cause of action will continue irrespective of his subsequent promotion. If any facts are disclosed in the written statement or there is subsequent material development during the pendency of the OA., the applicant is entitled to amend his OA. to mould his averments and the consequent reliefs. We therefore are of the considered view that the objection raised by the Respondent No. 1 is not sustainable.

12. The applicant has raised several grounds in assailing his non promotion. We will consider these grounds one by one to find out if any of them constitute infirmity/infirmities which would vitiate the selection proceedings.

13. The first ground is that the constitution of the Screening Committee on 7.1.1998 was illegal as it did not comprise of the required number of members as per the guidelines dated 4.9.1989. The applicant also contended that since there were only three members in the Screening Committee as against four prescribed, therefore there was no proper application of mind in assessing the performance of the applicant as one member cannot apply his mind in two capacities on the same sets of facts. The committee was required to be constituted of the following members as per IV (C) (i) of the 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). As admitted by the Respondent No. 1 in the written statement, 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). The Respondent No. 2 has however justified that the composition of Screening Committee with three Members was in accordance with the guide lines 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.2 contends that Home Secretary therefore represented both the Members as required at (b) & (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 provision 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 Respondent No. 2. The first contention of the Respondent No. 2 that guidelines 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 guide lines and therefore State Government is free to decide the composition of the Committee^{is not tenable}. 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 dated 15.1.1999 which was referred to during the arguments wherein the post of ADGP is included in the cadre, 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 constitution only 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 the 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 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 is not tenable. We are not convinced by the logic advanced by the Respondent No.2. After careful reading of para IV (C) (i) of the guide lines dated 4.9.1989, we are of the view that the same does not admit the interpretation made by the Respondent No. 2. The 4th Member is to be Secretary (Home) on ex-officio basis in case he holds the independent charge and is at least in the scale equivalent to Addl. Secretary to Government of India. If such an officer is available then 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 from the minutes of the meeting of January, 1998 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 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 a 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 guide lines dated 4.9.1989. The committee is not competent to take such decision. Dealing file made available does not reveal any such action being taken. On going through the minutes of the meeting held during April 1998, we find the same situation and here also the fourth member was not invited to attend meeting as being in the lower rank.

In the light of the above observations, we have little hesitation to conclude that the constitution of the Screening Committee was not as per guide lines 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 also the issue 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. Further, as held by the Hon'ble Supreme Court in the case of Dalpat Abasaheb vs. Dr. B. S. Mahajan, 1990 (1) SLR 849, Judicial interference is warranted in case the constitution of the selection/screening committee suffers from the vice of material irregularity/illegality. Thus the Screening Committee meeting held on 7.1.1998, therefore deserve to be held as vitiated on account of this infirmity.

14. The second ground of assailing his non promotion is that holding of the Screening Committee meeting on 20.4.1998 was illegal, irregular and invalid as it was held in violation of provisions in para IV (D) of the guide lines dated 4.9.1989. The applicant has stated in this respect that panel prepared based on the meeting held on 7.1.1998 had not expired and further two years had not yet elapsed before the next panel could be made. Thus there was no need to hold meeting on 20.4.1998 which was perhaps held with a certain calculated manipulation and favouritism to bring up 1968 and 1969 batches officers. The respondents on the other hand have justified the holding of meeting on 20.4.1998. It is submitted that for the meeting held

on 7.1.1998, there were 7 anticipated vacancies at that time (3 vacancies due to retirement and 4 against the proposed restructuring on the basis of Fifth Pay Commission recommendations). Eight officers of 1967 batch were considered and out of the same, four officers were found fit and all were senior to the applicant. The recommendations of this committee were accepted by the Government on 17.6.1998. The promotion orders were issued on 11.1.1999. In the brief written statement opposing admission, it is stated that in view of the proposed restructuring in pursuance of the Fifth Pay Commission few more vacancies of the rank of Additional DGP were anticipated. To fill up these anticipated vacancies, another meeting was held on 20.4.1998. However, in reply to the rejoinder of the applicant to the detailed written statement different stand is taken. it is stated ^{that} since against 7 vacancies for 7.1.1998, only 4 could be placed, ^{meeting} ~~on the panel~~ ^{on 20.4.1998} another meeting had to be held to cover the balance vacancies. In this meeting, the officers of 1968 and 1969 batches were considered. The applicant was not considered by the committee as his name could be considered again only after earning two more ACRs. The recommendations of the meeting held on 30.4.1998 were approved on 2.2.1999 and promotion orders were issued on 18.2.1999 when the Government decided to upgraded some posts of Special IGP to the rank of ADGP.

For going into the merits of this ground of the applicant, we will 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 :-

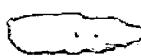
(a) Future vacancies - Retirement of Shri A.S.Inamdar on 30.11.1998, Shri G.C.Verma on 30.6.1999 and Shri R.H.Mendonca on 30.9.1999.

(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 resturcturing 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 supplementary written statement dated 19.4.1999 in reply to the rejoinder reply 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. In the brief written statement filed on 22.4.1999, different stand has been taken for holding meeting on 20.4.1998 as brought out earlier.

 In view of shifting stand in the written statement and non furnishing of the details of the vacancies clearly, the counsel of the respondent No.2 was asked during the hearing to

furnish the details of the vacancies considered for various meetings and he made available the details in tabular form as under : -

	Existing vacancy	Anticipated vacancy
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 restruct- uring, 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 - 14.5.1998	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.2 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 ^{un}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 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 meeting that 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 ~~as to~~ ^{how the} 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 and the vacancies to be filled up ~~are~~ to be decided first and then advised to the Screening Committee. It is within the domain of the competent authority to approve of 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 before hand done and approval taken 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 presumed that he can 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 no specific 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) ~~Q4~~ Functions & Composition". In para 4.2.1 of this O.M., it is laid down that for holding DPC, proposal is to be put up to DPC as per proforma at Annexure-I. Against items 3 & 4 of this proforma, details of the vacancies assessed 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 rule to be followed in the matter of selection 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 hope State Government will take note of this for necessary corrective steps We have ^{also} 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.

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 are to be reconsidered after scrutiny of two more reports. In para IV (C) (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 does not reflect this and it just considered only 1967 batch while the officers of subsequent batches had also completed 28 years at that time. It appears that in January,1998 meeting, the vacancies were assessed first 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 intriguing 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 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 14.5.1999 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. At this time, the four officers placed on the panel had not ^{yet} been promoted and 2 years had not elapsed. 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 framed. 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 meetings has been as a rolling plan by assessing vacancies in piecemeal

suiting the objective to be achieved. In the light of these observations, we find merit in the ground advanced by the applicant. Holding of a separate screening committee meeting in April, 1998 with independent assessment of vacancies cannot be held as valid. All the ~~2~~ vacancies (7 of January, 1998 and 5 of April, 1998 meeting) 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 accordingly.

15. The third ground taken through the amendment application is that the Respondent Nos. 3 to 6 have been illegally and irregularly empanelled in the meeting held on 20.4.1998 as they had not completed 30 years of service in IPS. The Respondent NO. 2 in the written statement to oppose amendment application has not offered any remarks to contest this submission. However, during the arguments, the learned counsel for the respondents justified the action stating that eligibility criteria followed for the post of ADGP is 28 years and not 30 years. The counsel for the respondents reiterated the same points as he had taken while arguing in OA.NO.117/99 which was also heard along with the present OA. The counsel for the Respondent No. ~~2~~ stated that the post of ADGP in April, 1998 was ex-cadre and therefore no criterian 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 criterian of ~~2~~ 28 years of service

Keeping in view 30 years for the post of DGP as laid down in the guide lines dated 4.9.1989 and this criterian 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 criterian 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 criterian 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 Respondents No. 3 to 6 for consideration for the post of ADGP in April, 1998 meeting if they had completed 28 years of service. We hold that there is no infirmity on this account as alleged by the applicant.

16. The fourth ground is that as per the guidelines dated 4.9.1989, the selection is to be based on the concept of screening and not of Departmental Promotion Committee and selection as such. The applicant has advanced the following contentions to support this ground :-

(a) Screening implies approval for being 'fit' or disapproval for being 'unfit' but not sifting within the 'fit'.

(b) While batch is to be considered for empanelment and the practically officers of senior batch are not allowed to be superceded by the officers of the subsequent batches.

: 25 :

(c) The revised guidelines issued on 15.1.1999 have clarified the concept of screening as per which the committee is required to grade each officer 'fit' or 'unfit' without any benchmark.

The Respondent No. 2 on the other hand has submitted that as per the guidelines dated 4.9.1989, procedure for promotion has been laid down stressing for following stricter standard for selection. The Screening Committee therefore recommended the officers as fit for promotion who were assessed as 'Very good'. The applicant was not assessed as 'very good' and therefore was not selected.

Keeping the rival contentions ^{in view,} we will examine the provisions of guidelines dated 4.9.1998 with regard to criterian for selection. We note that the following procedure is prescribed 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 Services (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), ^{Case} AIR 1972 Patna. In this, 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 were 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 background 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 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 and 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 position clear."

Similar issue has been examined subsequently in the case of Union of India vs. M.L.Capor, AIR 1974 Supreme Court 87. The matter related to selection to IPS & IAS cadres from State cadres under 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 was filed 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 by the Apex Court 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."

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 this judgement has been reproduced which we have also earlier extracted thereby concurring 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 criterian "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

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meeting, 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, the interpretation of selection criteria laid down in the guide lines dated 4.9.1989 ~~and made by the applicant is not tenable.~~

The applicant has contended that the revised guidelines dated 15.1.1999 have clarified the selection process through the concept of screening as per which the eligible candidates are to be graded only 'fit' or 'unfit' without any bench mark and selection is to be done as per seniority subject to fitness. Since the selection under challenge is as per the Screening Committee meeting held on 7.1.1998, the guidelines dated 4.9.1989 are only relevant and not the subsequent guidelines. We have already deliberated on the criterian of promotion on seniority with due regard to seniority as interpreted by the Hon'ble Supreme Court. Whether the guidelines dated 15.1.1999 comply

with the law laid down by the Hon'ble Supreme Court need not be gone into by us as this is not the issue before us. However, without going into issue of validity of 15.1.1999 guidelines with regard to method of selection, we feel it pertinent to make some observations. As brought out earlier that Sub Rule 2 A of Rule 3 was inserted as per Notification dated 21.11.98 in compliance with the observations of the Hon'ble Supreme Court in the case of **Sant Ram Sharma** (supra). For compliance with Sub Rule 2 A of Rule 3, guidelines for selection have been laid down to bridge the gap. However, we find that the guidelines do not clearly lay down as to how the merit is to be determined with due regard to seniority as interpreted by the Hon'ble Supreme Court and discussed earlier. On perusal of the minutes of the Screening Committee meetings particularly of January, 1998 and April 1998, we find that each committee has been evolving its own critaria for determining fitness. Here we reproduce what is recorded by the Screening Committees

7.1.1998

3 (G) As per Government of India guide lines dated 4.9.1989 regarding promotions to various grades in the IPS suitability of the officers may be adjudged by evaluating their character roll record as a whole and general assessment of their work. The gradation of IPS officers ACR is to be made as 'outstanding', 'very good', 'good', 'Average' and 'Below Average'.

3 (H) The minimum ACR gradation criteria fixed by the earlier Screening Committee for promotion to the post of Addl. DGP as 'Very Good'.

4. The Screening Committee and decided to follow and impose stricter standards for promotion of IPS officers as envisaged in the Government of India guidelines dated 4.9.1989. The post of Addl. DGP is above super time scale and therefore the Screening Committee has decided that the criteria of the requirement of gradation of ACR imposed by earlier Screening Committee for promotion to the rank of Addl. DGP should not only be 'Very good' but it should be continuously 'Very Good'.

20.4.1998

3 (a) In the Screening Committee meeting held on 7.1.1998, the gradation criteria of ACR for promotion to the rank of Addl. DGP was fixed as not only 'Very Good' but it should be continuously 'Very Good'.

4. The Screening Committee decided to follow and impose stricter standards for promotion of IPS officers as envisaged in the Government of India guide lines dated 4.9.1989. The post of Addl. DGP is above supertime scale and therefore the Screening Committee decided that the requirement of gradation of ACR fixed by earlier Screening Committee as 'Very Good' should not only be 'Very Good' but gradation of 6 years ACRs out of last 10 years and gradation of 3 years out of last 5 years is 'Very Good' and the recent ACR should be positively 'Very Good' as has been fixed for the promotion to the rank of Secretary and above in All India Services.

26.9.1999

In minutes of meeting of this Committee no details for the criteria followed for determining fitness as recorded by the earlier committees has been indicated.

From the above extracts from the minutes of the meetings, it is revealed that no uniform criteria has been followed in determining fitness and each committee has been evolving its own bench mark. As per guidelines dated 4.9.1989, the criterian for appointment by selection is "on merit with due regard to seniority" as per Sub Rule 2 A of Rule 3 of IPS Pay Rules. We have earlier deliberated on the interpretation of this criterian

by the Hon'ble Supreme Court. This criterian was introduced in 1968 based on the observations of the Apex Court in the case of Sant Ram Sharma (supra). Rule 3 (2 A) prescribes only the criteria but doe not lay down the methodology for making selection. This gap has been bridged by issuing administrative guide lines. Guide lines dated 4. 9.1989 apply to the selection under challenge in the present OA. These guide lines are however silent as to how the merit is to be determined and what should be the inclusion test for suitability for selection as laid down by the Hon'ble Supreme Court in the case of Union of India vs. Mohan Lal Capoor (Supra). In the absence of any instructions for objective assessment of the merit, the matter has been left to the subjective evaluation of the Screening Committee. This explains as to why the different committees have been following different norms as pointed out by us earlier. Each committee has set its own standard or bench mark for fitness. Such discretion and subjective evaluation cannot be free from the suspicion of being motivated and arbitrary and evolved keeping particular officers in view for promotion. The counsel for applicant hasborought out that new guide lines dated 15.1.1999 have calrified the matter with regard to selection and the officers under consideration are to be graded 'fit' or 'unfit' by the Screening Committee and promoted as per seniority. As stated earlier, we have not accepted the contention of the applicant, firstly in view of the law laid down by the Hon'ble Supreme Court and secondly 15.1.1999 guidelines do not apply to his case.

However, on going through the same, we would like to note a few points to find out whether revised guide lines detail the procedure for determining comparative merit which is lacking in the 4.9.1989 guide lines. On perusal of 15.1.1999 guidelines, we find that these guide lines instead of clarifying the matter, appear to have added to the confusion. It is noted that in para IV (C) (i), the criteria of selection is the same as in the 4.9.1989 guide lines, i.e. Rule 3 (2 A) of Pay Rules. However, in the annexure to the guide lines general principles on the mode of selection by the Screening Committee has been elaborated. In para 7.2, it is stated that each officer should be given an overall grading 'fit or 'unfit' without any bench mark for assessing suitability. In para 6.1 on the other hand, it is stipulated that merit has to be recognised for promotion following strict and rigorous selection process. This stipulation ~~controversy~~ what is laid down in para 7.2. Para 7.2 gives an impression that criterian for selection is seniority cum suitability as against selection on merit with due regard to seniority as per Rule 3 (2A) which implies promotion on the basis of merit cum seniority as held by the Hon'ble Supreme Court. Further, Paras 6.1 and 7.2 again leave it to the discretion of the Screening Committee to decide the basis for determining 'fit or 'unfit'. For any determination of 'fit' and 'unfit', bench mark is inherent as the Committee has to lay down the reference above which if the performance is assessed, the officer is considered as fit for promotion. Therefore, the provision in

para 7.2 appears to be not in line with the criterian for selection as per Rule 3 (2A). With these observations, we are of the considered view that 15.1.1999 guide lines have not clarified the matter any further and in fact appear to over look the provisions of Rule 3 (2A). We hope the Government of India will take note of our observations and consider laying down the detailed guidelines for the purpose of categorisation of officers ~~reference to~~ in ~~the~~ criterian of "on merit cum seniority" so that such a basis is objective and not subjective evaluation and left to the discretion of the members of the committee. This basis should be known to all to generate a feeling of fair and just selection among the officers.

17. The fifth ground and which is the core of the issue under ~~is~~ challenge ~~that~~ at no time in his entire service the applicant has been conveyed any adverse remarks. He has stated that he has been getting his promotions regularly as due and the last promotion as Spl. IGP was in 1993. Therefore, he has contended that his grading could never be below 'Good'. It is further averred that if as per the respondent No. 2, if the applicant had been assessed not to get the bench mark of 'Very good' then any grading, less than 'Very Good' in the reports were adverse as they have come in the way of promotion of the applicant. In the opinion of the applicant, such adverse gradings should have been conveyed to him. In the absence of any communication to the applicant, such gradings if any should have been ignored and the Screening Committee could not take the same ~~into~~ account for

assessing his fitness. The Respondent No. 2 on the other hand has contested the submissions of the applicant and has submitted that it is incorrect to say that if no adverse remarks are recorded and communicated to an officer, then he is entitled for promotion. Screening Committee has to determine the assessment based on overall record. The committee considered the case of all the officers of 1967 batch and recommended those for promotion who were assessed as "Very Good". Since the applicant was not assessed to have this grading based on the ACRs upto 1997 and including entries on integrity, he was not recommended by the Committee. It is also contended that writing of confidential rolls of IPS officers is governed by the All India Services (Confidential Rolls) Rules, 1970 and in Rule 8 of these rules, there is no provision to convey the gradings which are not enough for promotion.

The applicant has cited the following orders to support his submissions:-

- (i) Udai Krishna vs. Union of India
(1996) 33 ATC 802.
- (ii) J. Chekamalam vs. Union of India
(1998) 37 ATC 354.

These orders are briefly reviewed as below :-

Udai Krishna

In this order it is held that 'good' or 'average' grading in ACR though not per-se adverse would assume the

character of adverse remarks in the context of the requirement of very good bench mark to be fit for promotion. Such an adverse grading should have been communicated to the applicant before the same can be taken into account for consideration of the case of the applicant for promotion.

G. Chenkamalam

In this case, reliance on the earlier orders of the Tribunal in the following cases has been placed :-

- (a) Jugal Krishan Goyal vs Union of India of Jabalpur bench in OA.NO.29/1989 and decided on 17.5.1989.
- (b) Udai Krishna (1996) 33 ATC 802.
- (c) Bhaktadas Roy vs. Union of India in OA.125/92 of Mumbai Bench dated 18.2.93.
- (d) Girija Shankar Misra vs. Union of India (1996) 34 ATC 43.

It is held that if an employee is found with grading below the bench mark, then such a grading would be an adverse entry. In the absence of communications of such adverse remarks, the supersession of the applicant considering the adverse grading was arbitrary and denial of natural justice by giving adverse assessment without notice.

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 of 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, then 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 will violate the principles of natural justice. In this background, 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 promotion ACRs not likely to earn 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 ^{recent} case of U.P.Jal Nigam vs. State of U.P. cited by the applicant. 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 ACRs folder of the applicant for the last 10 years, we notice that applicant has 'Very Good' grading in the reports of all the years starting from 1988 to 1997. On perusal of the minutes of the meeting held on 7.1.1998, it is noted that all the three members have assessed the applicant as 'Good', i.e. below the bench mark and not recommended for promotion. For non promotion of the applicant, the committee has recorded the reasons in para 6 as under :-

"There is an entry of doubtful integrity in the ACR for the year 1991-92 of Shri B.N.Mishra, IPS (1967). After making the enquiry about such entry, instructions of keeping surveillance on Shri B.M.Mishra for 2 years was given to A.C.B in August, 1996. There is also an entry in the

'Integrity' column in the ACR for the year 1990-91 of Shri B.N.Mishra as 'No complaints'. There is also adverse entry about 'Integrity' in the ACR for the year 1992-93. Taking into account all these facts, Screening Committee has recommended him 'unfit' for promotion to the rank of Addl. DGP."

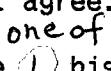
From the above remarks, it is obvious that the applicant was graded 'good' because of doubtful integrity and not because his overall performance was below the bench mark. On going through the various written statements filed by the Respondent No. 2, we find that this fact for overlooking the applicant for promotion was not disclosed in the first detailed written statement. Only in reply to the rejoinder, the Respondent No. 2 has stated that the integrity factor was also considered in accordance with the rules. This statement has been also reiterated while filing reply to Misc. Application No. 742/99 of the applicant proposing amendment but without any further elaboration. However in all the replies, the main stand has been that the applicant was not assessed at the bench mark on considering his merit in comparison with others. This is however clearly controverted by the minutes of the meeting which have brought out that overlooking of the applicant was on account of the doubtful integrity and not on merit. It appears that detailed written statement had been filed without looking into the reasons recorded by the committee. The Respondent No. 2 has also made no averment that the fact of doubtful integrity was ever conveyed to the applicant. It was expected of the Respondent No. 2 to bring out correct position with regard to reasons behind the applicant being not found fit for promotion before the Tribunal.

Before we go into merits of this aspect, on perusal of the ACRs, we find the following entries against the item of 'Integrity'. 

1990-91 - No complaints.

1991-92 - Reporting Officer - An inquiry is being

conducted by the Anti Corruption Bureau
on a specific allegation.

- Reviewing authority - Broadly I agree.
Integrity seems doubtful. Since  his
subordinates made a complaint on this
score, there is a reason to believe that
he reported adversely on the subordinate's CR.

1992-93 - In the report of 1992-93, the "Integrity" is
certified as 'beyond doubt' but the Committee has
recorded otherwise. The same is not factual. We
fail to understand as to how the Committee even
on the facts on the record has not checked the
reports carefully. When career of an officer is at
stake due care in examination and assessment of the
ACRs is expected. Besides this discrepancy noted
by us, it is also observed that in all the reports
till 1997, i.e. last report considered by the
committee, integrity was "not in doubt".

On going through the format of the confidential report, following provisions have been laid down as per Ministry of Home's letter dated 21.6.1965 to deal with the filling up of the column relating to 'INTEGRITY':-

- "(i) If the officer's integrity is beyond doubt, it may be so stated.
- (ii) If there is any doubt or suspicion, the column should be left blank and action taken as under :
 - (a) A separate secret note would be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow up action is taken expeditiously. Where is it not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he had not watched the Officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer as the case may be.
 - (b) If, as a result of the follow up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.
 - (c) If the doubts or suspicions are confirmed, this fact, should also be recorded and duly communicated to the officer concerned.
 - (d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above."

There is however no whisper of averment in the written statement that the procedure as laid down had been followed. The minutes of the meeting also do not bring out this aspect. However, after perusal of the relevant ACRs, we find that the laid down procedure has not been followed. We note that the reporting as well as the reviewing authority have straight away

in the report of 1991-92 filled the column of 'Integrity' / which should have been kept blank as per the instructions referred to earlier. If after the inquiry/follow up action, suspicion was confirmed then this fact should have been recorded in the ACR and the applicant should have been advised of the same. In the present case, this was not result of investigation as is obvious from the minutes recorded by the Committee. It is recorded that based on the follow up action, it was decided in 1996 to keep surveillance for a period 2 years. It is noted that the investigation took four years and sword of 'doubtful integrity' was kept hanging on the applicant's head. This delay has not been explained either by the committee or in the written statement. The committee appears to have not even taken note of this. In any way, two years period was almost over in 1998 when the Screening Committee met in January, 1998. At that time, the result of surveillance should have been ascertained particularly when investigation took four years and accordingly entry of 'doubtful integrity' reviewed / which in any case at the first instance should have not been made / and the column / kept blank. It appears that the committee went ahead with the consideration of the case of the applicant for promotion with the existing entries on Integrity in the ACRs which were in disregard of the procedure laid down and also without verifying the result of surveillance. On perusal of the record and consideration of the averments in the written statement, we canot help / to form an impression that the Screening Committee dealt with the issue casually. This is amply demonstrated by two facts namely :-

(a) In the report of 1992-93, the 'Integrity' was confirmed as 'beyond doubt' by the same authority who had earlier reported in the report of 1991-92. However, committee has noted that entry in report of 1992-93 was also adverse as pointed out earlier. Further ^{upto 1997} in all the subsequent reports, the Integrity ~~was~~ not in doubt.

(b) The applicant was sent on deputation as Director Vigilance to MSEB in 1993. There can be no two opinions that a incumbent with a clear record is expected to man such a post. It is therefore difficult to comprehend as to how an officer with 'doubtful integrity' and under investigation could be selected for deputation and that too for the post of Director Vigilance. These glaring facts should have hit the minds of the members of the committee apart from the fact that adverse entries were in total violation of the rules. But the committee seems to have been influenced by these entries ^{in the reports} and declared the applicant unfit for promotion which reflects lack of application of mind objectively without any bias. It seems that the committee had some other material directly fed to the committee which influenced the decision and ^{therefore perhaps} did not go through the ACRs carefully. If this was done, the observations made by us earlier would have been apparent to the committee. Remarks on integrity are dangerous, harmful and capable of massacaring the service career of an officer. It is a serious matter and therefore doubting integrity warrants a cautious approach. Keeping this in view, elaborate instructions have been laid down by the Government as extracted

earlier to safeguard the interest of both the Government servant and the Government. IN the present case, the laid down procedure has not been followed and cautious approach has been blown to winds. To top it all, the Committee has not taken note of the violation of the rules and apparent contradiction in the entries and went ahead to declare the applicant unfit for promotion.

In the light of the above facts, we have no hesitation to conclude that the Screening Committee has acted arbitrarily and did not check up whether entries of 'doubtful integrity' had been made after following the whole gamut of the procedure laid down. Use of such a material in declaring the applicant unfit for promotion inspite of consistent 'Very Good' gradings by the Screening Committee is illegal and such an action cannot be sustained. Until and unless the laid down procedure had been followed and definite opinion had been established and the same was conveyed to the applicant, integrity is to be treated "above board". Here we refer to the order in the case of S.Guruviah vs. Union of India (1991) 2 CAT SLJ 123. In this case also the procedure laid down as detailed earlier had not been followed while making entries against item of 'Integrity' and the adverse entries had not been advised to the applicant. It is held that uncommunicated adverse entries even for doubtful integrity cannot be used against the employee.

18. After recording our findings above, the question that arises now is whether such adverse entries which are not communicated to the applicant deserve to be ignored by the Screening Committee.

Out of three orders cited earlier in para , we note that in two cases "Udai Shanker 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 was to then required to review the grading based on the representation and if the grading is upgraded, then a review DPC ~~was to~~ be held. In the other three orders, the view has been taken that uncommunicated adverse entry is to be ignored and a review DPC to be held. After careful consideration of the matter, we are inclined to endorse the latter view. We are fortified to take this view by the following judgements of the Hon'ble Supreme Court, some of which have been referred to in the cited orders and one of them also relied upon by the applicant :-

- (a) Gurdial Singh Fijji vs. State of Punjab
1979 (1) SLR 809 (cited by the applicant)
- (b) Brijmohan Chopra vs. State of Punjab
1987 (3) SLJ
- (c) The State of Haryana vs. P.C.Wadhwa & Ors.
1987 (2) SLJ 162.
- (d) Union of India vs. E.G.Nambudiri
1991 SC SLJ 1953
- (e) Baidyanath Mohapatra 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 case of Gurdial Singh Fiji and Amar Kant Chowdry vs. State of Bihar, 1984(2) SCR 299, it is held that adverse remarkⁱⁿ in confidential roll cannot be acted upon to deny promotion unless it is communicated to the person concerned.

The judgement in the case of P.C.Wadhwa & Ors. dealt primarily with the competence of the Home Secretary empowered by the State Government to write the report of an IPS officer. One of the other grounds of challenge 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 Baidyanath Mohapatra in para , 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. Nambudri have reiterated in para 6 as under :-

" 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. 2 to convey the adverse entry for the Integrity 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 a review Screening Committee/consider the case of applicant for promotion by ignoring the adverse entries on the Integrity.

19. 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 Services Officers is to be subjected to judicial review keeping these rules in view. After careful consideration of these submissions, we are not impressed by the same. Rule 8 (1) of the Confidential Roll 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 remark means a remark which indicates the defects and deficiencies in the quality of the work or performance but does not include any word or words in the nature of counsel of advice to the officer."

It is clear from this explanation that any deficiency in performance is an adverse remark. As held earlier, an assessment of 'Good' grading which is below the bench mark is not enough to make an officer fit for promotion. Such a grading signifies a deficiency in the performance as every officer is expected to put his best foot forward and get his promotion in turn. Thus what is held in the cited judgements 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 from time to time.

laid down

time. Any principal 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.

20. In the light of the above deliberations, we conclude that Screening Committee meetings held on 7.1.1998 and 20.4.1998 are vitiated due to following infirmities :-

- (a) Holding of Screening Committee meeting on 20.4.1998 independent of the meeting on 7.1.1998 was in violation of the guidelines dated 4.9.1989.
- (b) Constitution of the Screening Committee suffers from material irregularity.
- (c) Consideration of the adverse entires on 'Integrity' without following the laid down procedure for making such entires and non conveying of the same.

21. Now the question which begs consideration is that what direction should be given in the light of the above infirmities.

For this, the matter needs to be looked at from the following two angles :-

- (a) The Hon'ble Supreme Court has laid down the law with regard to judicial interference in the matter of challenge of Screening Committee recommendations in the catena of judgements.

Here we reproduce the observations of the Apex Court in one such judgement in the case of Dalpat Abasaheb Solunke vs.

Dr.B.S.Mahajan in para 12 :-

"... 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, the Hon'ble Supreme Court has reiterated the same view point in the cases Union of India vs. Samar Singh & Ors., 1996 SCC (L&S) 1443, Dr. Krishna Chandra Sahu vs. State of Orissa, 1995 (5) SLR (SC) 337, Kuldeep Chand vs. State of H.P. & Ors., 1997 SCC (L&S) 1121. In view of what is held by the Hon'ble Supreme Court in the cited judgements, the infirmities found in the selection and detailed above are such that judicial interference is warranted. 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) Gurdial Singh Fiji vs. State of Punjab

1979 SCC (L&S) 197.

(ii) State of Bihar & Ors. vs. Bateshwar Sharma

1997 SCC (L&S) 975.

(iii) 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."

(b) We have found infirmities in the holding of Screening Committee meeting held on 7.1.1998. The applicant has sought the relief of quashing the proceedings and recommendations of this Screening Committee meeting. However, we note that the applicant has not challenged the selection of the four officers of 1967 batch who are senior to the applicant and placed on the panel. He has not made them as a party respondent by name. These four officers had been already promoted before filing the present OA. 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.

Concluding the third meeting in the OA, and shall file the same

with the following directions :-

(1) Proceedings of the Screening Committee
meeting held on 21.1.1988 are set aside. A
new Screening Committee for the same will be
reviewed to recommendations of review
held. Till the recommendations of the Screening
Committee are accepted, the promotion
of the A category of 1985 batch rejected earlier
will be postponed. In case they are accepted,
then their promotion will relate back to the date
of original promotion.

(2) Holding of the Screening Committee meeting
on 20.4.1988 and consequent recommendations of
the Committee are set aside.

(3) The associate assessed for holding the
meeting on 20.4.1988 will be released as part of
the assessed associates for the meeting held on
21.1.1988. Review Screening Committee will be
held for the posts assessed for all the eligible
officers including the applicants as per the date
given above 20.4.1988.

(4) The adverse suffice with regard to
'Interfia' in the AGC of 1985 and 1986 will be

22. Concluding we find merit in the OA. and allow the same 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 and consequent recommendations of the Committee are set aside.

(3) The vacancies assessed for holding the meeting on 20.4.1998 will be treated as part of the assessed vacancies for the meeting held on 7.1.1998. Review Screening Committee will be held for the total vacancies for all the eligible officers including the applicant as per the guidelines dated 4.9.1989.

(4) The adverse entries with regard to 'Integrity' in the ACRs of 1991 and 1992 will be

ignored and the fitness of the applicant will be determined by the review Screening Committee accordingly.

(5) The review Screening Committee will be properly constituted as per the guide lines dated 4.9.1989.

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

(7) The promotion of Respondents No. 3 to 6 will remain provisional subject to the outcome of the review Screening Committee meeting to be held as directed above. 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 availability of the vacancies.

(8) The compliance of this 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)

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

MEMBER (A)

mrj.