

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW .INDEX SHEETCAUSE TITLE G.A. No. 112 of 1990 (1)Name of the parties Pavendra Kumar Tewari

Applicant.

Versus.

Union of India and others Respondents.Part A.B.C.

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21/1/91

Huckin

9/1/91

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Centre of Appeal & the Tribunal
Office

Date: 15-4-9

Date of

Deputy Registrar

Registration No. 112 of 1989 (C)

APPLICANT(S) D. K. Tewari

RESPONDENT(S) C. C. C.

Particulars to be examined	Endorsement as to result of examination
1. Is the appeal competent ?	Ys
2. a) Is the application in the prescribed form ?	Ys
b) Is the application in paper book form ?	
c) Have six complete sets of the application been filed ?	
3. a) Is the appeal in time ?	Ys
b) If not, by how many days it is beyond time?	
c) Has sufficient case for not making the application in time, been filed?	
4. Has the document of authorisation/ Vakalatnama been filed ?	Ys
5. Is the application accompanied by B.D./Postal Order for Rs.50/-	Ys
6. Has the certified copy/copies of the order(s) against which the application is made been filed?	Ys
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Ys
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Ys
c) Are the documents referred to in (a) above neatly typed in double space ?	Ys
8. Has the index of documents been filed and paging done properly ?	Ys
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?	Ys
10. Is the matter raised in the application, pending before any court of Law or any other Bench of Tribunal?	No

(A2)

Particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- a) Identical with the Original ?
- b) Defective ?
- c) Wanting in Annexures
- Nos. _____ pages Nos _____ ?

Ys

Ys

13. Have the file size envelopes bearing full addresses of the respondents been filed ?

NA

14. Are the given address the registered address ?

Ys

15. Do the names of the parties stated in the copies tally with those indicated in the application ?

Ys

16. Are the translations certified to be true or supported by an affidavit affirming that they are true ?

NA

17. Are the facts of the case mentioned in item no. 6 of the application ?

Ys

- a) Concise ?
- b) Under distinct heads ?
- c) Numbered consecutively ?
- d) Typed in double space on one side of the paper ?

18. Have the particulars for interim order prayed for indicated with reasons ?

Ys

19. Whether all the remedies have been exhausted.

Ys

findings

3-5-90

①
Hon. Mr. Justice K. Nall, v.c.
Hon. Mr. K. Chagga, AM.

(A3)

Issue notice to opposite parties
to show cause why this Application
be not admitted. In particular, they will
^{elucidate} illustrate the action taken after the
judgment dated 13-12-88 of the
Hon'ble High Court (Annexure A-6)
and will also produce the Selection
Committee proceedings of 21-11-89.

In the matter of interim relief
also issue notice and list for
hearing on 2-7-90.

AM.

ca
notice
sep 9
a
10-5-90
V.C.

2-7-90

No sitting adjourn to 2-7-90

E-OR

Notices were issued
on 10-5-90.

Neither reply
nor any unserved
sepl. cover has been
received back.

≤ 50

25/9/90

11/2/90

(A5)

30.8.90 Hon Mr. D. K. Agrawal, Jm
Hon Mr. K. B. Gajjar, Jm

OP

Applicant in person

Shri Anoop Kumar for
Ob 3 & 4

Dr. Dinesh Chandra for
OP No. 4

Neither detail
CA on behalf of
Shri Anoop Kr. nor
CA on behalf of
Dr. D. Chandra have
been filed.
S.F. 4

Council for the parties

L
20/9

needs further time to file counter

allowed. Let counter be filed
within 3 weeks. Rejoinders may
be filed within one week
thereafter. No further time
would be allowed to OPs. List
for hearing on 10-10-90.

is

OP
A/S

Dr
Jm.

ex filed

7/9

10.10.90

No sitting order to 19.11.90

(A)

ex filed on behalf
of OP No. 3
L
21/11/90

13.11.90

3 Rejoinders
have been filed
by the applicants
put up on 19.11.
before the
Honble Bench
for F.H.

21/11/90
13

CA 112/90-L

(AB)

20.11.90

Honbl. Mr. Justice K. Mulla. VC
Honbl. Mr. M.M. Singh AM

Due to last decision of Sri.
B. K. Srinivasan Adv. Case is
adjourned to 21.11.90

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H. K. L
AM

VC

21.11.70

Hon. Mr. Justice K. Mulla. VC
Hon. Mr. M.M. Singh. AM

We have heard the
parties' counsel & it will be
of some help to the Bench if
the learned counsel for the parties
place before us a chart indicating
the date of communication of the
adverse entries for the years 1967-72
1973-74 & 1975-76 on which
Select Committee for the Review
of PC relied, along with the
date of making representation
and the final orders thereon.
Parties' counsel may do the
needful in this regard
within 24 hours, and
the case may be taken up
for final disposal as
part-heard on 23.11.90.

H. K. L
AM

VC

VC

ORDER SHEET

AB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

MP 100/915

GA No. 112

OF 19 904

D.K. Tewari

Vs.

002

Sl.No.	Date	Office Report	Orders
		<p>OK</p> <p>4c for the repts. can filed MP 100/915 for extension of time S F-O</p> <p>h 23/4/91</p>	

Recd. l/s of order
dt 20-4-91

Ans. C-

26-4-91

J. K. Singh

24.4.91

Hon. Mr. D.K. Agrawal, J.M.

Hon. Mr. K. Jbayera, A.M.

M.P. 180/91 'D.K. Tewari vs. Union of India' taken up. The above said O.A. was decided on 18.2.91 with direction to the respondents (1) to constitute a review Selection Committee within a period of one month from the date of receipt of copy of the judgment and (2) the Committee to finalise recommendations within two months thereafter and (3) the respondents to pass appropriate order within one month of receipt of its recommendations.

2. In this M.P. Respondents Nos. 3 and 4 have prayed for extension of two months more time for constitution of Review Selection Committee. Their plea is that the State Government has referred the matter to the U.P.S.C and a request has come from U.P.S.C. side for extension of time of two months to take necessary action.

3. We have heard the learned counsel for Respondents. We are not convinced of the reasons for the delay in implementing the order dated 18.2.91 in O.A. 112/90. The constitution of selection committee is laid down in the rules and a date is to be fixed in consultation with the Chairman and nominate the Members. It would appear the State Government which should move in the matter and coordinate with other Members, is not taking that this matter with seriousness/is warranted. We consider that delay beyond the time limit set for passing final orders is not justified, there being no other procedural hurdles except to convene meeting and consider the matter. Copy of this order will be served on the

(A10)

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Chairman of U.P.S .C. which shall be responsibility of Counsel appearing before us. The State Government may also carry out this direction and communicate the order to Chairman U.P.S .C. to fix an early date for the meeting of Review Selection Committee as far as possible in May, 1991. Copy of this order shall be supplied to Shri Anoop Kumar and Dr. Dinesh Chandra Counsel for Respondents for official use.

Shake-1/

A.M.

J.M.

(A11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Lucknow Circuit Bench

D.A. No.

T.A. No.

112

1990 (L)

DATE OF DECISION _____

Levensha Kumar Tiwari Petitioner

Mr. Vishwa Mohini Advocate for the Petitioner(s)
Shri S. V. Kumar Versus

(Including) Lohia & others Respondent

Shri Arun Kumar Advocate for the Respondent(s)
Shri Suresh Chandra

CORAM :

The Hon'ble Mr. Justice K. Datta, Jc.

The Hon'ble Mr. M. M. Singh, Jm.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Benches ?

.....

Ghanshyam/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Lucknow Circuit Bench
Registration O.A. No.112 of 1990(L)

Devendra Kumar Tewari Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. M.M. Singh, A.M.

(By Hon.Mr.Justice K.Nath, V.C.)

This petition under Section 19 of the Administrative Tribunals Act, 1985 is for a declaration that the applicant has been selected in the select list of the IPS of the year 1976 and to order promotion with effect from the date from which the next junior officer to the applicant in the State Police Service Gradation List was placed in select list and was promoted. There is also a prayer for the consequential benefits of seniority on the basis of continuous officiation to the post of S.P. Police with effect from September, 1973.

2. The applicant was appointed as Dy.S.P. in the U.P. Police Service in the year 1959 as a direct recruit. In September, 1973 he was posted as S.P. Balla in temporary and adhoc capacity. Since then he has been working on the post of S.P. ~~202402~~ or equivalent post till the filing of the present case.

3. His case was considered for promotion to the IPS by the Selection Committee for the year 1976. On the basis of certain adverse remarks in his Character Roll for the years 1974-75 and 1975-76, he was found unsuitable

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for placement in the select list. After his representation against the adverse entries had been considered and dealt with by the State Govt. he made a claim petition before the U.P. Public Services Tribunal which was decided by the Tribunal on 7.5.84 by judgement, Annexure-A4. Of the adverse entries for the year 1974-75 the Tribunal expunged the following portion :-

"He remained popular with only some sections of political leaders" and "this ~~is~~ obviously affected district administration now and then".

Of the entry of 1975-76 the Tribunal expunged the following portion recorded by the Commissioner :-

"Which reflected in the administration now and then" ;

and also expunged the following remarks of the Inspector General of Police :-

"and both were to blame for this".

4. The Tribunal directed that the State Govt. would constitute a Selection Committee to consider the applicant's case again for the select list for the year 1976. It was held that in case the applicant was found fit for placement in the select list of 1976, the date from which he shall be deemed to be on probation in the IPS will be determined with reference to the date from which the first officer who was junior in the State Service gradation list and ~~he~~ had found a place in the select list for 1976, had commenced to be on like probation .

5. The applicant as well as the State of U.P. filed cross writ petitions before the Hon'ble High Court. The

Q

- 3 -

applicant filed petitions in respect of so much of the adverse entries as had been sustained by the Tribunal; the State Govt. filed a petition in respect of so much of the adverse entries as has been expunged by the Tribunal, and also against a direction to constitute a fresh Selection Committee to consider the case of the applicant. Those Writ Petitions were decided by a common judgement dated 13.12.88, Annexure-A6. The Hon'ble High Court upheld the judgement of the Tribunal in so far as it expunged portions of adverse entries for the years 1974-75 and 1975-76 and further expunged the Home Secretary's adverse remarks for the year 1975-76 which said ^{that} ~~the~~ applicant was an ⁴adverage officer. The Tribunal's direction to constitute a Selection Committee to reconsider the case of the applicant for the select list of the year 1976 was upheld, but the further direction that if the applicant was found fit for placement in the select list of 1976 then he would also be deemed to be on probation from the date of the junior select list officer was placed on like probation was set aside; instead the Hon'ble High Court directed that in case the applicant was found fit for promotion, his promotion must be made in accordance with law.

6. Accordingly, a Review Selection Committee was constituted under Regulation 3 of the IPS (Appointment by Promotion) Regulation, 1955 to reconsider the case of the applicant for inclusion in the select list of 1976 for promotion to the IPS. The Committee met

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on 21.11.89. The minutes of the Committee have been placed before us on our directions. It mentions that the Selection Committee examined the records of the applicant after ignoring the expunged adverse remarks in his A.C.R. for the years 1974-75 and 1975-76 and came to the conclusion that the applicant was not suitable for inclusion in the select list prepared in 1976 for promotion to the IPS. The Selection Committee recorded the following reasons :-

- "(1) 1974-75 - His relations with the magistracy including District Magistrate did not remain cordial.
- (2) 1973-74 - He could not maintain good relations with the District Police. The work as S.P. Railways was just satisfactory. Probably he was handicapped due to his ill health.
- (3) 1969- 70 - His disposal of papers and enquiries was very slow and needed constant goading."

In view of these findings of the Review Selection Committee, the applicant was not placed on the select list of 1976 and therefore was not given promotion to the IPS on that basis. Counter Affidavit, Rejoinder, Supplementary Counter and Supplementary Rejoinder have been exchanged between the parties and we have heard Km.Vishwamohini, Advocate for the applicant and Dr.Dinesh Chandra and Anup Kumar, Advocates for the respondents.

7. In respect of the remarks of 1974-75, the learned counsel for the applicant contended that the

Hon'ble High Court had found similar remarks for the year 1975-76 to be only 'factual and not adverse'. We do not think that only because a remark is stated to be factual it ceases to be adverse. On the contrary the Hon'ble High Court having described the remark to be factual chose to maintain it and did not expunge it. However, the Hon'ble High Court proceeded to observe further in respect of these remarks as follows :-

" The effect of this remark was diluted by the I.G.-cum-Director General of Police who observed :

‘ However his relations with the District Magistrate for which he was not much to blame. stood in the way of smooth administration.’ In this way the Inspector General made both the parties responsible for it."

Therefore it is a pressing contention of the learned counsel for the applicant that, the Inspector General-cum-Director General having observed that the applicant was not much to blame for the nature of relations with the District Magistrate, the effect of the adverse remark was much diluted, and it was expected that the Review Selection Committee would appreciate that angle of the adverse entry of the year 1974-75.

8. In respect of adverse entry for the year 1973-74, the contention of the applicant's learned counsel is that the entry remained uncommunicated till date. The learned counsel for the respondents contended

that the entry had been communicated by AIG's D.O. dated 17.11.75; however the learned counsel for the respondents said that further records about the communication of the remark to the applicant are not traceable. The learned counsel for the applicant urged that in the applicant's rejoinder filed in the claim petition before the U.P. Public Services Tribunal, the applicant had stated that the remark was not communicated. A copy of the rejoinder or of the claim petition before the U.P. Public Services Tribunal has not been produced before us. The applicant's learned counsel relied upon observations of the U.P. Public Services Tribunal at page 8 of their judgement, Annexure-4. The observations mentioned that according to the opposite parties there, the A.C.R. of the applicant for several years including 1969-70, 1973-74, 1974-75, 1975-76 and 1977-78 had adverse remarks. The observations then mentioned the petitioner's stand regarding the entries of different years and mentioned that according to the applicant the remarks for the years 1974-75 and 1975-76 had not been communicated to the applicant at the time of the meeting dt. 29.12.76 of the Selection Committee which did not find him suitable at that time. It is noticeable that the observation had not mentioned that the remarks for the year 1973-74 had not been communicated. It is a normal expectation of the Rules that an adverse remarks is communicated to the concerned officer. Indeed, the communication of several other years' remarks is not disputed. In the normal course of official business

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(A18)

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the presumption is that the official routine has been carried out. There would have been worth in the contention of the learned counsel for the applicant if the applicant was able to prove by documents, in particular his pleadings, in the claim petition before the Public Services Tribunal, that he had claimed even at that time, that is round about the year 1981, that the adverse entries of the 1973-74 had not been communicated to the applicant. In the absence of such a material on the record it is not possible for us to hold that the Review Selection Committee committed any error or illegality in considering the adverse remarks for the year 1973-74.

9. But at the same time, it is noticeable that the remarks for the year 1973-74 as considered by the Review Selection Committee itself recorded that "probably he was handicapped due to his ill health". The learned counsel for the applicant again urged that this assessment considerably watered down the ill effect of the entry even as the remarks of the I.G-cum-Director General of Police diluted the effect of the adverse entry for the year 1974-75 as observed by the Hon'ble High Court and mentioned by us above.

10. In respect of the year 1969-70 the contention of the learned counsel for the applicant is that inspite of that adverse entry the applicant had been given promotion as an Adhoc S.P. in September, 1973 and therefore in the eyes of law the entry must be deemed to have been wiped off. The learned counsel for the applicant placed reliance on the decision of the Supreme Court in the case of Regional Manager and Another Versus Pawan Kumar Dubey 1976 SC 1766 and a Division Bench

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decision of the Allahabad High Court in the case of Dr. Girish Bihari Versus State of U.P. reported in 1984 UPLBEC 953.

11. The learned counsel for the applicant raised the following points in the course of arguments :-

(i) The Review Selection Committee considered the applicant's case in isolation which contravenes clauses (4) and (5) of Regulation 5 of IPS (Appointment by Promotion) Regulations, 1955; the applicant's merit should have been compared with that of the other officers who were included in the select list originally prepared for the year 1976.

(ii) The Review Selection Committee did not record reasons for superseding the applicant as required by clause (7) of Regulation 5.

(iii) The Review Selection Committee failed to appreciate that the adverse remarks for the years 1973-74 and 1974-75 were considerably watered down and those for the year 1969-70 were deemed to have been washed off.

12. In respect of point No(i) we find that the contention of the learned counsel for the applicant finds support from a decision of the Principal Bench of this Tribunal in the case of R.C.Kohli Versus Union of India and Others (1988) 6 ATC 228. That was the case of a Review D.P.C. which considered the petitioner's case in isolation. The Bench held that while considering the case of an individual officer, whose case was deferred at an earlier regular D.P.C. due to representations pending against the adverse remarks, the Review D.P.C. must not consider his case in isolation but comparatively with other officers who were considered by the earlier

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regular D.P.C. The Bench observed as follows :-

"Surely adoption of such a method has resulted in grave prejudice to him inasmuch as his comparative merit was not assessed by the Screening Committee and he was considered to be unfit for promotion on the basis of his own A.C.Rs."

13. The learned counsel for the applicant has referred to the decision of the Supreme Court in the case of Gurdial Singh Fijji Versus State of Punjab and Others 1979 SC 1622 where the Supreme Court have pointed out in para 20 about the manner in which a Review D.P.C. should proceed. It was observed that the question whether the officer should be included in the select list as on due date has to be decided in accordance with the relevant Regulations by applying the test of merit and suitability-cum-seniority (as the Regulations stood on 11.5.73 when the Selection Committee met), that the Selection Committee must consider the officer's service record upto date and if it finds him not suitable it must record reasons for supersession. It was further observed that if the Review Selection Committee finds him suitable the officer will be entitled to rank in the select list in accordance with the seniority as on 11.5.73 (that is, the due date) unless in the opinion of the Committee there is junior officer of exceptional merit and suitability who may be assigned a higher place. It may be seen that the Review D.P.C. has not only to apply the relevant Regulations for determining a merit of the officer concerned on a perusal of the service record, but have also to judge whether there is a junior officer of exceptional merit and suitability

who may be assigned a higher place in the select list than the officer under consideration. These are the clear provisions contained in clauses (4) and (5) of Regulation 5 of the Appointment by Promotion, Regulations 1955. Since the merit and suitability of the junior officer has also to be considered, there can be no manner of doubt that even the Review D.P.C. must examine the case of an officer not in isolation but in comparison with the officers who have been included in the select list. The Selection Committee in the case before us, has admittedly not examined the applicant's case in comparison with those included in the year 1976 and therefore the recommendations^{of} the Review Selection Committee cannot be sustained. The contention of the learned counsel for the respondents that the case of the applicant has to be considered in isolation because of the previous judgement of the Hon'ble High Court is not acceptable.

14. Points (ii) and (iii) raised by the learned counsel for the applicant may be considered together because they are concerned with the appreciation of the applicant's service record in respect of which the Review Selection Committee was expected to record reasons. It is not disputed that in accordance with the Regulations as they stood at that time, a Review Selection Committee which supersedes an officer or finds him to be unsuitable, has to record reasons. There is the specific requirement of clause (7) of Regulation 5 that in the ~~330000~~ case of proposed supersession, the Committee shall record its reasons for the proposed supersession. The reasons recorded

by the Selection Committee in this case are set out by us in para 6 of this judgement. The question is whether they satisfy the requirements of the reasons as contemplated by the rules. The learned counsel for the applicant has correctly relied upon the decision of the Supreme Court in the case of Union of India Versus M.L.Capoor 1974 SC 87 in para 28. The Supreme Court observed as follows :-

"..... It was incumbent upon the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded^{stood} in relation to the record of others who were to be preferred..... If that had been done facts on service record 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, and whether it is purely administrative or quasi judicial. Only in this way , can opinions or decisions recorded be shown to be manifestly just and reasonable."

15. Following these observations of the Hon'ble Supreme Court in M.L.Capoor's case the Supreme Court went on to say in Gurdial Singh Fijji's case (supra), para 18 as follows :-

" Though it is not expected that the Selection Committee should give anything approaching the judgement of a Court, but it must atleast state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the select list."

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16. We may add that these observations were again followed by the Supreme Court in the case of Uma Charan Versus State of Madhya Pradesh and Others 1981 SC 1915. It is true that the Review Selection Committee mentioned that it had examined the record of the applicant after ignoring the expunged adverse remarks in his A.C.R. for the years 1974-75 and 1975-76 and then it had arrived at the conclusion of the applicant's unsuitability for reasons of the entries which we have set out in para 6 of this judgement. We have pointed out that in respect of the remarks for the year 1974-75 the High Court had observed that the effect thereof was diluted by the observations of the I.G-cum-Director General of Police; we have reproduced the extract of the judgement at this point in para 7 of this judgement. The Minutes of the Review Selection Committee do not mention that they considered either the remark of the I.G-cum-Director General of Police or the observations of the Hon'ble High Court on the entry in question. In respect of the entry for the year 1973-74 the Committee did mention the portion which recorded that the applicant was probably handicapped due to his ill health; but it is not indicated how the factor of handicap^{due} to ill health was appreciated by the Committee. There is room for the learned counsel for the respondents to contend that inasmuch as the Review Selection Committee mentioned that they had examined the record of the applicant they may have considered these aspects of the entries of 1973-74 and 1974-75, but the contention would only be arguable, because the Minutes themselves do not reflect an application of mind in that direction. The

Committee, of course, was not expected to record something like a judgement of a court, but it was certainly expected to state as briefly as it might to show why they considered the entries as they produced in their Minutes to justify their finding of the applicant being unsuitable even if the entries could be considered to be watered down. Indeed, it is not quite clear that the Committee at all considered whether the entries stood watered down or not; this aspect of the entries has remained indeterminate. In this view of the matter, the reasons recorded cannot be said to ~~be~~ satisfy the standard of reasons expected to be recorded as indicated by the Supreme Court. Point No.(ii) raised by the learned counsel for the applicant, in these circumstances, must be answered in favour of the applicant. There is considerable controversy between the parties regarding the admissibility of the adverse entry for the year 1969-70. According to the learned counsel for the applicant, it must be deemed to have been washed off as soon as the applicant was given an adhoc promotion as S.P.; according to the respondents a mere adhoc promotion is not enough to wash off the entries when the case is to be considered for promotion to a selection post on the merits. We may consider the case law on the subject. In the case of Regional Manager Versus Pawan Kumar Dubey (supra), Pawan Kumar Dubey was given an adhoc promotion on 7.3.72. There were adverse entries in his Character Roll before that date; he was also awarded adverse entries in September and October, 1972 and January, 1973 which the Supreme Court considered to have been recorded by one particular superior officer. He was reverted by an order dt.20.2.73.

On an examination of the various adverse entries, the Hon'ble Supreme Court held that in respect of the entries after 7.3.72 proceedings under Article 311(2) of the Constitution of India should have been initiated and since that was not done the impugned reversion was hit by Article 311 of the Constitution. That should have been the end of the case. However, the Supreme Court also observed that on adhoc promotion on 7.3.72 the old adverse entries must be deemed to have been washed off. Perhaps that was an abitor; but even if it may not be considered to be an abitor the unmistakable position is that the Hon'ble Court was dealing with a case of reversion as contra-distinguished from the case of promotion to a selection post on merits. There can be absolutely no doubt that there are fundamental distinctions in the criteria for ordering reversion of a person as from those for promoting a person on merit to a selection post. When a person holds a post by virtue of an adhoc promotion all that has to be seen in a matter for his reversion is to consider whether he deserves better to be retained in the adhoc promotion post or must be reduced to his original substantive post and for that purpose such of the adverse entries which he has crossed over in order to be given adhoc promotion may not be given much weight; but when the same person has to be considered for promotion to a selection post on the criterion of merit there is no reason why the entire record and the background of his work and conduct in the past may not be considered. When entry is made in a Character Roll it has to stay there, unless it is expunged

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in accordance with law. It may be expunged either on a representation administratively or by a Court of Law judicially. An entry in order ^{to be} ~~expunged~~ has to be challenged on its own merits in a properly constituted case where the Department also gets an opportunity of meeting the challenge. The expression that an entry is deemed as wiped off only signifies its relative value in consequence of the development of promotion; it cannot cease to exist - only its value is reduced relatively. When it is said therefore that an entry is deemed to be washed off, it only means that under different circumstances it has to be appreciated in the light of the developments. Thus an entry may appear to be watered down by certain features of the case or by the observations of the Court; nevertheless, the entry does not cease to exist. It is not disputed that a case of adhoc promotion essentially rests on the concept of seniority. The applicable rules or criteria for adhoc promotion neither figured in Pawan Kumar Dubey's case nor have been placed before us; but there is no dispute that the criterion on merit as applicable to a selection post has absolutely no application to an adhoc promotion. We feel, therefore, that while for the purposes of appreciating a case of reversion, the effect of adhoc promotion may considerably water down the adverse entries prior to the date of promotion, — we do not think that anything worst than that ~~does~~ happens to the entries; they do continue to exist on the service record and therefore had to be looked into if for the purposes of promotion to a selection post on merits the rules require the record to be considered and assessed as a whole.

17. In this connection, the learned counsel for the applicant has strongly relied upon the decision of the Division Bench of the High Court of Allahabad in the case of Dr. Girish Bihari Versus State of U.P. (supra) in which reliance has also been placed on the case of Regional Manager Versus Pawan Kumar Dubey (supra). That was the case of an officer who had been selected and promoted to the selection grade on merit but had been superseded by the Selection Committee for promotion to the Super Time Scale post which was also a selection post on the criterion of merit. Since the officer had certain adverse entries in his Character Roll for the period prior to his selection and promotion to the selection grade, the Selection Committee did not find him suitable for promotion to the selection post in the Super Time Scale and superseded him by his juniors. It would appear from the facts stated in para 1 of the judgement that the officer had been promoted to the selection grade by order dated 28.11.75 with effect from 15.11.74 and was denied Super Time Scale by the State Govt's order dated 2.12.80. It would appear from para 3 of the judgement that the Selection Committee considered the adverse entries awarded to the applicant for several years upto 1974-75 and 1975-76. It would appear from para 5 of the judgement that selection grade was given in 1975 despite the adverse entry upto 1974-75. The Hon'ble High Court took the view that since the applicant had been awarded selection grade by orders passed in 1975 the adverse entries upto 1974-75 would be deemed to have been washed off. The Hon'ble High Court referred to the cases dealing with the effect

of crossing Efficiency Bar on the earlier entry and with the cases of compulsory retirement; none of the cases appears to be concerned with the situation in which a person given an adhoc promotion was examined for promotion to a selection post by merit. Para 12 of the judgement mentions the rulings which had been relied upon by the Chief Standing Counsel to show that the principle of wiping out of the adverse entries on the ground of crossing Efficiency Bar or on the ground of promotion to a higher post does not apply where a question of selection to a higher post by promotion on merits is under consideration. The Supreme Court case of Mir Ghulam Hasan Versus Union of India 1973 SC 1138, a five Judge Bench decision of Orissa High Court in the case of Ramesh Prasad Mahapatra Versus State of Orissa 1980 SLJ 566 and Other cases were referred to. The Division Bench considered these matters. We think that the crux of the view ultimately taken by the Division Bench is contained in the following words of para 9 of the judgement :-

" After promotion by selection despite adverse entry the adverse entries lose all value and they cease to be of any relevant material for consideration for further promotion."

This we may say with great respect is the true legal position applicable to the particular facts of the case of Dr. Girish Bihari. Dr. Girish Bihari had been granted promotion to a selection post in the selection grade on the criterion of merit in 1974 and therefore the entries which had been recorded upto the year 1974-75 were considered not to have been wiped off but to have lost value and to be ceased to be material for consideration

for further promotion to the selection post in the Super Time Scale again on the criterion of merit. Dealing with the case of Mir Ghulam Hasan Versus Union of India (supra) the Division Bench observed in para 30 as follows :-

"It cannot be disputed that where selection is made on the basis of merit, absence of adverse entries does not show positive merit of an officer but presence of adverse entries is bound to affect the selection of an officer on merit."

18. Clearly the Court recognized the effect of an adverse entry as and when a question of promotion to a selection post on merits arises. Dealing with the five Judge Full Bench decision of the Orissa High Court in the case of Ramesh Prasad Mahapatra Versus State of Orissa and others the Division Bench of the Allahabad High Court expressed their dissent in para 16. In our opinion the decision of the Division Bench of the Allahabad High Court may properly be confined to those cases where a person having adverse entries has been given promotion to a selection post on the criterion of merit and thereafter his case is again considered for further promotion to a still higher selection post on the criterion of merit. In those cases the adverse entries recorded during the period prior to the grant of the earlier promotion lose much of their value; even there they do not get wiped off completely. It is for the selection committee to make a proper appreciation of such entry and then arrive at an assessment of the merit of the concerned officer and compare the same with

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the merit of the other officers¹ who had been included in the select list. This being the position, in our view, the adverse entry of the applicant for the year 1969-70 was rightly considered by the Review Selection Committee.

19. However, in view of what we have stated on points (i) and (ii), the order of supersession of the applicant cannot be sustained and must be quashed. The learned counsel for the applicant then urged that since the respondents had ^{occasion} an / to consider the case of the applicant by a Review D.P.C. and comply with the orders of the Hon'ble High Court in the previous litigation but they had failed to do so, this Tribunal must direct the applicant to be promoted; the learned counsel for the respondents contends that the function of granting promotion does not rest with this Tribunal but with the Selection Committee and the Govt. and therefore at best this Tribunal may direct a fresh Review D.P.C.

20. The learned counsel for the applicant has referred to the cases of State of Madhya Pradesh Versus Bani Singh and Another 1990 SC 1308 and the State of Mysore and Another Versus Syed Mahmood and Others 1968 SC 1113; the learned counsel for the respondents have referred to the case of State Bank of India and Others Versus Mohd. Mynuddin 1987 SC 1889. We do not think it necessary to go into much detail of the judgements because in our opinion ~~that~~ since the respondents have not recorded reasons as required by the law and since

they have not made a comparative assessment of the merits of the applicant qua those officers who were included in the list of 1976, this Tribunal is not in a position to find affirmatively whether or not the applicant should be promoted and placed in the select list. That function has to be discharged by the Selection Committee. The general practice recognized judicially in this respect is that reflected in the case of State Bank of India Versus Mynuddin(supra), that is, "in the first instance" direction should issue to the Govt. to have a proper D.P.C. proceedings conducted and then to take a decision; but that is only a direction in the first instance. In other words, where an opportunity has been given to the Govt. and a Selection Committee to reconsider the case of an officer by holding a Review D.P.C. and yet the Govt./ the Review D.P.C. does not comply fully with the directions of the Court or requirements of the law, the hands of the Court are not tied down to a repeat direction to the concerned authorities to undergo the exercise once again. In a given case where the rights are clear and well established after the process of a Screening Committee has been gone through the Court may still direct a promotion to be given. This is not only on the general principle that a defaulting respondent is not entitled to have opportunity after opportunity with liberty to continue to commit mistakes but also because it is a judicially recognised principle that in the ultimate analysis the Court may have to interfere in the particulars facts and circumstances of a case. That is what clearly follows from the observations of the

Supreme Court in the case of State Bank of India Versus Mynuddin (supra) para 5 where it was held that the High Court ought not to have issued a Writ without giving State Govt. "an opportunity in the first instance to consider their fitness for promotion" and that the Court should not "ordinarily" issue a Writ to promote an officer straightway. Para 5 of the judgement of the Hon'ble Supreme Court in the case of State of Mysore and Another Versus Syed Mahmood (supra) is more explicit when it states :

" We are of the opinion that the State Govt. should be directed at this stage to consider the fitness of Syed Mahmood and Bhau Rao for promotion in 1959. If on such examination the State Govt. arbitrarily refuses to promote them, different considerations would arise. The State Govt. would, upon such consideration, be under a duty to promote them ^{as} from 1959 if they were then fit to discharge the duties of the higher post and if it fails to perform its duty, the Court may direct it to promote them as from 1959 ."

21. It is clear therefore that this Tribunal is not entirely powerless to direct a person to be included in a select list and to be promoted, but that is an exceptional situation depending upon the particular facts of the case and the findings recorded by the Selection Committee and the orders of the Govt. We think that in the particulars facts of this case the case should be reconsidered by the Selection Committee.

22. For the reasons recorded above, the Minutes dated 21.11.89 and the recommendations of the Review

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Selection Committee in the case of the applicant and consequential orders of the respondents are quashed. The respondents are directed to constitute a Review Selection Committee within a period of one month from the date of receipt of a copy of this judgement, the Committee shall consider and make recommendations in the case of the applicant for inclusion or otherwise in the select list of the I.P.S. for the year 1976 within two months from the date of its being constituted bearing in mind the observations contained in the body of this judgement, and the respondents shall thereafter pass appropriate orders in the matter of the applicant's promotion and other benefits, if any, from the appropriate date in accordance with law within one month from the date of receipt of the recommendations of the Review Selection Committee. Parties shall bear their costs of this case.

M. M. Gupte

Member (A)



Vice Chairman

Lucknow.
Dated the 18th February, 1991

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Section 4(1) of the
Central Administrative Tribunal
Act, 1985
Date of filing 5/4/90
Date of receipt

Receipt

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

O.A. No. 112 (L) OF 1990

Between

Devendra Kumar Tewari, aged about 54 years, son of Late
Sri B.B. Singh Tewari, resident of B-405, Indira Nagar,
Lucknow

Applicant

Versus

Union of India through the Secretary, Ministry of Home
Affairs, Government of India, New Delhi
and

Three others- - - - - Respondents.

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filed
5/4/90

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5-4-90

Before the central Administrative Tribunal Allahbad
Lucknow Bench, Lucknow.

Application U/s 19 of the Administrative
Tribunal, Act of 1985.

For use in Tribunal's offices

Date of filing or date of receipt by post-----

Registration No-----

Registrar

[Handwritten signature]

(A36)

Central Administrative Tribunal

Circuit

Date of

5-4-90

Date of

on 112/90(1)

h
Deputy Minister

DETAILS OF APPLICATION -

1. PARTICULARS OF Name Devendra Kumar Tewari.
APPLICANT:-

ii. Name of father- Late Sri B.R. Singh Tewari.

iii. Designation and Office in which employed- Superintendent of Police Revenue and Special Intelligence Directorate, U.P. Lucknow.

iv. Office Address Revenue and Special Intelligence Directorate IV Floor, Annexe- Bhawan, U.P. Sashan, Lucknow.

v. Address for service of all notices - D.K. Tewari (Tel. No. 73944) B-405, Indira Nagar, Lucknow.

2. PARTICULARS OF RESPONDENT(S):-

1. Name and/or Designation of Respondents - 1) Union of India through the Home Secretary, Ministry of Home Affairs, Government of India, New Delhi.

2) Union Public Service Commission through its Chairman.

3) State of U.P. through the Secretary, Home Department, Government of U.P., Lucknow.

4) Director General of Police, U.P. Lucknow.

ii. Office address of the respondents. 1) Ministry of Home Affairs New Delhi.

2) Union Public Service Commission, New Delhi.

3) Home Secretary, U.P. Sashan 1st Floor, Annexe Bhawan Sachivalaya, Lucknow.

4) D.G.P. Office, 1, Tilak Marg, Lucknow.

iii) Address for service of all notices - as referred to above.

3. PARTICULARS OF THE ORDER AGAINST WHICH APPEAL IS MADE:-

The application is in respect of the suppression of the applicant made illegally and arbitrarily on 23.12.1978 and biased consideration

112/90
3/5/1990
for Annex

of its review made on 21.11.1989 as per judgment/
order of the Hon'ble High Court dated 13.12.1988.

1. Order No.- No formal order has been
communicated to the applicant
and, therefore, further details
of the order cannot be stated.

ii. Date -

iii. Passed by -

iv. Subject in brief- The applicant was first super-
seded in the year 1976 on the
basis of uncommunicated adverse
remarks for the year 1974-75
and the period 1.4.75 to 19.7.75
and a warning given by the then
I.G.P. U.P. Adverse remarks
and warning under reference
were communicated after the
supersession of the applicant
had been caused on 29.12.76.
On representation these remarks
as also the warning were expunged/
removed by opposite parties Nos
3 and 4 and by U.P. Public Services
Tribunal No.V in Claim Petition
No.104/T/V/1981, who also
directed C.P.No.3, State of U.P.
to reconsider the name of the
applicant for induction in the
I.P.S. with retrospective effect
vide judgment dated 7.5.1984.
The judgment and order of the
Tribunal No.V was confirmed in

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Writ Petition No. 3918 of 1984
on 13.12.88 by the Hon'ble
High Court, Lucknow Bench, Lucknow
in compliance of which Selection
Committee meeting took place
on 21.11.89 and the applicant
was considered in a biased
malafide and partison manner
and was not promoted to the IPS.
This application is being filed
against the illegal non-selection
of the applicant into I.P.S.
on 21.11.89 with retrospective
effect disregarding the above
referred orders of the Hon'ble
Tribunal and High Court.

4. JURISDICTION OF THE TRIBUNAL:-

The applicant declares that the subject
matter in respect of which he wants redressal is within
the jurisdiction of the Tribunal.

5. LIMITATION:-

The applicant declares that the application
is within the limitation, prescribed in Section 21
of the Administrative Tribunal Act, 1985. The applicant
further declares that the adverse entries for the
year 1974-75 and the period 1.4.75 to 19.7.75 and
the question of consequent supersession was subjudice
before the Public Services Tribunal, U.P. and later
before the High Court at Allahabad, Lucknow Bench,
Lucknow till 13.12.88. It is submitted that in
compliance of High Court's judgment the C.P.No.3 and 4
convened meeting of the Selection Committee at Lucknow

on 21.11.1989 in which the applicant was not selected in utter disregard of the High Court's Order and on account of illegal, mala fide and partisan considerations. Hence this application is within limitation as provided in Sec. 21(i)(a).

6. FACTS OF THE CASE:-

The facts of the case are given below:-

1. That the applicant was initially recruited through the Public Service Commission, U.P. for appointment on the post of Deputy Superintendent of Police in the cadre of U.P. Police Service in the batch of 1957 and was appointed in the year 1959.
- ii. That after confirmation at the end of the probation period in 1961, the applicant, on the basis of his good work and conduct, was promoted on officiating basis to the post of Superintendent of Police in September, 1973 and was assigned independent charge of the post of Superintendent of Police, District Ballia.
- iii. That in the year 1974-75 and upto 19.7.75, the applicant was posted as Superintendent of Police, in District Jaunpur where the then District Magistrate Sri C.N. Vaid developed unpleasant relations against the applicant and addressed several letters to the then Commissioner, Varanasi Division, Home Secretary, U.P. and Chief Secretary, U.P. etc., the applicant's reporting, reviewing and accepting authorities. These officers, in turn, awarded adverse entries to the applicant for the period 1974-75 and 1.4.75 to 19.7.75 without ascertaining the truth and, in case of the then Chief Secretary Sri Mahmood Butt, without competence rendering the said entries malicious.

iv. That the meeting of the Selection Committee constituted under Regulation 3 of the Indian Police Service (Appointment by Promotion) Regulations 1955 met on 20.12.1976 in which applicant's name was considered for being brought on the select list but he was superseded on the basis of uncommunicated remarks for the aforesaid period and a warning awarded vide letter No.I-C-76/30(1) dated, Lucknow, April 30, 1976 by the then I.G.P. and ex-officio member of the Selection Committee of 20.12.76. The minutes of the Selection Committee meeting held on 20.12.1976 are annexed herewith as Annexure No.A-1. The reasons of supersession of the applicant as mentioned in these minutes are reproduced below:-

"He did not pull on well with the D.M. and avoided monthly meetings called by him. This attitude adversely affected the District Administration."

It is submitted that on date only following line of the above referred extract of the minutes of the Selection Committee dated 20.12.76 remains un-expunged- "He did not pull on well with the D.M."

v. That the adverse entries referred to above were communicated to the applicant vide letters dated 23.3.1977 and 27.4.1978, true copies of which are filed as Annexure No.A-2 and A-3 respectively to this application. On coming to know of the above referred-to, entries, the applicant first submitted representation and memorial in respect of the entry for the year 1974-75 and representation in respect of the entry for the period 1.1.75 to 10.7.75 and, thereafter, after, filed a claim petition before the

Public Services Tribunal under Section 4 of the U.P. Public Services Tribunal Act, 1976 being number 47(F)/V/1981.

vi. That the stringent portions of the above referred adverse entries had to be expunged by G.P.No.3, the State of U.P. as a result of an enquiry which was got conducted through the then Commissioner, Varanasi Division, Sri S.K. Jha Nagar by the State ~~Government~~ Government. Sri Jha Nagar on enquiry found the factum of monthly staff meetings having been convened by the then D.M., Jaunpur, as recorded in the adverse entry for the year 1974-75 awarded to the applicant by his predecessor, Sri Pratap Singh, factually incorrect and wrote the line "He generally avoided to attend monthly staff meetings called by the D.M. under Government instructions.", was expunged as communicated to the applicant vide letter No.I-35(17)-77 dated Lucknow, April 27, 1978. The word "Attitude" was deleted from the sentence, "This attitude obviously adversely affected the District Administration, now and then." and the applicant was informed accordingly vide letter No.I-35(17)77 Lucknow dated: December 19, 1978 the entry awarded for the year 1975-76 by the then Chief Secretary, Sri Mahmood Butt to the effect, "An officer of average calibre. He must learn to accept the D.M. as the Head of the Criminal administration in the district.", had to be expunged because Sri Butt had taken charge of Chief Secretary, U.P. after nearly 45 days of the period of impugned entry,

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which was awarded for the period 1.4.75 to 19.7.75. The applicant was informed about the fact of expunction of above quoted adverse remarks of the Chief Secretary vide letter No.I-35(40)-73 dated: Lucknow January 29,1980.

vii. That the U.P.Public Services Tribunal vide its judgment and order dated 7.5.1984 expunged significant and trenchant portions of the remaining adverse entries under reference and quashed the supersession of the applicant. The judgment and the order of the Public Services Tribunal is being filed to this application as Annexure No.A-4 and the operative portion of this judgment is being reproduced below for the sake of convenience.

(i) "The following portions of the annual confidential remarks awarded to the petitioner, Shri D.K.Tewari, for the year 1974-75 by the Commissioner, Varanasi Division, Varanasi be expunged.

"he remained popular with only some sections of political leaders" and the sentence" This obviously adversely affected the District Administration now and then."

(ii) The following further portions of the annual confidential remarks recorded in respect of the petitioner for the year 1975-76 be expunged.

(a) From the remarks recorded by the Commissioner, Varanasi Division, Varanasi, the portion "which reflected in the Administration now and then".

(b) The portion "and both were to blame for this" recorded by the Inspector-

General of Police.

(iii) A decision to supersede the petitioner in the Select List prepared for the year 1976 on the basis of Selection Committee Meeting held on 29.12.1976 is quashed and set aside. The opposite party No.1, State of U.P. will again place the case of the petitioner for consideration at the next meeting of the selection Committee constituted for the purpose of preparing the Select List for promotion to the Indian Police Service, and the Selection Committee shall consider the case of the petitioner once again for the Select List of 1976. In case the petitioner is found fit for placement on the Select List for 1976, the date from which he shall be deemed to be on probation in the Indian Police will be determined with reference to the date from which the first officer who was junior to him in the state services promotion list and who had found a place in the Select List for 1976 had commenced to be on like probation.

There will be no order as to costs".

VIII. That the State Government O.P.No.3 filed writ petition No.4236 of 1984 before Hon'ble High Court challenging the judgment of the Public Services Tribunal and the applicant filed writ petition No.318 of 1984 against the remaining adverse portion in the Public Services Tribunal's judgment and also for the issuance of mandamus, commanding the State of U.P. to place the applicant's name for reconsideration in respect of his induction to the Indian Police Service with effect from 29.12.76 within a specified period.

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IX. That in the meantime adverse entries for the year 1976-77 and 1977-78 were communicated to the applicant. The applicant after having exhausted departmental remedies filed claim petition No.104/F/V/1983 which was decided by judgment of the U.P.Public Services Tribunal No.5 dated 2.4.1985 according to which the Public Services Tribunal quashed the entry for 1976-77 in toto finding it arbitrary and held in respect of the entry for the year 1977-78, according to which the category of the applicant had been reduced from very good8 to 'good', that it was not a case of adverse entry but the Public Services Tribunal, however, did not restore the category of the applicant to 'very good'. The applicant, therefore, filed a writ petition No.3747 of 1985 in the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, D.M.Tewari versus State of U.P.and others. A copy of the judgment pronounced by the Hon'ble Tribunal No.5 on 2.4.85 is annexed to this application as Annexure No.A-5.

X. That all the above referred to three writ petitions were decided and disposed off by the Hon'ble High Court vide a common judgment and order dated 13.12.1988, a true copy of which is filed to this application as Annexure No.A-6.

XI. That the Hon'ble High Court decided three writ petitions vide a common judgment dated 13.12.88 ^{was} which ^{was} enumerated as under on its last page -

".....The entry of 'good' without any superlative continues to be good and same does not amount to be an adverse entry and cannot be quashed

as such. With these observations, writ petition No.3018 of 1984 Devendra Kumar Tewari Vs.State of U.P.and others is allowed to the extent that the entry given by the Home Secretary "An Average Officer.Rest" is expunged."

"Writ petition No.1236 of 1984 State of U.P.Vs.D.K.Tewari and another is partly allowed to the extent that the last sentence of order of item No.3 beginning from "In case the petitioner is found fit" upto "On like probation" is quashed and the same is to be read as " In case he is found fit for placement on probation, his promotion shall be made in accordance with Law".

"Writ Petition No.3717 of 1985 is dismissed with observation made in the judgment".

XII. That from the above it is clear that the supersession of the applicant in the year 1976 is bad in law and, that both, the Public Services Tribunal, U.P.and Hon'ble High Court quashed the same. The applicant informed the State of U.P. and the D.G.P. accordingly vide his D.O.letter No. 1/DWT/PSI/MC/89 dated January 19, 1989 followed with D.O.reminders of even number dated May 2, 1989 and May 16, 1989 enclosing therewith copies of judgments of the Hon'ble Tribunal No.5 and the High Court as also incorporating the relevant extracts from these judgments.

XIII. That the State Government, C.P.No.3, in response to protracted correspondence, referred to in the preceding paragraph and personal enunciation issued order No. गृह(पुलिस सेवाएँ)अनु-2,संख्या 2620/ आठ-पु.से-2-545(2)/85 लखनऊ: दि. 20 सितम्बर, 1989.

It is submitted that, although, this letter is avowed to have been issued in deference to the above referred-to, judgment of the Hon'ble High Court but, in fact, the above letter dated 20.2.89 has disregarded not only the spirit and the intent of the judgment of Public Services Tribunal dated 7.5.1984 and the High Court's judgment dated 13.12.83 but, also, ignored the specific order contained in the judgment of the Hon'ble U.P. Public Services Tribunal dated 2.4.1985 which expunged the adverse annual entry for the year 1976-77 in toto.

XIV. That the State of U.P., G.P.No.3 had stated before the State Public Services Tribunal, U.P. in their written statement in the claim petition No.47-(F)/5/1981 ^{that} ~~dated~~ the applicant was awarded adverse remark for the year 1981-82. The applicant submitted in his rejoinder affidavit that ~~this~~ said adverse entry had been expunged by the State Government in November 1983 and filed Government Communication in support of his contention. The State of U.P., G.P.No.3 did not dispute the authenticity of the said Government order of 1983 but have refrained from mentioning about rectification, if made at all, in the above referred Government Order dated 20.2.1989, a true copy ^{of} which is filed to this application as Annexure No.A-7.

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XV. That the Government order dated September 20, 1989 does not reveal follow-up action regarding the expunction of the adverse entry for the year 1976-77, as well, presumably, to perpetuate the wrong done to the applicant.

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XVI. That the Government order dated September 20, 1989 does not reckon-with the observations made in the judgment of the Hon'ble High Court dated 13.12.88 regarding the subject matter of writ petition No.3747 of 1985 according to which it was held that the impugned entry awarded to the applicant in the year 1977-78 does not amount to be an adverse entry and can not be treated as such.

XVII. That the applicant after receipt of the above referred Government order dated 20.9.89 and having waited for further follow-up action to be initiated for near about five months submitted a representation bearing No. पत्रांक : प्रत्यावेदन/दे० कुं० ति०/लो० सं०/उ० नं०/ल० सं०/दि० प्र० 15.11.90 to the State of U.P., O.P.3 and endorsed its copy to the I.G. Personnel, O.P.No.4, a true copy of which is filed to this application as Annexure No.A-8. Complete lack of response to this letter dated 15.2.1990 from O.P.No.3 and 4 is ^{towards the applicant and explains the illegal, malafide} clearly indicative of their malice and partisan action taken during the Selection Committee Meeting held on 21.11.89 in compliance of the judgment of the Hon'ble Tribunal and the High Court.

XVIII. That the applicant has gathered from reliable sources that ^{2 we} was considered for induction in the I.P.S.Cadre by the Selection Committee which met on 21.11.89 and was superseded again on account of highly biased, subjective, malicious and partisan considerations in utter disregard of the material, in respect of the issue of the alleged uncordial relations between the applicant and then D.M., Jaunpur

available with the State of U.P., O.P.No.3 and the judgments delivered by the Hon'ble State Public Services Tribunal No.5 and the Hon'ble High Court on 7.5.1984 and 13.12.1988 respectively.

7. RELIEF(S) SOUGHT:-

In view of the facts stated above the applicant humbly prays for the following reliefs -

1. After summoning the relevant records, this Hon'ble Tribunal be kindly pleased to declare the applicant inducted to the Indian Police Service in accordance with the regulations contained in the Indian Police Service (Appointment by promotion) Regulations, 1955 with effect from the date from which the first officer who was junior to the applicant in the State Service gradation list was included in the select list of 1976 and consequently promoted, with all the consequential benefits arising there-from including seniority on the basis of applicant's continuous length of service on the post of S.P. with effect from September, 1973.

ii. To award the cost of instant application.

iii. Any other relief which this Hon'ble Tribunal deems proper.

The grounds for the above referred reliefs are being enumerated below. Further legal provisions and rulings etc. will be brought to the kind notice of the Tribunal at appropriate stage.

LEGAL GROUNDS OF RELIEF(S)

- i. Because the applicant's name having been included in the Select List of IPS prepared in 1973, he was entitled for regular promotion to the I.P.S.Cadre.
- ii. Because in any case when the suitability of the applicant was being judged in the meeting of the Selection Committee held on 29.12.1976, only such of the entries and adverse material could be taken into consideration which had been communicated to the applicant and his representation, if any against the same, had been disposed off prior to the date of selection.
- iii. Because in the case of the applicant the adverse entries for the year 1974-75 and 1.4.75 to 19.7.75 were communicated to him on 23.3.1977 and 22.4.1978, much after the meeting of the Selection Committee held on 29.12.1976. The applicant, had no opportunity to represent against the adverse entries under reference prior to 29.12.76.
- iv. Because major and stringent portions of the adverse entries in question were later on expunged rendering the said adverse entries non est in the eyes of law.
- v. Because the warning given by the then Inspector General of Police Sri Shrawan Tandon having been recalled could not have been legally read against the applicant by the Selection

Committee in its meeting held on 29.12.1976, in which Sri Tandon himself participated as a member and appended his signatures to the minutes of the Selection Committee Meeting as would be evident from the perusal of Annexure No.A-1.

vi. Because the portions of the adverse entries which remained after expunction by the State Government and subsequently by the Public Services Tribunal and the High Court are not such on the basis of which the applicant could have been legally superseded by the opposite parties.

vii. Because the opposite parties have not taken into consideration the significant observations of the Hon'ble Tribunal despite applicant's requests and written communications vide letter No.1/DKT/PST/HC/89 dated 19.1.89 followed with letters of even No. dated 2.5.89, 16.5.89 and the letter dated 15.2.90 on 21.11.89 when Selection Committee was convened in compliance of the judgment, dated 13.12.1988.

viii. Because the opposite parties have not taken follow-up action despite unambiguous verdict of the Hon'ble Tribunal on the issue of the remaining portion of the adverse entries pertaining to the alleged uncordial relations between the applicant and Sri O.N.Vaid, the then D.M.Jaunpur during the year 1974-75 and period x 1.4.75 to 19.7.75. State of U.P.O.P.No.3 contrived semblance

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of compliance by issuing letter No.2620/VIII-PS-2-545(2)/85 dated Lucknow, 20.9.1989 and ignored the judgment dated 7.5.1984 which reads, "..... Ordinarily when there exist bad relations between two senior officers one might presume that both officers are responsible to some extent for such a situation but in the present instance, when the petitioner has repeatedly expressed that he was not to blame in any way, it was necessary for the opposite parties to refute such a contention with a statement of facts, such has not been done here. Seen in the light of this, the comment, "..... and both are to blame for this" must be deemed to be without adequate basis and hence arbitrary..."

ix. Because the warning kept on the personal file of the applicant on 30.4.1976 by the then I.G.P. Sri Shrawan Tandon, who was an ex-officio member of the Selection Committee convened on 29.12.76, arbitrarily without asking for the explanation of the applicant had to be removed by Sri Shrawan Tandon vide letter dated 3.9.1977, a copy of which is appended to the application as Annexure No.A-9.

x. Because the adverse entry awarded by Sri Shrawan Tandon for the year 1976-77 in succession of the afore-said warning dated 30.4.1976 was held arbitrary by the Hon'ble Public Services Tribunal and, hence, was expunged in toto vide judgment dated 2.4.1985. The Hon'ble Tribunal further ordered payment of Rs.150/- as cost to the applicant which could be seen from the enclosure No.A-5, filed

with the instant application. It is submitted that the entry for the year 1976-77 refers to the period subsequent to 29.12.1976 when Selection Committee Meeting was held.

xi. Because the opposite parties keep on harping the point of alleged uncordial relations between the applicant and the then D.M. Jaunpur, Sri O.N. Vaid and hold the applicant responsible as also liable ignoring the finding arrived-at, on various files of State Government and the unambiguous verdict of the Hon'ble High Court which reads, "The D.I.G. himself did not agree with the adverse remarks given by the Commissioner who only stated the factual position that his relations with his District Magistrate were not cordial. The I.G. cum Director General of Police, who observed, "However his strained relations with the District Magistrate, for which he was not much to blame, stood in the way of smooth administration ." In this way I.G. made both parties responsible....".

xii. Because no efforts have been made by the Selection Committee which met at Lucknow on 21.11.89 as per directions of the Hon'ble Tribunal and the Hon'ble High Court to ascertain the truth on the basis of the records/files which are in the custody of the State of U.P., O.P. No. 3 and which had not been produced before the Hon'ble Services Tribunal with the sole intention of protecting the then D.M. Jaunpur, Sri O.N. Vaid.

and particularly on 21-11-1989

xiii. Because on 29.12.1976 there was no such valid material in the service record of the applicant which could have been used by the opposite parties for holding the applicant unsuitable for induction to the I.P.S. cadre. He was, therefore, entitled to induction and consequent promotion in 1976 along with his other batch-mates.

xiv. Because the applicant was discriminated against, in as much as, that persons junior to him having in no way better service record were not only inducted to the Indian Police Service but were, also promoted to still higher posts, attracting the provisions of Article 14 and 16 of the Constitution of India.

xv. Because the amendments to the 1955 Regulations were made after 76 and therefore, would not effect the declaration of induction of the applicant in the Indian Police Service in 1976. It is submitted with due emphasis that the applicant was superseded on 29.12.1976 and detailed reasons of his supersession cannot be other than those mentioned in the minutes of the Selection Committee Meeting held at Lucknow on 29.12.1976 which is appended to this application vide annexure No.A-1.

xvi. Because the High Court in its judgment dated 13.12.1988 has upheld the judgment of the Public Services Tribunal, quashing the supersession of the applicant and directed for considering the matter relating to the induction of the applicant to the Indian Police Service as in 1976

in accordance with law but the opposite parties flouted this direction in spirit and letter both on 21.11.89 when they reviewed applicant's supersession caused on 29.12.1976.

xvii. Because in not complyind with the judgment of the Hon'ble High Court dated 13.12.1988, the oppisite parties have acted in contravention there-of.

xviii. Because in any case the opposite parties can not ignore the judgments referred-to above and are liable to give effect to the orders contained in the judgments under referejce in spirit and letter both.

xix. Because the applicant was appointed as S.P. on adhoc basis in September, 1973 and is continuously working as such without any break as also drawing the salary and other pecunary benefits in the senior scale of I.P.S. The opposite parties are simply not bringing the applicant on select list on account of malafide and partisan considerations.

xx. Because it is expedient in the interest of justice to declare the applicant as inducted to the Indian Police Service with effect from, atleast, 29.12.1976 and promote him and give him seniority in the Indian Police Service with effect from September, 1973 since when the applicant is officiating on the post of Superintendent of Police in the senior scale and all other accompanying

pecuniary benefits of senior scale of I.P.S. as in the year 1973. This position has not been altered till date by O.P.No.3 and 4 notwithstanding the revision of pay scales of I.P.S.cadre as also that of U.P.Police cadre.

xxi. Because this Hon'ble Tribunal has granted the benefit of continuous efficiation on the post of Superintendent of Police in case of many others, and, recently, in A.B.Shukla's case.

8. INTERIM ORDER PRAYED FOR:-

Pending the final decision on this application, the applicant seeks the following interim relief:-

This Hon'ble Tribunal be pleased to direct the opposite parties not to promote any one in the Indian Police Service cadre till the case of the applicant is considered for promotion to the ~~to the~~ higher post i.e. Deputy Inspector General of Police.

9.DETAILS OF REMEDIES EXHAUSTED:-

The applicant declares that he had availed of all the remedies available to him under the relevant service rules etc. at appropriate time. It is further declared that no alternative departmental remedy is, now, available to the applicant in respect of illegal and malafide non-selection to the I.P.S. by the Selection Committee in the Select Committee Meeting held on 21.11.89. under the I.P.S.Appointment by Promotion Regulations, 1955.

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It is only this Hon'ble Tribunal which has been conferred the power of Judicial Review against the arbitrary executive actions/decisions of the Executive and thereupon granting consequential reliefs including declaratory relief.

10. MATTER NOT PENDING WITH ANY OTHER COURT, ETC:-

The applicant had filed claim petition No.47/F/V/1981 under section 4 of U.P.P.S.(Tribunals) Act, 1976 for quashing of his supersession alongwith expunction of adverse remarks but could not seek any direction to the Union of India as the said Tribunal had no jurisdiction over the Union of India. The Hon'ble Public Services Tribunal expunged the adverse remarks partly and quashed the supersession and this judgment of the Hon'ble Tribunal was upheld by the Hon'ble High Court vide its judgment dated 13.12.1988. The copies of the judgments of the Public Services Tribunal and the High Court are annexed to this application in support thereof as Annexures No.A-4 and A-6 respectively.

The applicant declares that at the time of filing this application no proceedings or the matter, regarding which this application has been made, is ~~not~~ pending before any court of law or any other authority or any other branch of the Tribunal.

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE:-

Postal Order No.- B 02 449696

Date of Issue - 4-4-1990

Name of issuing Post Office-

In favour of -

12.DETAILS OF INDEX:-

For details of Index front page of this application may kindly be seen.

13.LIST OF ENCLOSURES:-

Total number of enclosures being filed to this application is 9(Nine). Details of these enclosures are given in the Index at the front page.

V E R I F I C A T I O N

I, Devendra Kumar Tewari aged about 54 years son of Late Sri B.R.Singh Tewari, working as Superintendent of Police, Revenue and Special Intelligence, U.P.Government, resident of B-405, Indire Nagar, Lucknow do hereby verify that contents from 1 to 13 mentioned in the application are true to my personal knowledge and belief and I have not suppressed any material fact.

Lucknow:

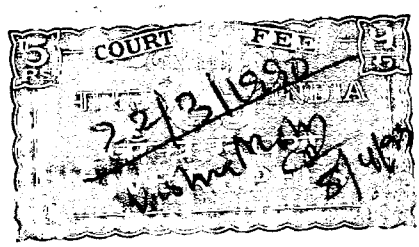
Dated: April 5, 1990. (Signature of the Applicant)

Devendra
5-4-'90
Vishwa Mohan Singh
- the applicant -

A 588

य अदालत धीमान Central Administrative Tribunal महोदय
[वादी अपीलान्ट] Lucknow Bench Lucknow.
श्री D K Tripathi का वकालतनामा
प्रतिवादी [रेस्पाडेंट]

Sh D K Tripathi



वादी (अपीलान्ट)

Union of India

बनाम

प्रतिवादी (रेस्पाडेंट)

नं० मुकद्दमा सन् 1990 पेशी की ता० 5 April 1990 ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री ^{UD} VISHWANATH MOHINI, ADVOCATE,
(27) Smt. MAL KUMAR, Advocate, 126/43/5-BN Road, Kashi, वकील
27-A Nylking Road, Lucknow महोदय
Bardhaman, Kashi, Lucknow. एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरोकत

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावे या हमारी ओर से डिगरी जारी करावे और रुपया लसूब करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरोकसानो) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पेरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसको जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

Accepted
Shree Mohini
Adv

हस्ताक्षर... 5-4-90

साक्षी (गवाह) ... साक्षी (गवाह) ...

दिनांक ... 5 ... महीना 4 ... सन् 1990 ई०

स्वीकृत

5/4/1990

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW BENCH, LUCKNOW.

Application U/S 19 of the Administrative Tribunal's
Act, 1985

Devendra Kumar Tewari ----- Applicant

Versus

Union of India and three others

I N D E X

Sl.No.	Particulars	Annexure No.	Page
1.	Application with format for the use in Tribunal's Office and verification certificate.	-	1 to 2
2.	Minutes of the Selection Committee meeting held on 29.12.76 at Lucknow.	A-1	25 to
3.	Letter No.CO(2)ACR-10/74-75 Dated:Lucknow:March 23,1977 communicating adverse remarks awarded to the applicant for the year 1974-75	A-2	29
4.	Letter No.C.O.(2)-12-ACR/75-76 Dated:Lucknow:April 27,1978 communicating adverse entry awarded to the applicant for the period 1.4.75 to 19.7.75.	A-3	30 to 31
5.	Judgment and order of the Hon'ble Public Services Tribunal No.5 dated 7.5.1984 showing expunction of certain portions of the impugned adverse remarks and quashing the applicant's supersession caused on 29.12.76.	A-4	32 to 57
6.	Judgment and order of the Hon'ble Public Services Tribunal No.5 dated 2.4.1985 showing expunction of the adverse entry awarded to the applicant for the year 1976-77 and award of Rs.150.00 to him as cost.	A-5	58 to 64

Sl.No.	Particulars	Annexure No.	Page
7.	The common judgment and order of the Hon'ble High Court passed in respect of writ petition No.3918 of 1984, 4236 of 1984 and 3747 of 1985 on 13.12.1988, confirming the judgment of the learned Public Services Tribunal No.5 dated 7.5.1984 resultant of the claim petition No.47(F)/V of 1981 filed by the applicant.	A-6	65 to 74
8.	Govt. Order No. Grah (Police Sevai) Anu-2, No. 2628/VIII-P.S.-545(2) 85 Lucknow: Dated 20 September 1989, avowed to have been issued in defence to the judgment dated 13.12.1988 delivered by the Hon'ble High Court.	A-7	75 to 77
9.	Letter No. Patrank: Pratiavedan/DKT Lo. Sey. Aa U. Na/89; Lucknow dated February 15, 1990 sent to O.P. No. 3 and 4 by the applicant requesting implementation of the orders of the courts concerned.	A-8	78 to 104
10.	Letter No. I-C-176/30(1) dated: Lucknow September 3, 1977 informing the applicant that the warning awarded to him has been removed from his personal file.	A-9	105
11.	Vakalatnama	-	106

Dated
5/4/90

Vishwa Mohan for
for applicant.

(A6) 25
BEFORE THE CENTRAL GOVT. SERVICE TRIBUNAL
(CIRCUIT BENCH)

O.S.No. 112/90 (L)
Between

Devendra Kumar Tewari ...Applicant
Versus

Union of India and others ...Respondents

ENCLOSURE NO.A-1

Minutes of the meeting of the Selection Committee constituted under regulation 3 of the I.P.S.(Appointment by Promotion) Regulations, 1955 for preparation of a list of such members of the State Police Service as are suitable for promotion to the I.P.S.

The Committee met at Lucknow on 29th December at 10.30 A.M.

The following were present:

1. Sri R.N. Muttou, Member, U.P.S.C., President.
2. Sri K.N. Srivastava, Chief Secretary, U.P. Govt. Member.
3. Sri P.K. Kathapalia, Jt. Secy. to Govt of India, MOHA., Member
4. Sri B.J. Khodijaji, Comr. & Secy. Home Deptt. Govt. of U.P. Member.
5. Sri S. Pandon., I.G.(P), Govt. of U.P. Member.
6. Sri B.L. Gulati., D.I.O. Govt. of U.P. Member.

The Committee examined the records of the officers (whose names are included in the list attached) who fulfilled the conditions of eligibility. The Committee also considered the question of suitability of those officers for selection with reference to their integrity. The State Government has withheld integrity certificate in respect of S/Sri R.C. Banuacha, Meharban Singh, Jeutram Gupta and A.B. Sorewal.

2. The Committee selected the officers, whose names are mentioned below, as suitable in all respects for promotion to the I.P.S. and placed them in the following order:

	<u>Name</u>	<u>Date of Birth.</u>
1.	S/Sri Hari Singh (S/C)	14.7.23
2.	" J.S. Bhandari	29.12.30
3.	" K.B. Singhal	4.7.24
4.	" Sushil Kumar	19.3.30
5.	" Vijai Nath Singh	10.1.32
6.	" V.N. Ray	1.7.30
7.	" H.C. Rawat	27.12.30
8.	" G.K. Shukla	1.7.30
9.	" Bhupendra Singh	24.11.32
10.	" Devendra Prasad	20.12.30
11.	" Harish Kumar	23.6.30
12.	" Sheoraj Singh	10.1.30
13.	" Ram Lal (S/C)	2.1.28
14.	" S.N. Prasad (S/C)	30.3.32
15.	" I.P. Bhatnagar	3.11.31
16.	" S.P. Misra	1.1.32
17.	" A.P. Sharma	1.10.32
18.	" K.P. Rai	1.2.31
19.	" R.B. Misra	30.3.32
20.	" J.C. Joshi	31.12.32
21.	" J.N. Saxena	24.1.32
22.	" L.N. Singh (S/C)	25.1.34

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23.	S/Sri	L.M.Tewari	1.5.23
24.	"	B.N.Dhwan	2.7.25
25.	"	K.P.Tripathi	30.1.33
26.	"	D.K.Agarwal	7.5.32
27.	"	K.N.Dhatt	3.7.33
28.	"	K.C.Joshi	20.3.32
29.	"	Yogendra Pal	5.2.32
30.	"	P.P.Srivastava	1.11.32
31.	"	Ahmad Ahsan	2.1.34
32.	"	O.P.Agnihotri	6.7.36
33.	"	A.N.Singh	13.1.35
34.	"	R.S.Narain	22.4.35
35.	"	R.C.Srivastava	4.8.35
36.	"	Hori Lal (S/C)	25.4.31
37.	"	H.P.Tripathi	1.7.34
38.	"	T.K.Joshi	1.3.36
39.	"	L.M.Singh	10.7.36
40.	"	Run Bahadur Singh	5.12.36

The Committee was satisfied from the remarks in the confidential reports of the officers, selected for inclusion on the list, that there was nothing against their integrity.

3. The names of the officers included in the list given in paragraph 2 above are arranged in the order of seniority in the State Police Service.

4. The following officers had attained the age of 52 years on January 1, 1976

1.	S/Sri	P.S.Srivastava	6.	S/Sri	L.M.Tewari
2.	"	M.L.Kapoor	7.	"	H.R.Ambardekar.
3.	"	N.L.Pippal (S/C)	8.	"	Awdhesh Kumar
4.	"	Hari Singh (S/C)	9.	"	A.K.Joshi
5.	"	R.N.A.Shukla	10.	"	K.S.Bargoti

11.	"	P.B.Singh	28.	"	J.S.Talwar
12.	"	S.K.Chatterji	29.	"	S.D.Rai
13.	"	S.K.Singh	30.	"	J.S.Rawat
14.	"	S.J.Russel	31.	"	A.A.Khan
15.	"	M.Baqar Husain	32.	"	R.N.Nigam
16.	"	J.B.Verma	33.	"	C.P.Saxena
17.	"	S.P.Chandola	34.	"	S.V.S.Rathi.
18.	"	Bhagwan Singh	35.	"	K.P.Misra
19.	"	S.P.Sharma	36.	"	M.H.S.Bisht.
20.	"	I.Ali Siddiquie	37.	"	S.L.Joshi
21.	"	Babu Ram Shukla	38.	"	R.D.Singh II
22.	"	Q.M.Khan	39.	"	G.P.Kapoor
23.	"	H.L.Sharma	40.	"	S.M.Zaidi
24.	"	N.N.Tandon	41.	"	G.P.Singh
25.	"	Ram Babu	42.	"	Sultan Haider
26.	"	N.L.Singh	43.	"	B.R.J.Singh
27.	"	S.N.Singh	44.	"	Bal Krishna Chadda

Shri Hari Singh, whose name appears in the Select List in force, has been included the list, as he was considered by the Committee as suitable in all respects for further continuance in the List.

Shri N.L.Pippal, whose name also appears in the Select List in force, was considered by the Committee as not fit for further continuance in the list for the reasons stated in para 5 below.

Shri L.M.Tewari, has been included in the list in view of certain exceptional circumstances and his merit and seniority.

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The Committee did not consider that the remaining 41 officers were of such exceptional merit and suitability or that there were any special or extra ordinary circumstances in the case of those officers to warrant a departure from the rule that the Committee shall not ordinarily consider the cases of the members of the State Police Service who have attained the age of 52 years on the 1st day of January of the year in which the meeting of the Committee is held VIDE Sub: regulation(3) of Regulation 5 of the I.P.S.(Appointment by Promotion)Regulations 1955.

5. The selection of the officers mentioned in paragraph 2 above involves the supersession of the under mentioned officers for the reason that their performance in the discharge of the various functions assigned to them, on an over all assessment of their records, was considered to be inferior to that of the officers junior to them in the State Services who have been included in the list, the detailed reasons for supersession in respect of each officer are indicated below:

<u>Name of the Officer</u>	<u>Reasons for supersession.</u>
1.S/Sri S.P.Singh	Officer of average calibre. He needs to improve his conduct.
2. " K.N.Misra	His work has been just satisfactory" He is not cut out for armed Police"
3. " R.C.Banudha (S/C)	Integrity certificate withheld. His confidence has been of ordinary standard and spirit of responsibility has been just satisfactory.
4. " N.L.Pippal (S/C)	Cf medicore calibre and limited ability. He could not control undue lacyency towards erring subordinates.
5. " Meharban Singh	Integrity certificate withheld. He had a bad reputation. Showed undue lacyency towards erring subordinates.
6. " J.R.Gupta	Integrity certificate withheld. Officer of average calibre. Lacks self confidence and needs round improvement.
7. " Parasnath Tripathi.	His work has been just satisfactory on the whole.
8. " J.S.Agarwal	Disposal of work not upto the mark. Maturity of judgment and comprehension need improvement.
9. " A.B.Sorewal	Integrity certificate withheld. He is a liability to Police Force and complicates simple matters.
10. " H.D.Maurya	He has to put in much more effort and honest work to become a successful S.P.

11. S/Sri Basudeo Gupta Officer of average calibre. He is picking up work of Intelligence Deptt.
12. " D.K.Tewari. He did not put on well with D.H. and avoided monthly meetings called by him. This attitude adversely affected the District Administration.
13. " S.P.N.Rai Sharma Despite his seniority, his overall performance has been of average category.
- S/D. K.N.Srivastava S/D. R.N.Muttoo
- S/D B.J.Khodaiji S/D P.K.Kathpalia
- S/D B.L.Gulati S/D S.Landon.

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BEFORE THE CENTRAL AD ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A.No. (1)
Between

Devendra Kumar Tewari ...Applicant
Versus
Union of India and others ...Respondents

ENCLOSURE NO.A- 2

CONFIDENTIAL/REGD.

D.O.No.CO(2)ACR-10/74-75

Asstt.Inspr.-Genl.of Police,
Uttar Pradesh,
Dated:Lucknow: March 23, 1977.

My dear Tewari,

I am desired to communicate to you the following Annual Confidential Remarks for the year 1974-75 given to you while you were posted as S.P. Jaunpur.

REMARKS BY COMMISSIONER, VARANASI DIVISION, VARANASI.

"I do not entirely agree with the DCS in the assessment of work and conduct of Sri D.K.Tewari, S.P. Jaunpur. Sri Tewari is, undoubtedly, an efficient Officer. However, (he remained popular with only some sections of political leaders.) (His relations with the Magistracy including the District Magistrate did not remain cordial. (He generally avoided to attend monthly staff meetings called by the District Magistrate under Government instructions. This attitude obviously adversely affected the District administration now and then".

REMARKS BY IG-CUM-DIRECTOR GENL OF POLICE UP.

Sri Tewari is no doubt an experienced and hard working officer who effected considerable improvement in the Police administration of this district in all spheres. However, (his strained relations with the District Magistrate, for which he was not much to blame, stood in the way of smooth administration.) He was popular with the larger section of the public and consequently he could handle the various law and order problems quite effectively."

2. Please acknowledge receipt of this letter in the attached form.

Encl: One
Sri D.K.Tewari,
Commandant, IG. En., P.A.C., U.P.
VARANASI.

Yours sincerely,
30/23.3.77
(S.V. ...)

h. M. ...
m. ...

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A.No. (1)

Between

Devendra Kumar Tewari ...Applicant
Versus
Union of India and others. ...Respondents

ENCLOSURE NO.A-3

CONFIDENTIAL/REGD.

D.O.No.CO(2)-12-ACR/75-76

ASST. INSPR GENL. OF POLICE
UTTER PRDESH

DATED:LUCKNOW:APRIL 27, '78.

My dear Tewari,

I am desired to communicate to you the following Annual Confidential Remarks including adverse remarks for the year 1975-76 given to you when you were posted as S.P.Jaunpur from 1.4.75 to 10.7.75:-

REMARKS BY DIG OF POLICE VARANASI RANGE:

"An experienced, hardworking officer, who knows police work very well. He is thorough in his work and has good power of expression. He is willing to accept responsibilities. As Superintendent of Police, Jaunpur, he contributed a lot towards improving the working of the Police Office. He also took adequate steps to control crime. He was very popular with all sections of political leaders and his subordinates. His work and conduct remained good during the period under review."

REMARKS BY COMMISSIONER,VARANASI DIVISION:

"Sri D.K.Tewari is, of course, an experienced officer who knows the Police work very well. He well maintained Law & Order in the district, (but somehow he could not pull on well with his District Magistrate, (which reflected in the administration now and then.)"

REMARKS BY I.G.:

"I agree in general with the assessment of the Reporting Officers.

"An experienced officer who worked well both in district Jaunpur and Saharanpur and handled the various law and order and crime situations satisfactorily.

(His relations with his District Magistrate were, however, not good in Jaunpur district and both were to blame for this".)

REMARKS BY HOME SECRETARY:

— ("An average officer.) Rest, I agree with the I.G.P."

REMARKS BY CHIEF SECRETARY TO GOVT. U.P.:

("An Officer of average calibre. He must learn to accept the D.M. as the head of the criminal administration in the district."

2. This letter is being sent to you in duplicate, one copy of which should please be returned to me immediately with your signature thereon in token of receipt of the same for record.

Yours sincerely,

Sd/- V.S. Mathur,
27.4.73

Sri D.K. Tewari,
Commandant,
XX Bn. PAC,
AZAMGARH.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A.No. (1)

Between

Devendra Kumar Tewari

...Applicant

Versus

Union of India and others

...Respondents

ENCLOSURE NO.A-4

J U D G M E N T

The petitioner Shri D.K.Tewari was directly recruited as Deputy Superintendent of Police and worked as such in various capacities until 1973 when ^{he} was promoted as officiating Superintendent of Police. He was posted as Superintendent of Police at Jaunpur from May 1974 to 19.7.75 and was awarded adverse remarks in his character roll for the year 1974-75 and again for the period 1.4.1975 to 19.7.1975. Subsequently when the selection Committee met on 29.12.1976 for the purpose of selecting officers from the State Police Service to the Indian Police Service he was superseded as a result of which his name did not find place in the Select List. Certain portions of the adverse confidential remarks entered in the character roll of the petitioner have since been expunged pursuant to his representations and a memorial preferred by him but the said remarks as they now stand continue to have adverse connotations in their import. This petition seeks directions from the Tribunal for the expunction of the remaining portion of the adverse remarks for 1974-75 and the quashing of the supersession suffered by the petitioner in the select list prepared in December, 1976.

2. The adverse remarks for 1974-75, reproduced at para 10 of the petition, are taken up first for consideration. These remarks were communicated to the petitioner in a letter dated 23.3.1977 i.e. some three months after the Selection committee meeting of 29.12.1976 and are reproduced below:-

"Remarks by the Commissioner, Varanasi Division, Varanasi.

I do not entirely agree with the D.I.G. in the assessment of work and conduct of Sri D.K. Tewari, S.P. Jaunpur. Sri Tewari is, undoubtedly, an efficient officer. However, he remained popular with only some sections of political leaders. His relation with the Magistracy including the District Magistrate did not remain cordial.

He generally avoided to attend monthly staff meetings called by the D.M. under Government instructions. This

(attitude) obviously adversely affected the District Administration now and then."

Remarks of Inspector General-cum-Director General of Police, U.P.

"Sri Tewari is, no doubt, an experienced and hard working officer who effected considerable improvement in the Police Administration of this district in all spheres. However, his strained relations with the District Magistrate, for which he was not much to blame, stood in the way of smooth administration. He was popular with the larger sections of the public and consequently he could handle the various law and order problems quite effectively."

The petitioner represented against the entry and the following portion of the remarks made by Shri Pratap Singh, the Commissioner, Varanasi Division were ordered by the Government of U.P. to be expunged:-

"He generally avoided to attend monthly staff meetings called by the D.M. under Government instructions."

- 3 -

This was done subsequent to clarifications obtained by the Government of U.P. from the next Commissioner of Varanasi Division, Shri S.K. Bharnagar. The petitioner thereafter submitted a memorial to the Governor as consequence of which the word "attitude" was further expunged from the last sentence of the remarks made by Shri Pratap Singh, Commissioner of Varanasi Division. As a result, the remarks of the Commissioner as they now stand, read:-

1876-75
Expunged by
Commissioner
1876-75
"I do not entirely agree with the D.I.G. in the assessment of work and conduct of Shri D.N. Tewari S.P. Jaunpur. Sri Tewari is, undoubtedly, an efficient officer. (However, he remained popular with only some sections of political leaders.) [His relations with the Magistracy including the District Magistrate did not remain cordial.] [This obviously adversely affected the District Administration now and then.]"

We have therefore to consider the above remarks and judge whether any further expunction is justified under the circumstances or whether these residual remarks call for no interference.

2. We are constrained to observe that we have been hampered by certain features in the course of hearing this petition. Shri O.N. Vaid, who was District Magistrate at Jaunpur during the petitioner's tenure as Superintendent of Police in the same district was made party to this petition but he has not filed any counter affidavit and written statement. Since a number of paragraphs in the petition allude directly or indirectly to personal animosity on the part of Shri Vaid it would have greatly facilitated our endeavours to disentangle the different contentions and counter contentions had Shri Vaid thought it proper to file documents and counter affidavit before us. The petitioner, too, has not made

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Shri Pratap Singh a party to the petition, possibly under the impression that it would not facilitate matters to disturb a retired civil servant with a distinguished record of public service. But paragraph 29 of the petition, containing as it does, expressions like "Not only did he fail to bring a fair and objective consideration but he did not even care to verify the truth of the facts which he has, working with prejudice and malafide intention, noted in the adverse entry awarded to the petitioner" surely required an opportunity to be given to Shri Pratap Singh to reply to the imputations made. This has been an unfortunate omission on the part of the petitioner. Another difficulty coming in the way of a methodical shifting of facts is that the remarks communicated to the petitioner for the period 1.4.1975 to 19.7.1975 commence with those of the reporting officer, the Deputy Inspector General of Police, Varanasi Range, as indeed they should, but the remarks for 1974-75 do not. The revealed remarks of the Deputy Inspector General of Police for the three and a half months of 1975-76 are in general appreciation in nature and these for the full year 1974-75 were, in all probability also appreciative as ~~as~~ may be surmised from the remarks of the Commissioner of the division. The same pattern of communication of remarks for both the years would have been logical and rational. Lastly, Paragraphs 34 to 41 of the petition contain references to specific incidents and to official correspondence on those matters, but the written statement ~~filed~~ by the opposite parties 1 and 2 contain assertions such as "No records are available hence no reply can be given" and the like. We can only express our disapprobation and sense of distress at the numerous omissions made by the various parties which have added not inconsiderably to our labours.

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4. The entry for 1974-75, as it now stands, contains two adverse ingredients viz. the petitioner's popularity with only a section of political leaders, and his poor relations with executive magistrates which had deleterious effect on the district administration. The petitioner has challenged both assertions. The contents of paras 26, 27, 28 and 37 of the petition seek to repel the suggestion of any partisan approach with political leaders of the district or any imputation of his having worked with the support of some sections of political opinion. Only, he has cited in his favour the opinion recorded by the Inspector General cum-Director General of Police in his character roll to the effect that " he was popular with the larger sections of the public and consequently he could handle the various law and order problems quite effectively." He has also reasoned that he was able to bring about considerable improvement in the law and order situation not only because of his sustained efforts in that direction but also because the people in general had confidence in him and gave him their support. The replies to these contentions, contained in the written statement filed by opposite parties 1 and 2, do not seek to furnish any argument other than that the remarks recorded by the Commissioner are quite clear. In the face of specific averments made in the petition it was incumbent upon the opposite parties to furnish facts and cogent reasoning to rebut these averments and justify the remarks recorded by the Commissioner of the Division. The opposite parties faced no insurmountable difficulties in this regard because, prior to this petition the Government of U.P. opposite party No.1, had

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availed of two opportunities to examine all the issues threadbare when the petitioner had filed his representation and then his memorial to the Governor of U.P. The opposite parties cannot also complain of lack of time to prepare and file their written statement. The only conclusion available under the circumstances is that the remarks about the petitioner having remained popular with only a section of political leaders is based on no known material. On the other hand the Inspector General cum-Director General of Police has reported favourably on this aspect. The remarks are therefore arbitrary and liable to be expunged.

5. We next take up for consideration the portion of the Commissioner's remarks for 1974-75 which state that the petitioner had strained relations with the District Magistrate and executive magistracy in general, and with the resultant bad effect this had on the district administration. Paragraphs 24 and 25 of the petition outline facts to substantiate the claim that the petitioner always extended his fullest cooperation to executive magistrates in general and the District Magistrate in particular during his stay in Jaunpur district. Paragraphs 33 to 36 seek to prove that the District Magistrate, Shri O.N.Vaid, bore personal animosity against him and further that the Government of U.P., on consideration of the matter, had disagreed with the District Magistrate and had even censured his conduct. Paragraphs 38 to 41 amplify the same matters with the addition of some further data. The reply furnished by the opposite parties Nos.1 and 2 are, once again, less than satisfactory. In paragraph 24 of the written statement it has been stated that " the contents of para 24 are ^{to be} ~~have~~ replied by op No.3. However it is

stated that the petitioner did not give required cooperation to the D.M. Jaunpur." In reply to paragraph 25 their reliance has been placed on the document at annexure No.1 to the written statement and on the confidential remarks entered in the character roll of the petitioner. The document at annexure I referred to supra is a copy of a confidential letter dated 27.6.1975 written by Shri O.N.Vaid to the Chief Secretary, Government of U.P. and with the copies endorsed there of to the Home Secretary and the Appointment Secretary to the Government of U.P. and the Commissioner of Varanasi Division. The letter speaks of non-cooperation from the Superintendent of Police, the present petitioner, and lists in the form of a detailed annexure to the letter, a number of instances where the petitioner had exhibited a non-cooperative or unhelpful attitude in the transaction of Government business. It also contains a request that suitable instructions may be conveyed to the Superintendent of Police to extend full cooperation to the district administration. The opposite parties Nos. 1 and 2 have not clarified at any stage whether any action was taken on that letter and, in the absence of any such clarification, there is no alternative except to take it as an expression of opinion by the principal officer of the district administration, and to keep in mind the facts that his motives have been impugned by the petitioner in the present petition. Paragraphs 33 to 36 and 38 to 41 of the petition have been countered by placing reliance on the letter of 27.6.1975 written by the District Magistrate referred to supra, simple denials and, with reference paragraphs 34-36, 38 to 40, the comment that "no records are available and hence no reply can be given. The petitioner has sought to amplify the

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his contentions further in his rejoinder affidavit and has also filed extracts from Government files in support thereof. The paucity of details furnished by the opposite party No.1 is ~~is~~ indeed some what puzzling, as is the cryptic statement that certain records are not available, even when some of them are said to concern matters that came to the notice of different members of the Council of Ministers and the Home Secretary to the Government of U.P. As matters stand however, these shortcomings do not hinder us more than marginally because our examination of this portion of the petition essentially concerns the correctness or otherwise of the adverse remarks awarded to the petitioner, and not the apportioning of blame between the District Magistrate and the Superintendent of Police for the strained relations between them.

6. The existence of strained relations between the petitioner and the opposite party no.3, Shri C.N.Vaid is not a doubt. It is attested by a number of factors, the remarks recorded by the Director General cum Inspector General of Police in the character roll of the petitioner for 1974-75 which have not been impunged or refuted by any of the parties, the letter written by Shri C.N.Vaid on 27.6.1975 to a number of important functionaries (which can either be read as a complaint against the petitioner or an endeavour to have instructions sent to the petitioner to mend his ways) and in fact by the contents of the petition and the rejoinder affidavit. The petitioner has nowhere denied that the relations between District Magistrate and the Superintendent of Police were lacking in harmony. He has instead taken some pains to bring to light facts indicative of well intentioned attempts made by him to extend cooperation wherever possible to the executive magistrates in the district. In the circumstances we can find no reason to justify the expunction of the

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sentence occurring in the Commissioner's remarks to the effect that " His relations with the Magistracy including the District Magistrate did not remain cordial."

7. The import of the last sentence of the Commissioner's adverse comments for 1974-75 can be conveniently judged by comparing the original entry with the entry as it stood after expunction of a portion thereof subsequent to the petitioner's representation, and the entry as it now stands after the expunction of the word "attitude" from the last sentence as a result of the petitioner's memorial to the Governor of U.P. The metamorphosis undergone by the original entry has already been outlined in paragraph 2 of the judgement. The expunction of the comments relating to the petitioner's absence from the District Magistrate's monthly staff meetings which could have been illustrative of the petitioner's non-cooperative attitude had they been allowed by the Government of U.P. to remain, have the effect of removing some of the stigma associated with a non-cooperative posture. A reading of the original text of the Commissioner's entry would strongly suggest a nexus between the last sentence of the entry and the penultimate one which had made a reference to the petitioner's non-attendance of the District Magistrate's monthly staff meetings, and this in turn gives the word "attitude" in the last sentence now expunged a connotation which tends to lose all meaning once the penultimate sentence is deleted. The sentence prior to the penultimate one reads " His relations with the Magistracy including the District Magistrate did not remain cordial" the sentence reveals a condition which prevailed and not an attitude. The conclusion that emerges is that the act of deletion of the word " attitude" seeks to delink the last sentence of the Commissioner's entry from its

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nexus with the already expunged penultimates sentence which had become nonest as it were, and to bestow upon it a wholly new bond with the prior sentence which concerns the petitioner's relation with the executive magistrates. We do not deny that the power ~~of~~ to act in such a matter could be exercised by the Government of U.P. acting on behalf of the Governor, but such an action, once impugned must be shown to have been based on equitable and rational grounds. Such impugnement has indeed been made by the petitioner with a number of assertions which seek to substantiate his claim that he invariably acted in good faith and ^{extended} ~~exercised~~ all possible cooperation to the District Magistrate and his subordinate executive magistrates. We have had occasion to refer in paragraph 5 supra to the fact, the reply furnished by the opposite parties Nos. 1 and 2 leaves a great deal to be desired, and it is essentially based on the District Magistrate's letter of 27.6.1975. at Annexure 1 to the written statement. We have already observed that there is no explanation regarding whether any action was taken by opposite party no.1 on receipt of the letter and in such circumstances it has the value of an expression of opinion by an important public servant ^{but} ~~that~~ it cannot ipso-facto be taken to be expressive of the opinion of the Government of U.P. in the absence of some modicum of proof. Further, the petition is replete with allegations of personal animosity said to have been borne by the District Magistrate, Sri O.N.Vaid against the petitioner. In the event it is manifest that opposite parties nos.1 and 2 have not been able to show sufficient facts to repel the petitioner's contention that he extended all cooperation to the executive magistrates in the district. Consequently the newly created ~~the~~ nexus between the last sentence (after

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the deletion of the word "attitude") and the earlier sentence in the instant entry which relates to the lack of harmonious relations with the executive magistrates is clearly revealed to be arbitrary. The sentence

"This obviously adversely affected the district administration now and then." a sentence which could possibly lead to adverse inference about the work and conduct of the petitioner without adequate justification therefore is must to be expunged.

1875-76
8. Some of the remarks recorded in the character roll of the petitioner for 1975-76 are also adverse in nature and these have been impugned. The petitioner remained posted as Superintendent of Police, ^{at} Jaunpur till 19.7.1975 and the adverse remarks are concerned with the period 1.4.1975 to 19.7.1975. The text of the remarks as originally conveyed is available at Annexure 2 to the petition. The remarks of the reporting officer, the D.I.G. of Police, Varanasi, are very favourable to the petitioner, those of the Commissioner, Varanasi Division, Shri Pratap Singh are appreciative of the petitioner's work but contain in addition the comments "...but somehow he could not pull on well with his District Magistrate which reflected in the administration now and then." The Inspector General of Police recorded that he found the work of the petitioner to be satisfactory and also added, "His relations with his District Magistrate were, however, not good in Jaunpur District and both were to blame for this. "The Home Secretary to the Government of U.P. observed " An average Officer Rest, I agree with the I.G.P.". The Chief Secretary to the Government of U.P. had recorded certain adverse remarks which have been reproduced in annexure II to the petition but these have been expunged on the petitioner's representation and have no relevance in the present context.

9. The Commissioner's entry for 1975-76 has been impugned on several grounds. It has been suggested that the manner of writing the remarks is against the general principles out-lined by the Government of U.P. from time to time and copious extracts of such Government orders, office memoranda and the like have been cited in support of this argument. We have perused the extracts so produced and we find ourselves unable to accept the petitioner's contention. The Commissioner's remarks are not ex-facie whimsical, capricious or based on purely subjective consideration, and they do not exhibit vagueness "almost amounting to slang and jargon" as suggested by the petitioner. The general tenor of the remarks can be described as objective in nature provided they are found to be based on cogent considerations. In examining the validity of the remarks we can not totally exclude from consideration the conditions that had prevailed during 1974-75 a period during which, as we have concluded elsewhere in this judgment there were differences between the District Magistrate and the Superintendent of Police and these differences had come to the notice of the Government of U.P. Under the circumstances we can see no reason to justify the expunction of the words "...but somehow he could not pull on well with his District Magistrate.." The same consideration does not however apply to the concluding portion of the sentence "which reflected in the administration now and then." It is not illogical to presume that where there were differences between two of the principal officers in a district administration such a situation might reflect in the administration now and then, but it would surely amount to jumping to unwarranted conclusions to assume that such a situation must invariably reflect in the administration. The

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petitioner has impugned the remarks on several grounds. It was necessary for the opposite parties nos.1 and 2 to show that they were based on facts which can bear judicial scrutiny. Such an opportunity was not properly availed of by the opposite parties and they have resorted to reliance on the entry as it stands by averring that it was based on facts and circumstances. The character roll of an officer plays a crucial role in determining the success or otherwise of his career and, seeing the importance of the matter under consideration, it was incumbent upon the opposite parties 1 and 2 to adduce some facts to corroborate the remarks of the Commissioner. The remarks recorded by the Inspector General of Police and the Home Secretary to the Government of U.P. also make no mention of any adverse impact of the aforesaid differences of opinion or the strained relations arising there from on the district administration. Under the circumstances the word "which reflected in the administration now and then" must be deemed to be arbitrary and not based on admissible facts and hence liable for expunction.

The remarks recorded by Shri Govind Chandra, the Inspector General of Police, have been briefly referred to in para B supra. We may recapitulate once again for the sake of convenience that the adverse portion of the remarks reads "His relations with his District Magistrate were, ~~were~~ however, not good in Jaunpur District and both were to blame for this." The petitioner has raised the point that Shri Govind Chandra had worked for less than three months in the post of Inspector General of Police at the time of his transfer from Jaunpur and hence adverse remarks recorded by him for this period are to be expunged. We do not agree with this submission. The existing Government instructions do certainly stipulate that an officer should see the

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work of a subordinate for atleast three months before recording his remarks in the character roll of the latter, but in the present instance Shri Govind Chandra evidently had little choice in the matter because had he preferred to withhold his remarks about the petitioner for the period in question, it is clear that no one else could have recorded any remarks for the same period in his behalf. As things stand Shri Govind Chandra saw the petitioner's work at Jaunpur for the period 16.5.1975 till 19.7.1975 i.e. for a little over two months and was thus in a position to form some assessment in his mind about his work and conduct. His predecessor as Inspector General of Police had relinquished charge of his post on or just before 16.5.1975 and thus had even less opportunity of seeing the petitioner's work at Jaunpur during 1975-76. Under the circumstances there is nothing patently irregular in Shri Govind Chandra's having recorded his remarks for 1975-76. On taking up the impugned adverse remarks as recorded by Shri Govind Chandra it is seen that they highlight the bad relations between the District Magistrate and the Superintendent of Police and, further, that they indicate some fault on the part of both officers for their lack of harmony. We have already commented earlier on the question of strained relations between the District Magistrate and the Superintendent of Police and we do not feel the necessity of reopening this question. On the other aspect of the impugned in that relating to the fault of the two officers, the petitioner has averred in paragraph 67 of the petition that he had extended his fullest cooperation in all spheres of administration to the District Magistrate and that law and order was maintained and improved as a result, inspite of which Sri Vaid had developed an inimical attitude towards him.

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Perusal of the entire material filed before us reveals no evidence to suggest that the petitioner had ever written against the District Magistrate and, in this context, it is important to recapitulate that Shri Vaid had on the other hand written a letter to a number of senior offices on 27.6.1975 (at annexure I to the written statement of the opposite parties nos 1 and 2) outlining several shortcomings on the part of the petitioner. These opposite parties nos. 1 and 2 have all through relied on the entries as recorded by the different officers on the work of the petitioner but they have not produced any corroborative material other than the letter written by Shri C.N.Vaid on 27.6.1975 referred to supra. We have already commented earlier about the limited value of Shri Vaid's letter in the absence of any indication about the decision of the Government of U.P. on that letter. The petitioner has elsewhere in the petition, mentioned certain specific instances where the opposite party no.1 had, after making inquiries, concluded that the petitioner was not at fault and in one matter, that the District Magistrate should be censured on certain points, but the opposite parties, in their written statement, have claimed that the record in question are not available. This creates certain difficulties. Ordinarily, when there exist bad relations between two senior officers one might presume that both officers are responsible to some extent for such a situation, but in the present instance when the petitioner has repeatedly stressed that he was not to blame in any way, it was necessary for the opposite parties to refute such a contention with a statement of facts. Such has not been done here. Seen in this light the comment "...and both were to blame for this" must be deemed to be without adequate basis and hence arbitrary. Under the circumstances

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this portion will have to be expunged from the sentence

Expunged

" His relations with his District Magistrate were, however, not good in Jaunpur district, and both were to blame for this."

In paragraph 69 of the petition the remarks recorded by the Home Secretary to the Government of U.P. to the effect that he is " an average officer" have been impugned on the grounds that they are against facts. He has averred that his work to improve the law and order, and crime situation and the like has not been recognized. The petitioner's contention is erroneous. It is possible to infer from the material on record that the performance of the petitioner in law and order 'crime control, supervision of police office in general and relations with the public was not such as to merit any stricture and in fact won the appreciation of some of his supervisory officers. But the actual assessment of such work naturally varies from person to person. The Deputy Inspector General of Police had been appreciative of his work without going into superlatives, the Commissioner of the Division had recorded that " he well maintained law and order in the district. "and the Inspector General had observed that he had "worked well" and had "handled the various law and order and crime situations satisfactorily." The connotation of the work "average" in the general administrative use of the word in India is not taken to be adverse in nature and it does not differ very greatly from the Inspector General's preference for word"satisfactory" in the form of its adverse. The general import of the remarks recorded by the two state level functionaries, the Inspector General of Police and the Home Secretary to the Government of U.P. is that there was nothing adverse to report about what is usually referred to as his "Police work" and





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were subsequently expunged by the Government on the receipt of representation from the petitioner. The written statement of the opposite parties 1 and 2 avers in paragraph 72 thereof that the petitioner was not passed over by the selection committee on 29.12.76 because of adverse remarks for the year 1974-75 and 1975-76. The committee had considered the cases of all the eligible candidates including the petitioner keeping in view the criterion of "merit and suitability in all

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while they assessed his work in this regard to be satisfactory or on par with the general standard attained by ~~other~~ district Superintendent of Police in the State, they could find nothing of exceptional merit to warrant mention in the character roll. Such an assessment is not illogical and does not go against the facts and in any case when the comments are not adverse in the sense of leading to adverse inferences. It is not possible for the Tribunal to go into the matter afresh and seek to substitute its own judgment in place of what is recorded. The Home Secretary's remarks about the petitioner's having been "an average officer" does not therefore call for any interference.

Corrigendum

The last part of the petition, which relates to his supersession in the matter of selection for the I.P.S. (Indian Police Service) at the selection Committee meeting held on 29.12.1976, raised matters of grave legal import. The adverse remark for 1974-75 and 1975-76 were communicated to the petitioner through letters dated 23.3.1977 and 24.4.1978 respectively. The petitioner has contended in paragraph 72 of the petition that his name was passed over only because of the uncommunicated remarks for the year 1974-75 and 1975-76 alleging incompatibility on his part to pull on well with the District Magistrate and the alleged avoiding of monthly staff meetings called by him resulting in adversely affecting the district administration. He has also called into question the very use of such uncommunicated adverse remarks in assessing his overall suitability for selection to the I.P.S., apart from the ethical and legal aspects of this issue, there is an additional question, including those relating to non-attendance of monthly staff meetings called by the District Magistrate

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were subsequently expunged by the Government on the receipt of representation from the petitioner. The written statement of the opposite parties 1 and 2 avers in paragraph 72 thereof that the petitioner was not passed over by the selection committee on 29.12.76 because of adverse remarks for the year 1974-75 and 1975-76. The committee had considered the cases of all the eligible candidates including the petitioner keeping in view the criterion of "merit and suitability in all respects." The opposite parties have also indicated that the service record of the petitioner contains adverse remarks for the year 1961-62, 1967-68, 1969-70, 1973-74, 1974-75, 1976-77 and 1977-78 with the obvious inference to be drawn that the petitioner's overall work and conduct during the course of his service was not satisfactory. The petitioner has countered this in his rejoinder affidavit by pointing out that the adverse entry for 1961-62 had been expunged in November 1963 and ~~and~~ he has filed a copy of the relevant government communication at annexure I. He has also stressed that annual remarks for 1976-77 and 1977-78 have no relevance as far as the selection of 29.12.1976 was concerned, and this point is too obvious to merit any further consideration in this judgment. He has also repeated that the remarks for 1974-75 and 1975-76 had not been communicated to him at the time of the meeting of 29.12.1976 and hence were not liable to be considered when deciding his fitness for selection to I.P.S. He has further filed a photostat copy of the minutes of the selection Committee meeting on 29.12.1976 at annexure VI to his rejoinder affidavit. The document in question merits serious consideration. Paragraph 2 of the said minutes lists 40 officers who had been found suitable in all

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respects for promotion to the I.P.S. and the petitioner did not find a place in that list. Paragraph 5 of the minutes states that the selection of these 40 officers "involves the supersession of the undermentioned officers for the reason that their performance in the discharge of the various functions assigned to them and an overall assignment of their records was considered to be inferior to that of the officers junior to them in the state services who have been included in the list, the detailed reasons ^{are} for supersession in respect of each officer indicated below:-

<u>Name of Officer</u>			<u>Reasons for Supersession</u>
X	X		X
X	X		X
12. D.K.Tewari			He did not pull on well with D.M. and avoided monthly meetings called by him. This attitude adversely affected the district administration.
X	X		X
X	X		X
		"

(The portions relevant to the petitioner's case have been extracted supra.)

It is manifest from the preceding paragraph that the petitioner's overall record of service was perused by the Selection Committee on 29.12.1976 before the decision was taken ~~inter alia~~ to supersede him by preferring certain officers junior to him in the State service, and the main, if not the only, reason for doing so was the petitioner's failure to work harmoniously with the collector and Magistrates of the district and to attend the monthly meetings called by the latter, an attitude which adversely affected the district administration. There is no dispute about the fact that the annual remarks on which the rationale behind the

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supersession was based had not been communicated to the petitioner at the time of the Selection Committee meeting. It is further beyond doubt that significant portions of these hitherto uncommunicated remarks were expunged under the order of the opposite party no.1, the Government of U.P. subsequent to the petitioner's preferring a representation and then a memorial. The precise import of such a situation was argued at length by the learned counsels appearing for the parties, Shri R.C. Bajpai for the petitioner and Shri H.K. Misra for the opposite parties nos.1 and 2. certain rulings emanating from the Supreme Court of India and the High Court of Judicature were also cited by Shri R.C. Bajpai in support of his contentions.

It is not the case of the petitioner that there was actual malicious intention on the part of the Government of U.P. the opposite party no.1, in taking the alleged wrongful decision to supersede him so as to amount to malice in fact. As regards malice in law, which is a different concept, were produced Viscount Haldane's Views in the matter as indicated in Shearer V. Shields (1914) A.C. 808 @ 813.

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"A person, who inflicts an injury upon another person in contravention of the law, is not allowed to say that he did so with an innocent mind, he is taken to know the law, and he must act within the law. He may therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

It is, however, not necessary to examine the question of malice in any of its connotations for manifestations with respect to the impugned supersession

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(although such a concept might not have been without relevance in the present context) because no impugment along such lines has been made. It is nevertheless too well known to warrant re-iteration here that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its respondent was acting in good faith or in bad faith. Lord Goddard C.J. had stated in *Pilling v. Abingdon Urban District Council*, (1950) 1 KB 636.

"Where a duty to determine a question is ~~conferred~~ conferred on an authority which state their reasons for the decision, and the reasons which they state so that they have taken into account, or that they have failed to take matters into account which they ought to have taken into account," The court to which an appeal lies can/ought to adjudicate on the matter." The above principle, applicable in such cases, had earlier been stated by Lord Esher, J.R. in *The Queen on the prosecution of Richard Walthorpe v. The Vestry of St. Pancras* (1890) 24 & 80 571 @ 375.

If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eyes of law, they have not exercised their discretion."

This view was also followed in *Sedler v. Sheffield Corporation* (1924) 1 & 483. The views expressed by learned authorities as extracted above throw light on the general principles covering such matters as the impugned supersession of the petitioner under consideration

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here. As regards the actual facts and circumstances of the Select Committee meeting of 29.12.1976 and the supersession that arose therefrom, the learned counsel for the petitioner cited the decision of the Supreme Court of India in Gurdial Singh Fijji V. State of Punjab and others 1979 Supreme Court Cases (L & S) 1972 SCC 368. Shri Fijji was an officer of the Punjab Civil Service (Executive Branch who had been awarded an adverse entry in his character roll for the year 1966-67 by the District and Sessions Judge, Amritsar. He had made his representation against it but the said representation could not be disposed of for one reason or another. Then a Committee constituted under Regulation 3 of the I.A.S. (Appointment by promotion) Regulations 1955 in May 1973 for the purpose of bringing names on the select list for the Indian Administrative Service. Shri Fijji was superseded by some persons junior to him in the Punjab Civil Service, and it appeared that the supersession was due to the fact that the Chief Secretary to the Government of Punjab had refused to give an integrity certificate to him. It was observed in paragraph 14 of the judgment that "It is clear that the Chief Secretary, Punjab did not grant integrity certificate in favour of the appellant because of the adverse report in his confidential roll for the year 1966-67. One of the reasons which evidently weighed with the Selection Committee in not putting the appellant's name on the selection list was that the Chief Secretary had not issued the integrity certificate in his favour. Thus the non-inclusion of appellant's name in the select list and the non-issuances of the integrity certificate are closely linked, whether or not there was another reason also for which the Selection Committee kept him out from the Select List." Paragraph

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Select Lists are prepared and reviewed from year to year and it is not always easy to work out the logical consequences of holding that the case of a particular officer must be reconsidered, as is indeed the case here. At the same time it is evident that the case of the petitioner will have to be taken up and considered afresh by the selection committee. The adverse entries relating to the year 1974-75 and a part of 1975-76 have, since the date of the Selection Committee meeting of 29.12.1976, been communicated to the petitioner and his representations and memorial thereon have resulted in the expunction of certain portions of those adverse remarks. In the present judgement this Tribunal is directing that certain further portions of the impugned adverse remarks be expunged. As such, the petitioner's case can now be processed without delay, since no representations and the like are now pending with respect to the remarks awarded prior to the meeting of the selection committee of 29.12.1976. The Selection Committee can therefore decide without impediment whether or not the petitioner should be included in the Select List for the Indian Police Service for 1976. In the event of his selection the date from which he shall be deemed to be on probation in the All Indian Service will be determined by the date from which the first officer who was junior to him in the state service and who had found a place in the Select List for 1976 had commenced to be on like probation. We do not think it necessary to direct that a meeting of the Selection Committee be convened specially for the purpose of considering the petitioner's claim. In the changed circumstances-it will suffice if his claims are fairly considered for the year 1976 select list as and when the Selection Committee next meets in the normal course.

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Indian Police Service will be determined with reference to the date from which the first officer who was junior to him in the state services gradition list and who had found a place in the Select List for 1976 had commenced to be on like probation.

There will be no order as to costs.

Sd./-

(K.K.BAKSHI)
Administrative Member
7.5.1984

Sd/-

(RAJESHWAR SINGH)
Judicial Member,
7.5.1984.

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Attested
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A. No.

(L)

Between

Devendra Kumar Tewari

.....Applicant

Versus

Union of India and others

... Respondents

ENCLOSURE NO. A- 5

उत्तर प्रदेश लोक सेवा आधिकारण सं०-5, जवाहर भवन, लखनऊ
निर्देश याचिका सं०-104/एफ/5/1983

डी०के० तिवारी

---याची

प्रति

- 1- उ०प्र० राज्य द्वारा गृह सचिव, सचिवालय, लखनऊ ।
- 2- पुलिस महानिदेशक, उ०प्र०, लखनऊ ।
- 3- श्री श्रवण टण्डन, आई०पी०एस० तत्कालीन पुलिस महानिरीक्षक, वर्तमान सदस्य, उ०प्र० लोक सेवा आयोग, इलाहाबाद ।
- 4- श्री महेन्द्र सिंह, पुलिस महानिरीक्षक वर्तमान सदस्य, उ०प्र० लोक सेवा आयोग, इलाहाबाद

-----विपक्षी गणा

==निर्णय==

श्री कल्याण कुमार बक्शी, प्रशासनिक सदस्य द्वारा प्रदत्त।

याची डी०के० तिवारी की सर्वप्रथम दिनांक 9-2-59 को नियुक्ति उप पुलिस अधीक्षक के पद पर हुई और तत्पश्चात दिनांक 19-9-1973 से उन्हें स्थानापन्न पुलिस अधीक्षक के रूप में पदोन्नति प्राप्त हुई । याची का कथन है कि जब वह दिनांक 26-7-1975 को पुलिस अधीक्षक, सहारनपुर तैनात था, उसे राजनैतिक दबाव के कारण 20वीं वाहिनी, पी०एस०सी० आजमगढ़ स्थानान्तरित कर दिया गया । उसे वर्ष 1976-77 के लिए एक प्रतिकूल प्रविष्टि प्रदान की गई जो कि विपक्षी सं०-3 श्री श्रवण टण्डन ने राजनैतिक प्रभाव के कारण दी । याची ने उसके विरुद्ध अभ्यावेदन प्रस्तुत किया । तत्पश्चात वर्ष 1977-78 के लिए विपक्षी सं०-4 श्री महेन्द्र सिंह ने उसकी श्रेणी, जो कि उसके तात्कालिक प्राधिकारी द्वारा प्रदान की गई थी, " बहुत अच्छे " से प्रत्यावर्तित कर "अच्छे" कर दी जो प्रतिकूल प्रविष्टि की संज्ञा में नहीं आती है । इसी बीच भारतीय पुलिस सर्विस के अधिकारियों हेतु एक चयन समिति आयोजित की गई जिसमें विपक्षी सं०-3 एवं 4 द्वारा अपनाए गए हवेशापूर्ण कृत्यों के कारण उसका नाम चयन तालिका में कोई

स्थान ग्रहण नहीं कर सका । याची ने इन दोनों प्रविष्टियों के विषय में अनेकों आधार प्रस्तुत किए हैं तथा प्रार्थना की है कि वर्ष 1976-77 की प्रतिकूल प्रविष्टि संलग्नक-1 को विलोपित किया जाए तथा विपक्षीयता को निर्देशित किया जाए कि वे किसी भी मामले में इस प्रतिकूल प्रविष्टि को सम्मिलित न करें तथा वर्ष 1977-78 की प्रविष्टि को प्रतिकूल न समझा जाए परन्तु यदि इसे प्रतिकूल समझा जाता है तो उसे अधिकरण विलुप्त करे । याची ने अधिकरण से यह भी प्रार्थना की है कि उसे इन दोनों प्रविष्टियों के आधार पर वर्जित सेवालाभ पूर्वगामी प्रभाव से दिलाए जाँस ।

2- विपक्षीयता की ओर से इस याचिका का विरोध किया गया है तथा इसके उत्तर में लिखित विवेचन/प्रतिज्ञापत्र निवेशित किया है । याची की ओर से प्रति उत्तरज्ञापत्र निवेशित कर लिखित विवेचन/प्रतिज्ञापत्र में वर्णित तथ्यों से इनकार किया गया है तथा याचिका में वर्णित तथ्यों का विस्तृत वर्णन किया गया है ।

3- हमने उभय पक्ष के विद्वान अधिवक्तागण को सुना तथा पत्रावली का अवलोकन किया ।

4- मैं सर्वप्रथम वर्ष 1976-77 की प्रविष्टि पर विचार करूँगा:-

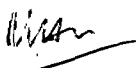
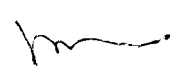
वर्ष 1976-77 की वार्षिक प्रविष्टि की प्रतिलिपि याचिका के संलग्नक सं०-1 में प्रस्तुत की गई है । पुलिस उप महानिरीक्षक, पी०ए०सी०, पूर्वी क्षेत्र ने सर्वप्रथम याची का कार्य एवं आचरण सराहनीय बताते हुए अपना मतव्य प्रकट किया है एवं श्रेणी में "अच्छा" अंकित किया है । इसके पश्चात पुलिस महानिरीक्षक, पी०ए०सी० ने याची को एक बुद्धिमान अधिकारी बताते हुए उन्हें एक कुशल निरीक्षकता घोषित किया है तथा अनुशासन बनाए रखने पर भी अच्छी टिप्पणी लिखी है । परन्तु पुलिस महानिरीक्षक श्री श्रवण टण्डन ने अंकित किया है कि " इस अधिकारी ने अपने सहारनपुर जनपद से पी०ए०सी० आजमगढ़ जाने के स्थानान्तरण आदेश को राजनैतिक प्रभाव से परिवर्तित कराने की चेष्टा की है " । श्री टण्डन ने इसके अतिरिक्त कोई और टिप्पणी नहीं दी है । गृह सचिव का कथन है कि " मुझे कोई अतिरिक्त बात नहीं कहनी है । " मुख्य सचिव की टिप्पणी " कोई मतव्य नहीं है " अतः पी०ए०सी० से संबंधित पुलिस उप महानिरीक्षक एवं पुलिस महानिरीक्षक सामान्यतः याची के कारण को संतोषजनक पाए थे और यह कार्यकाल स्पष्ट रूप से उनके पी०ए०सी० में कार्यरत रहने से सम्बन्धित था । परन्तु श्री टण्डन की टिप्पणी उनके पी०ए०सी० कार्यकाल से पूर्व

याची के सहारनपुर से स्थानान्तरित होने से परिचय रखती है । गृह सचिव एवं मुख्य सचिव की टिप्पणी से कोई आभास नहीं मिलता है कि क्या वह श्री टण्डन से सहमत थे या असहमत । और यही स्थिति दोनों वरिष्ठ पी०ए०सी० के अधिकारियों द्वारा दी गई टिप्पणी की भी है । इस प्रकार से यह देखा जाता है कि श्री टण्डन द्वारा दी गई टिप्पणी के हमे पार्थक्य । इन आईसोलेशन ही देखने पड़ेगे।

5- याची ने संलग्नक-1 की टिप्पणी, जिसके सम्बन्ध में उपलिखित प्रस्तर में प्रारम्भिक विचार किया गया है, को खण्डित करने के लिए कई आधार दशाये हैं। उक्त टिप्पणी देर से संसूचित की गई है जिससे याची समझता है कि श्री टण्डन की ओर से अवश्य ही उनके प्रति दुर्भावना का परिचय प्राप्त हुआ है । स्मरणीय है कि टिप्पणी अंकित होने एवं संसूचित होने की तिथियों के मध्य भारतीय पुलिस सेवा के पदों के चयन के लिए एक चयन समिति की बैठक हुई थी और याची यह समझता है कि प्रतिकूल बातें उक्त समिति के सगक्ष रखी गई जब कि उन्हें याची को इसके सम्बन्ध में कोई जानकारी नहीं थी । याची का यह भी कथन है कि वह सहासपुर से स्थानान्तरित होने के आदेश को प्राप्त करने के तुरन्त पश्चात कार्यभार छोड़ दिये परन्तु वह तुरन्त अपने नये तैनाती स्थल अर्थात् पी०ए०सी० आजमगढ़ में इसलिए योगदान नहीं कर सका चूंकि उनकी बेटी को एक स्कूटर दुर्घटना में भारी चोटें आई थीं। उस आधार को सुदृढ़ करने के लिए याची ने पर्याप्त तथ्यों का उल्लेख किया है जैसा कि वह सग्य से अवकाश के लिए प्रार्थना पत्र प्रस्तुत किए एवं ऐसे प्रार्थना पत्र पर परिक्षेत्रीय स्तर के अधिकारियों की संस्तुति भी प्राप्त हुई । समुचित चिकित्सा प्रमाण पत्र भी जमा किए गए थे । इन सब परिस्थितियों को देखते हुए पुलिस महानिरीक्षक श्री टण्डन ने याची को अर्जित अवकाश अवश्य ही दिया था परन्तु ऐसे अवकाश को केवल 21 दिन तक के लिए सीमित कर दिया था । इस प्रकार, संक्षेप में याची ने सहासपुर से पी०ए०सी० आजमगढ़ के लिए स्थानान्तरण आदेश दिनांक 26-5-1976 के अपरान्ह में प्राप्त किए थे, 27-5-1976 को कार्यभार से मुक्त हुए एवं सेनानायक, पी०ए०सी० आजमगढ़ के पद पर दिनांक 9-6-76 को कार्यभार ग्रहण किया । उनका तर्क है कि उन्होंने स्थानान्तरण पर जाने में किसी प्रकार का अनावश्यक रूप से विलम्ब नहीं किया है और न ही किसी प्रकार की कोई राजनैतिक शक्ति का प्रयोग करने की चेष्टा की है तथा अवकाश पूर्णतः न्यायसंगत था । श्री टण्डन की ओर से विद्वेष भावना के सम्बन्ध में याची ने कतिपय दृष्टान्त प्रस्तुत किए हैं परन्तु मैं इन पर अधिक समय देना उचित नहीं समझता हूँ । याची का कथन है कि सहारनपुर के तत्कालीन एक मंत्री श्री यशपाल

सिंह के भाई उनसे कुछ नाजायज कार्य कराना चाहते थे परन्तु याची के कारण असमर्थ थे इस कारण वह क्षुब्ध हो गए थे जिसके फलस्वरूप श्री यशपाल सिंह याची के विरुद्ध लखनऊ में सक्रिय हो गए थे और श्री टण्डन पर इन गतिविधियों का प्रभाव भी पड़ा था । याची ने इस सम्बन्ध में कुछ सामग्री भी अधिकरण के समक्ष प्रस्तुत की है । विपक्षीगण ने अपने प्रतिज्ञापत्र पत्र में याची द्वारा वर्ष 76-77 की प्रतिपादित प्रविष्टि के संबंध तर्कों को अस्वीकार करते हुए निवेदन किया है कि उक्त प्रविष्टि अपने स्थान पर तथ्यों के अनुरूप है और किसी प्रकार से खण्डित किए जाने योग्य नहीं है । श्री श्रवण टण्डन की ओर से किसी प्रकार की ~~दोषपूर्ण~~ भावना होने से साफ इन्कार किया गया है । याची को सहारनपुर से पी0ए0सी0 आजमगढ़ के स्थानान्तरण के लिए श्री यशपाल सिंह मंत्री की ओर से किसी प्रकार के दबाव के आरोप को गलत बताया गया है । विपक्षीगण की ओर से एक रोचक बात उठाई गई है कि संलग्नक-1 पर प्रस्तुत प्रतिपादित प्रतिकूल प्रविष्टि पर याची के प्राप्त प्रत्यावेदन को दिए गए निर्णय शासन द्वारा पत्र दिनांक 22 अक्टूबर, 1978 को निरस्त कर दिया था । शासन का उक्त निर्णय याची को सहायक पुलिस महानिरीक्षक, उ0प्र0 के अर्द्ध शासकीय पत्र सं0-आई-351491-78 दिनांक 4 फरवरी, 1980 द्वारा सूचित किया गया है कि याची प्रत्यावेदन के निरस्त किए जाने की सूचना के तथ्यों को छिपाने का प्रयास कर रहा है ।

6-- क्या याची का प्रत्यावेदन अस्वीकार होने की सूचना लिखित विवेचन के संलग्नक-2 द्वारा याची को प्राप्त हुई थी । यह एक महत्वपूर्ण प्रश्न है ~~क्योंकि~~ यदि हुई तो वर्तमान याचिका का यह भाग अवधिबाधित हो जाएगा । इस पहलू पर अन्तिम सुनवाई के समय विस्तृत तर्क दोनों पक्षों की ओर से प्रस्तुत किए गए । मैं इस पर गम्भीरतापूर्वक विचार किया और मेरी निश्चित राय में लिखित विवेचन का संलग्नक-ए-2 को देखने से यह सिद्ध नहीं होता है कि याची को पत्र प्राप्त हो गया था । उक्त पत्र पंजीकृत रूप से नहीं भेजा गया अर्थात् निश्चित प्रमाण हमारे समक्ष उपलब्ध नहीं है । पत्र की एक प्रतिलिपि पुलिस उप महानिरीक्षक, आगरा परिक्षेत्र को भी सम्बोधित की गई थी । परन्तु प्रतिवादीगण के साथ कोई ऐसा पत्र नहीं था जो अधिकरण को दिखाया जा सके जिसके आधार पर यह समझा जा सके कि याची श्री तिवारी अथवा उनके अधिक पुलिस उप महानिरीक्षक, आगरा ने किसी प्रकार की अभिस्वीकृति प्राप्त की थी । अतः इस विषय के सम्बन्ध में कुछ सदेह अवश्य रह जाता है परन्तु न्यायिक दृष्टिकोण से मेरे लिए यह कहना सम्भव नहीं है कि

प्रत्यावेदन की अस्वीकृति अवश्य ही याची को भेजी गई थी । अतः विवादास्पद विषय अधिबाधित नहीं है । गुणावगुणा के आधार पर अन्तिम सुनवाई के दौरान तर्क-वितर्क सुनने के समय याची के विद्वान अधिवक्ता श्री आर०सी० बाजपेयी ने जल दिया कि प्रतिवादी श्री श्रवण टण्डन जो संबंधित समय में उ०प्र० पुलिस के महानिरीक्षक थे और जिन्हें इस याचिका में प्रयोजन के लिए पक्षकार बनाया गया है, की ओर से कोई लिखित विवेचन प्राप्त नहीं हुआ है । विद्वान श्री बाजपेयी का कथन है कि श्री टण्डन के प्रति द्वेषाभावना के आरोप इस प्रकार से सिद्ध हो जाते हैं । इसके अतिरिक्त उनका यह भी तर्क था कि प्रतिष्ठादित प्रतिकूल प्रविष्टि को वास्तविक एवं यथार्थ समझने के लिए प्रतिवादीगण कोई विश्वसनीय सामग्री नहीं दिखा पाए हैं । द्वेषाभावना का तर्क मुझे न्यायसंगत नहीं लगता है। बहुधा यह देखा जाता है कि अधीक्षक अधिकारीगण अपने नियंत्रण में कार्यरत अधिकारियों को समय-समय पर कुछ प्रतिकूल बातों का उल्लेख करते हुए स्पष्टीकरण मांगते हैं । ऐसा स्पष्टीकरण संतोषजनक सिद्ध होने से उक्त अधीक्षक प्राधिकारी के प्रति प्रायः संदर्भित विषय को स्थिर कर दिया जा सकता है । यह स्थिति ऐसी ही प्रतीत होती है । श्री टण्डन एवं उनसे सम्बद्ध सहायक पुलिस अधिकारी कतिपय बातों पर श्री तिवारी से स्पष्टीकरण मांगते रहे और अधिकतर मामलों में श्री तिवारी से संतोषजनक उत्तर प्राप्त होने पर उस विषय को वहीं समाप्त कर दिया गया । इससे श्री टण्डन की ओर से द्वेषाभावना का प्रमाण निकालना भ्रान्तिपूर्ण होगा । परन्तु विद्वान अधिवक्ता श्री बाजपेयी का दूसरा तर्क आधारहीन नहीं है । यह सत्य है कि वर्तमान याचिका के पत्रादि में जगह-जगह पर राजनैतिक प्रभाव की बात किसी न किसी रूप में उठाई गई है परन्तु कहीं भी श्री तिवारी द्वारा अपना स्थानान्तरण सहारनपुर से पी०ए०सी० आजमगढ़ के बजाय किसी अन्य जनपद पुलिस अधीक्षक के पद पर कराने के लिए कोई सामग्री नहीं उल्लिखित की गई है । कदाचित ऐसी स्थिति में विपक्षीगण का यह कर्तव्य था कि वे श्री टण्डन या उनके किसी उत्तरवर्ती प्राधिकारी से इस विषय में छानबीन करने के लिए आग्रह करते । यदि इस प्रकार से चेष्टा की जाती है तो कदाचित सामग्री होने या न होने के सम्बन्ध में अधिकरण को लाभप्रद सूचना उपलब्ध होती । स्पष्टतः ऐसा प्रयास नहीं किया गया है और इसके फलस्वरूप विवादित प्रतिकूल प्रविष्टि में अंकित राजनैतिक प्रभाव का असमर्थित प्रयोग का परिचय नहीं मिलता है । याचिका के संलग्नक-1 पर श्री श्रवण टण्डन, पुलिस महानिरीक्षक द्वारा दी गई प्रतिकूल प्रविष्टि स्पष्ट रूप से स्वेच्छाचारी 'आरबीदेरी' साबित होती है । ऐसी प्रविष्टि को विलुप्त करने में ही हमारा कर्तव्य है ।

7- द्वितीय प्रतिकूल प्रविष्टि वर्ष 1977-78 से संबंधित है। उक्त प्रविष्टि की प्रति याचिका के संलग्नक सं०-7 पर अंकित है। वर्ष 1977-78 के लिए 7 विभिन्न टिप्पणी संलग्नक-7 में अंकित की गई हैं। प्रत्येक टिप्पणी में याची द्वारा किए गए कार्य एवं उनके आचरण को अच्छा, उत्तम एवं अति उत्तम बताया गया है परन्तु श्री महेन्द्र सिंह, पुलिस महानिरीक्षक पी०एस०सी० विपक्षी सं०-4 द्वारा दिनांक 12-7-77 से 28-8-77 एवम् 12-12-77 से 31-3-78 के लिए दी गई प्रविष्टि में अन्य बातों के मध्य यह लिखा गया है कि "श्री तिवारी एक बुद्धिमान अधिकारी हैं जिन्होंने अपने अधीनस्थ बटालियन को ठीक ढंग से सम्भाला। परन्तु यह देखते हुए कि उनके अधीनस्थ सेवा के लोगों से संबंधित कतिपय जाँचों का निष्पादन अपेक्षाकृत शीघ्रता से नहीं किया गया था, मैं इनके सम्बन्ध में मूल्यांकन को अति उत्तम से उत्तम स्तर पर प्रत्यावर्तित करूँगा।" पुलिस महानिरीक्षक पी०एस०सी० की उक्त टिप्पणी के पश्चात् उनसे वरिष्ठ अधिकारियों अर्थात् पुलिस महानिरीक्षक उ०प्र० ने अपनी टिप्पणी में यह लिखा है कि "श्री तिवारी एक पर्याप्त बुद्धिमान एवं योग्य अधिकारी हैं जो अपनी सेनानायक, 20वीं वाहिनी पी०एस०सी० आहमदाबाद की तैनाती एवं उनकी अस्थाई नियुक्ति बहैसियत आरक्षी अधीक्षक के कार्यालय में अच्छे कार्यकर्ता रहे।" इस प्रकार से यह देखा जाता है कि समग्र दृष्टिकोण के अवलोकन करने के पश्चात् वर्ष 1977-78 के लिए श्री तिवारी द्वारा प्राप्त की गई विभिन्न टिप्पणियों की छवि प्रतिकूल प्रकृति की नहीं है। क्योंकि श्री महेन्द्र सिंह, पुलिस महानिरीक्षक, पी०एस०सी० के मनतव्य के अतिरिक्त अन्य सभी विभिन्न टिप्पणियाँ अनुकूल से लेकर प्रशंसात्मक हैं। परन्तु यह देखते हुए कि समस्त टिप्पणियाँ याची को संतुष्टित की गई हैं, हमें समझना पड़ेगा कि उ०प्र० शासन की राय में श्री महेन्द्र सिंह द्वारा दिया गया मनतव्य प्रतिकूल समझा गया था। याची ने उपरिलिखित टिप्पणी को विलुप्त करने के लिए सामग्री का प्रादूर्य समर्पित किया है। विपक्षीगण की ओर से भी इस सम्बन्ध में अस्वीकार्य सामग्री एवं तर्क प्रस्तुत किए गए हैं। हम पहले ही कह चुके हैं कि वर्ष 1977-78 के लिए दी गई समस्त टिप्पणी की समग्र छवि याची के सम्बन्ध में प्रतिकूल मनोभाव नहीं बनाती है और न याची को समझना चाहिए कि ऐसी प्रविष्टि की प्राप्ति के फलस्वरूप उनका सेवा भविष्य धूमिल हो जाएगा। क्योंकि उनके सम्बन्ध में अच्छे एवं प्रशंसात्मक शब्दों का भी अंकन है जिससे किसी भी चयन समिति के मन में एक सम्पूर्ण विचार बन जाएगा। याची ने विशेष बल दिया है कि किसी भी दशा में उनकी ओर से जाँच बाध्याओं को भेजने में विलम्ब नहीं हुआ था परन्तु याची से प्राप्त विभिन्न साक्ष्य एवं तर्कों से व

श्री महेन्द्र सिंह, विपक्षी सं०-4 द्वारा प्रस्तुत तथ्यों, जो संलग्नक-9 याचिका के साथ

संलग्न है, की तुलना करने के पश्चात यह देखा जाता है कि कतिपय विषयों में कदाचित याची की ओर से कुछ विलम्ब हुआ ही था । ऐसे उदाहरण बहुत अधिक नहीं हैं परन्तु यह भी अस्वीकार नहीं किया जा सकता है कि संलग्नक-9 में दर्शित कतिपय बातों को खण्डित करना कठिन है । उदाहरण के तौर पर, 15वीं वाहिनी, पी०ए०सी० के लिये भूमि अध्याप्ति की प्रारम्भिक कार्यवाही सम्पन्न करने में याची की ओर से कुछ विलम्ब हुआ है ऐसा आभास पाया जाता है । इस प्रकार से अन्य उठाई गई विलम्ब हुआ है ऐसा आभास पाया जाता है । इसी प्रकार से अन्य उठाई गई विलम्ब सम्बन्धी कुछ बातों पर भी जगह जगह पर विलम्ब का कुछ आभास प्राप्त होता है यद्यपि ऐसा विलम्ब कहीं गम्भीर नहीं मालूम पड़ता है । पत्रादि के अवलोकन के पश्चात हमारा प्रभाव यह बनता है कि श्री महेन्द्र सिंह, पुलिस महानिरीक्षक, पी०ए०सी० द्वारा दी गई टिप्पणी के सम्बन्ध में यह कहा जा सकता है कि कदाचित किसी अन्य वरिष्ठ अधिकारी ने ऐसे टिप्पणी लिखने में वाक्यरचना या शब्दव्यय और उदार दृष्टिकोण से प्रयोग किया होता परन्तु यह भी इन्कार नहीं किया जा सकता है कि विद्वान श्री महेन्द्र सिंह, विपक्षी सं०-4 द्वारा दी गई टिप्पणी को अनुचित घोषित करना सम्भव नहीं है । ऐसी परिस्थिति में संलग्नक-9 पर दी गई टिप्पणी की आंशिक रूप से प्रतिकूल भाग खण्डित करना उचित नहीं समझता हूँ ।

याची और विपक्षी की ओर से कोई अन्य विचार वस्तु पर बल नहीं दिया गया ।

आदेश =====

वर्ष 1976-77 में याची को श्री श्रवण टण्डन, विपक्षी सं०-3 द्वारा प्रदान टिप्पणी का निम्न भाग उनकी प्रविष्टि से विलुप्त किया जाता है :-

" This officer exerted political pressure for altering his posting to P.A.C. from Saharanpur district."

वर्ष 1977-78 के लिए याची को प्रदान प्रविष्टि में कोई हस्तक्षेप नहीं किया जाता है ।

याची को इस याचिका के व्यय स्वरूप 150/- भी प्रदान किए जाते हैं, जो वे विपक्षीगण से प्राप्त करने के अधिकारी हैं ।

Attested
Impd

HO/-

कल्याण कुमार बक्शी
प्रशासनिक सहाय
2/4/1985

(A99)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A. No. (L)

Between

Devendra Kumar Tewari

Versus

Union of India and others.

...Applicant

...Respondents.

ENCLOSURE NO. A-6

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH

LUCKNOW.

RESERVE JUDGMENT

Writ Petition No. 3918 of 1984

Devendra Kumar Tewari Vs. State of U.P. and others.

Connected with

Writ Petition No. 4236 of 1984.

State of U.P. Vs. D.K. Tiwari and another.

And

Writ Petition No. 3747 of 1985.

Devendra Kumar Tewari Vs. State of U.P. and others.

Hon'ble U.C. Srivastava J.

These three connected writ petitions arise out of two judgments passed by Public Service Tribunal. Writ Petition No. 3918 of 1984 has been filed by Devendra Kumar Tewari against that part of the order in respect of which his claim petition has not been allowed and some of adverse remarks have been expunged. Writ petition No. 4236 of 1984 has been filed by State of U.P. against the very same order passed by Public Services Tribunal challenging the order passed by it expunging some of adverse remarks and directing for promotion of the petitioner Devendra Kumar Tewari in case he is found fit for placement on the select list for 1976.

(A100)

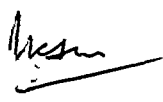
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The date from which he shall be deemed to be on probation in the Indian Police Service will be determined with reference to the date from which the first officer who was junior to him in the State Services Gradation list and who had found place in the select list for 1976 had commenced to be on like probation. Writ Petition No.3747 of 1985 has been filed by Devendra Kumar Tewari against the judgment and order dated 2.4.85 passed by Public Services Tribunal which expunged some of adverse remarks but not quashed the adverse portion of entry for the year 1977-78. Writ petition No.3918 of 1984 is being taken as first case.

The petitioner Devedendra Kumar Tewari (here-in-after referred as the petitioner) after undergoing the process of Public Service Commission was selected for appointment on the post of Deputy Superintendent of Police in Uttar Pradesh and was appointed on the said post on 9.2.1959. In the year 1973 he was promoted to the post of Superintendent of Police on officiating basis. While the petitioner was posted at Jaunpur adverse entries for the years 1974-75 and 1975-76 were given to him. In the year 1976 the petitioner was considered for being included in the select list for promotion to the Indian Police Service but on account of the aforesaid adverse remarks he was not promoted. These remarks according to the petitioner were communicated to him on a date subsequent to the meeting of the selection committee held in December, 1976 to consider the names for promotion with the result that he had no opportunity to represent against adverse remarks awarded to him. These remarks were communicated to the petitioner on 23.3.77 and 27.4.78 respectively. On the representation of the petitioner, the State Government partly expunged the remarks for the year





- 3 -

1974-75. Thereafter the petitioner submitted a memorial to the Governor as a result of which the word 'attitude' occurring in the remaining portion was also expunged. Against the entry for the year 1975-76 which was for the period 1.4.75 to 19.7.75 the petitioner submitted a representation on 28.11.73 to the Chief Secretary, Government of U.P. and some of the remarks given by the Chief Secretary were expunged by the State Government on the said representation which were to the following effect:-

"An officer of average calibre. He must learn to accept the District Magistrate as the head of the criminal administration in the district."

According to the petitioner these entries were illegally and mala-fidely given to him, hence he filed claim petition before the Public Services Tribunal impleading the then District Magistrate who did not file any counter affidavit but his claim was contested by the State Government. The Public Services Tribunal considered the case exhaustively and felt somewhat dissatisfied in the way the case was conducted on behalf of State Government inasmuch as even relevant records were not available to show nexus between the conclusion drawn from these entries and the reasons given for the petitioner's non-selection for the Indian Police Service select list and supersession by juniors. It was further observed by the Tribunal that the lack of legal basis for the supersession is further aggravated by the fact that significant portions of the remarks for 1973-74 were subsequently expunged by the Government of U.P.

In the circumstances, the decision to supersede the petitioner and to omit his name from the select list prepared for 1976 must be deemed to be violative of the principles of natural justice and therefore, must be quashed and set aside. It was also directed by the Tribunal that certain further portions of the impugned adverse remarks be expunged. As such the petitioner's case can now be proceeded without delay, since no representation and the like are now pending with respect to the remarks awarded prior to the meeting of the selection committee on 29.12.1976. With respect to the annual confidential remarks recorded for the year 1975-76 against the petitioner the following portion was expunged by the Tribunal:-

"which reflected in the administration now and then." [So far as these remarks were concerned, they only reflected the factual position and cannot be said to be adverse as contended by the petitioner. There appears to be no good ground for expunging the said remarks which only state the factual position.] It is not the case of either party that the officer should be popular with all political leaders of all the parties may be of different use and shade and it was obligatory for the officer to become popular to this extent even though the other ~~party~~ party may not cooperate with it in the matter. Some of the portions of adverse entry which were retained by the Tribunal are as follows:-

"Recorded by Commissioner: I do not entirely agree with the D.I.G. in the assessment of work and conduct of Sri D.K.Tewari, S.P., Jaunpur"... "His relation with magistracy including the District Magistrate did not remain cordial."

The D.I.G. himself did not agree with the adverse

remarks given by the Commissioner who only stated the factual position that his relations with District Magistrate were not cordial. The effect of this remark was diluted by the I.G.cum-Director General of Police, who observed : "However, his strained relations with the District Magistrate, for which he was not much to blame, stood in the way of smooth administration." In this way the I.G. made both the parties responsible for it. Similarly for the period 1.4.75 to 19.7.75 the Commissioner again recorded the following entry:

1975-76

"But somehow, he could not pull on well with his District Magistrate." While the I.G. recorded: " His relations with his District Magistrate were not good in Jaunpur District."

These remarks only state the factual position that his relations were not good when he was posted in district Jaunpur and there appears to be no ground for expunging the factual entry but on this basis the Home Secretary gave a remark of "average officer". There appears to be no such material before the Home Secretary on the basis of which he could give a remark that he was an average officer. The entries which were placed before me did not indicate anything that any such impression could have been taken because that portion has already been expunged by the Tribunal. As such the entry given by Home Secretary has got to be expunged and it is accordingly expunged. The writ petition No. 3918 of 1984 is allowed to the extent that the entry given by Home Secretary "An average Officer. Rest." is expunged.

Writ petition No. 4236 of 1984 has been filed by the State by which the State has raised grievance that the Tribunal has wrongly expunged the

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entry given by the Commissioner for the years 1974-75 and 1975-76 and certain directions given by the Tribunal have been also challenged. So far as the prayer for quashing of the order passed by the Tribunal quashing the entries is concerned, there appears to be no good ground for allowing the writ petition in this behalf. The Public Services Tribunal exhaustively dealt with the question and has assigned reasons for expunction of said entry. The reasons given by the Tribunal get support both from the facts as well as in the eyes of law. The Tribunal took into consideration that the District Magistrate did not file any affidavit controverting the assertions made by the petitioner. The Tribunal also recorded its dissatisfaction in the way the reply was given by other opposite parties in which it was stated that no record was available, hence no reply can be given. In the circumstances, the Tribunal rightly observed:-

"In the face of specific averments made in the petition it was incumbent upon the opposite parties to furnish facts and cogent reasoning to refute those averments and justify the remarks recorded by the Commissioner of the Division.....

The only conclusion available under the circumstances is that the remarks about the petitioner's having remained popular with only a section of political leaders is based on no known material. On the other hand the Inspector General -cum- Director General of Police has reported favourably on this aspect. The remarks are therefore arbitrary liable to be expunged."



So far as other entry for the year 1974-75 is concerned, the Tribunal noticed that the State did not furnish the details and non-submission of details by it was somewhat puzzling. The other remarks were also expunged after taking into consideration the explanation given by the State Government that certain records were not available in which the word 'attitude' was also deleted.

The petitioner also placed certain material before the court to substantiate his plea that he invariably acted in good faith and extended all possible cooperation to the District Magistrate and his subordinate executive magistrates. The reply given by the State Government in this behalf was cryptic and simply based on District Magistrate's letter dated 27.6.75 who did not file his own affidavit controverting the assertions made by the petitioner. The Tribunal has rightly observed that there is no explanation regarding whether any action was taken by opposite party No.1 on receipt of that letter by an important public servant which has the value of an expression of his opinion but it cannot ipso facto be taken to be expression of the opinion of the Government of Uttar Pradesh in absence of some proof. There was no sufficient material to repel the contention of the petitioner that he extended all cooperation to the executive magistrates in the district, consequently the remark deserved to be quashed after beginning from words " This obviously adversely affected the District administration now and then" which was expunged by the Tribunal. Similarly other portion of the remark was also expunged. State has undoubtedly challenged that before the Tribunal no material could be placed by the petitioner to substantiate his plea, but the same is without any force and deserves to be rejected.

The direction given by the Public Services Tribunal obviously is not supported by law and the State's writ petition deserves to be allowed to this extent. Undoubtedly the petitioner after expunction of remarks requested for consideration of his name for promotion but the observations made by the Tribunal that in case the petitioner is found fit for placement on the select list for 1976. The date from which he shall be deemed to be on probation in the Indian Police Service will be determined with reference to the date from which the first officer who was junior to him in the State Services gradation list and who had found a place in the select list for 1976 had commenced to be on like probation. The promotion is governed by rules and in case the petitioner was wrongly deprived of his promotion, he will get promotion in accordance with rules. The observations made by the Tribunal should not be in conflict with the statutory rules on the subject. Whether he could be treated on probation with effect from 1976 with reference to the date from which the first officer who was junior to him in the state services gradation list, no direction in this behalf could be given. Consequently, the writ petition filed by the State deserves to be allowed to this extent that the last last sentence of the order of item no.3 beginning from "In case the petitioner is found fit" upto "on like probation" deserves to be expunged and substituted by the following words: " In case he is found fit for placement on probation, his promotion shall be made in accordance with law."

Writ petition No.3747 of 1985 is in respect of remarks for the year 1977-78 which still survive. The petitioner has prayed for expunction of the following

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remarks which have been given by the I.C. P.A.C. from 12.2.77 to 28.8.77 and 12.12.77 to 31.3.78:-

"As some of the enquiries concerning the men in his Battalion were not handled as promptly as required, I would reduce the grading of the Reporting Officer from 'Very Good' to 'Good'".

According to the petitioner this entry which has been given to him is adverse and is standing in the way of his promotion. Obviously reducing the petitioner from very good to good will not amount to tantamount adverse remark. It is only indicative of the fact that his grading has been lowered down but still it continues to be good. Earlier entry of 'very good' was given to him but this entry was changed to 'good'. Reasons for the same have been assigned by the Inspector General of P.A.C. The reasons could have been assigned elsewhere instead of placing the same in the character roll. Merely because his grading has been changed as is mentioned in the character roll, same cannot be looked or considered as adverse remark. Though he was good officer but as some of the enquiries concerning the men in his Battalion were not handled promptly as was expected from a very good officer. He was nonetheless credited to be a 'good' officer. An entry of fraud or misconduct was not given to him against which the petitioner could have been heard making complaint. The entry of 'good' without any superlative continues to be good and same does not amount to be an adverse entry and cannot be treated as such.

With these observations, writ petition No. 3918 of 1984 Devendra Kumar Tewari Vs. State of U.P. and others is allowed to the extent that the entry given by the Home Secretary "An Average Officer. Rest" is expunged.

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Writ petition No.4236 of 1984 State of U.P. vs.D.K.Tiwari and another is partly allowed to the extent that the last sentence of order of item No.3 beginning from "In case the petitioner is found fit" upto "on like probation" is quashed and the same is to be read as "In case he is found fit for placement on probation, his promotion shall be made in accordance with law".

Writ petition No.3747 of 1985 is dismissed with the observation made in the judgment.

There will be no order as to costs.

Dated:-

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Attested
[Signature]

Sd. U.C.Srivastava

13.12.88.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A.No.

(L)

Between

Devendra Kumar Tewari

...Applicant

Versus

Union of India and others

....Respondents

ENCLOSURE No. A-7

उत्तर प्रदेश सरकार
गृह/पुलिस सेवाएं अनु-2

संख्या: 2620/आठ-पुसं-2-545121/85

लखनऊ: दिनांक 20 दिसम्बर, 1989

आदेश

चूंकि श्री डी०के० तिवारी एस०पी०एस० की 1974-75 तथा 1975-76 की वार्षिक गोपनीय रिपोर्ट में अंकित मन्तव्य के कुछ अंश प्रतिकूल थे, और राज्य पुलिस सेवा से भारतीय पुलिस सेवा में नियुक्ति के लिये दिनांक 29-12-76 को सम्पन्न हुई चयन समिति की बैठक में तैयार की गयी ब्री प्रवरणा सूची में श्री डी०के० तिवारी को अवक्रमित कर दिया गया था,

चूंकि श्री डी०के० तिवारी ने 1974-75 तथा 1975-76 की प्रतिकूल प्रविष्टियों तथा दिनांक 29-12-76 की बैठक में तैयार की गयी प्रवरणा सूची में अवक्रमित किये जाने के विरुद्ध मा० उत्तर प्रदेश लोक सेवा आधिकारण लखनऊ में निदेश याचिका संख्या: 47एफ/पांच/81 वर्ष 1981 में दायर की थी,

चूंकि मा० उ०प्र० लोक सेवा आधिकारण लखनऊ ने उपरोक्त निदेश याचिका में अपना निर्णय दिनांक 7-5-84 को घोषित किया,

चूंकि उ०प्र० लोक सेवा आधिकारण, लखनऊ के निर्णय दिनांक 7-5-84 के विरुद्ध श्री डी०के० तिवारी द्वारा मा० उच्च न्यायालय, इलाहाबाद, लखनऊ बेंच के समक्ष रिट याचिका संख्या 39184/84 प्रस्तुत की तथा साथ ही इस निर्णय के विरुद्ध राज्य सरकार द्वारा भी मा० उच्च न्यायालय लखनऊ बेंच में रिट याचिका संख्या: 4236/84 प्रस्तुत की गयी। मा० उच्च न्यायालय द्वारा उक्त दोनों रिट याचिकायें *club* कर दी गयी,

चूंकि 1976-77 तथा 1977-78 की वार्षिक गोपनीय रिपोर्ट में अंकित प्रतिकूल मन्तव्य के विरुद्ध श्री डी०के० तिवारी द्वारा मा० उ०प्र०

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लोक सेवा अधिकरण, लखनऊ में निदेश याचिका संख्या: 104/एफ/पांच/83 वर्ष 1983 में दायर की गयी थी और इसमें भी मा० लोक सेवा अधिकरण ने अपना निर्णय दिनांक 2.4.85 को घोषित किया। श्री तिवारी द्वारा इस निर्णय के विरुद्ध मा० उच्च न्यायालय लखनऊ बेंच के समक्ष एक रिट याचिका संख्या 3747/85 प्रस्तुत की गयी। मा० उच्च न्यायालय ने इस रिट याचिका को भी उपरोक्त दोनों रिट याचिकाओं के साथ *club* कर दिया,


चूँकि मा० उच्च न्यायालय ने उपरोक्त तीनों रिट याचिकाओं में अपना एक संयुक्त निर्णय दिनांक 13.12.83 को घोषित किया जिसके अनुसार श्री डी०के० तिवारी द्वारा दायर की गयी रिट याचिका संख्या: को खारिज कर दिया गया और 1984 में श्री तिवारी तथा राज्य द्वारा दायर की गयी क्रमशः रिट याचिकाओं संख्या 3918/84 तथा 4236/84 को आंशिक रूप से *allow* किया गया,

चूँकि राज्य सरकार द्वारा विचारोपरान्त यह निर्णय लिया गया है कि मा० उच्च न्यायालय, इलाहाबाद, लखनऊ बेंच के उपरोक्त निर्णय दिनांक 13.12.88 का समादर किया जाये,

अतएव श्री राज्यपाल, उ०प्र० यह आदेश प्रदान करते हैं कि श्री डी०के० तिवारी, एस०पी०एस० की 1974-75 तथा 1975-76 की वार्षिक गोपनीय रिपोर्ट में अंकित मन्तव्य के निम्नलिखित प्रतिकूल अंश को विलोपित कर दिया जाये :-

- | | |
|-------------|--|
| 1974-75 (a) | "he remained popular with only some sections of political leaders X X X
This obviously adversely affected the District Administration now and then" |
| 1975-76 (b) | Which reflected in the administration now and then" |
| 1975-76 (c) | "and both were to blame for this" |
| 1975-76 (d) | "an average Officer Rest" |

महानिदेशक एवं पुलिस महानिरीक्षक उ०प्र० लखनऊ तदनुसार आवश्यक कार्यवाही सुनिश्चित करें तथा कृत कार्यवाही से शासन को अवगत करायें।




राज्यपाल की आज्ञा से,
ड०/-1 दुर्गा प्रसाद, निदेश
संयुक्त सचिव।

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संख्या: 2620111/आ6-मु0से0-2-तद दिनांक

प्रेषित:-

111 श्री रमेशा चन्द्र दीक्षित पुलिस उपमंडा निरीक्षक प्रशासन 30प्र0
लखनऊ ।

श्री डी0के0 तिवारी की वरिष्ठ-पंजी भी संलग्न है ।

कृपया इसकी प्राप्ति स्वीकार करें ।

121 सहायक अधिकारी ।

msm

Attested

MAOH

आज्ञा से,

ड0/-

सुभाषिंकर मिश्र:

संयुक्त सचिव ।

प्रेषक,

देवेन्द्र कुमार तिवारी,
पुलिस अधीक्षक,
राजस्व व विशिष्ट अभिसूचना निदेशालय,
उत्तर प्रदेश सचिवालय, सैकसी भवन,
लखनऊ ।

सेवा में,

श्री सन्त कुमार त्रिपाठी,
आई. ए. एस.
गृह सचिव,
उ०प्र० शासन, लखनऊ ।

पत्रांक: प्रत्यावेदन/दे०कु० ति०/लो०से०अ०/उ०न०/८९ लखनऊ: दिनांक: फरवरी १५, १९९०.

विषय:- लोक सेवा अधिकरण द्वारा निर्देश याचिका सं० ४७/एफ/५/१९८१ तथा निर्देश याचिका सं० १०४/एफ/५/१९८३ एवं माननीय उच्च न्यायालय द्वारा रिट पिटीशन सं० ३९१८/१९८४ देवेन्द्र कुमार तिवारी बनाम उत्तर प्रदेश शासन एवं अन्य, रिट पिटीशन संख्या-४२३६/१९८४ उत्तर प्रदेश शासन बनाम देवेन्द्र कुमार तिवारी एवं एक अन्य रिट पिटीशन संख्या-३७४७/१९८५ देवेन्द्र कुमार तिवारी बनाम स्टेट आफ उत्तर प्रदेश में पारित निर्णय के सम्यक क्रियान्वयन के सम्बन्ध में ।

सन्दर्भ :- अदालत पत्र सं० १/दे०कु० ति०/लो०से०अ०/उ०न०/८९ लखनऊ दिनांक जनवरी १९, १९८९, अदालत पत्र सं० २/दे०कु० ति०/लो०से०अ०/उ०न०/८९ लखनऊ मई १२, १९८९, अदालत पत्र सं० ३/दे०कु० ति०/लो०से०अ०/उ०न०/८९ लखनऊ मई १६, १९८९ तथा गोपनीय पत्र सं० उ०प्र० सरकार गृह/पुलिस/सेवाएं अनुभाग-२/संख्या: २६२०/आठ-पु०से०-२-५४५१२१/८५ दिनांक लखनऊ २० सितम्बर, १९८९.

महोदय,

उपरोक्त वर्णित दो निर्देश याचिकाओं में माननीय उ०प्र० लोक सेवा अधिकरण संख्या-५ ने निर्णय क्रमांक: दिनांक ७-५-१९८४ और दिनांक २-४-१९८५ को पारित किया था । इसी प्रकार उपरोक्त वर्णित तीन रिट पिटीशन में माननीय उच्च न्यायालय, इलाहाबाद, लखनऊ बेंच के सीनियर न्यायमूर्ति श्री यू०सी० श्रीवास्तव ने संयुक्त निर्णय दिनांक १३-१२-८८ को पारित किया ।

फलस्वरूप प्राथी ने उपरोक्त वर्णित सन्दर्भों द्वारा दिनांक जनवरी १९, १९८९ को उक्त निर्णयों के परिपेक्ष्य में न्यायसंगत तथा सम्यक कार्यवाही किये जाने की प्रार्थना की और उक्त पत्र दिनांक जनवरी १९, १९८९ के क्रम में उपरोक्तानुसार दो अन्य अनुत्प्रेषित दिनांक मई २, १९८९ तथा दिनांक मई १६, १९८९ को सम्बन्धित अधिकारियों से साक्षात्कार के दौरान मौखिक निवेदन के क्रम में भेजे ।

उ०प्र० शासन ने माननीय उच्च न्यायालय के निर्णय के परिपेक्ष्य में सन्दर्भ के समक्ष इंगित किये गये गोपनीय पत्र दिनांक 20 सितम्बर, 1989 द्वारा प्रार्थी को सूचित किया है कि राज्य सरकार द्वारा विचारोपरान्त यह निर्णय लिया गया है कि माननीय उच्च न्यायालय, इलाहाबाद, लखनऊ बेंच के उपरोक्त निर्णय दिनांक 13-12-88 का समादर किया जाय । अतएव श्री राज्यपाल, उ०प्र० यह आदेश प्रदान करते हैं कि श्री डी०के० तिवारी, एस०पी०एस० की 1974-75 तथा 1975-76 की वार्षिक गोपनीय रिपोर्ट में अंकित मन्तव्य के निम्नलिखित प्रतिकूल अंश विलोपित कर दिये जायें:-

- 1974-75 (a) "He remained popular with only some sections of political leaders X X X This obviously adversely affected the District Administration now and then"
- 1975-76 (b) Which reflected in the administration now and then"
- 1975-76 (c) " and both were to blame for this"
- 1975-76 (d) " an average officer Rest"

2- शासन ने अपने उक्त पत्र दिनांक 20 सितम्बर, 1989 द्वारा यद्यपि सूचित किया है कि माननीय उच्च न्यायालय इलाहाबाद, लखनऊ बेंच के उपरोक्त निर्णय दिनांक 13-12-88 का समादर किया जाय परन्तु वस्तुतः प्रार्थी की वार्षिक गोपनीय रिपोर्ट वर्ष 1974-75 तथा वर्ष 75-76 के उन प्रतिकूल अंशों को भी विलोपित किये जाने की सूचना दी गयी है जिन्हें माननीय उ०प्र० लोक सेवा आधिकारण ने अपने निर्णय दिनांक 7-5-84 द्वारा विलुप्त कर दिया था । स्पष्ट है कि शासन का यह निर्णय न्यायिक प्रक्रिया के अनुकूल है । इस स्तर पर इस तथ्य की ओर भी ध्यान आकृष्ट करना आवश्यक है कि स्वयं शासन विपक्षी पार्टी सं-1 ने पूर्व में आलोच्य अवधि वर्ष 1974-75 तथा 1975-76 की गोपनीय रिपोर्ट में प्रतिकूल मन्तव्य के महत्वपूर्ण हिस्सों को प्रार्थी द्वारा वर्ष 1974-75 के लिए प्रस्तुत किये गये रिप्रेजेन्टेशन एवं मेमोरियल तथा वर्ष 75-76 के लिए प्रस्तुत किये गये रिप्रेजेन्टेशन के परिपेक्ष्य में विलोपित कर दिया था ।

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3- प्रार्थी को 29 दिसम्बर, 1976 में उक्त दो वार्षिक रिपोर्ट के आधार पर निम्नलिखित कारण दर्शाते हुए अतिक्रमित किया गया था :-

<u>Name of Officer</u>		<u>Reasons for supersession</u>
X	X	X
X	X	X
12. D.K. Tewari		He did not pull on well with D.M. and avoided monthly meetings called by him. This attitude adversely affected the district administration.
X	X	X
X	X	X

उपरोक्त शासन, उपरोक्त लोक सेवा अधिकरण तथा माननीय उच्च न्यायालय इलाहाबाद, लखनऊ बेंच द्वारा प्रतिकूल अंश विलोपित कर दिये जाने के बाद उपरोक्त दर्शाये गये कारण में प्रयुक्त शब्दावली में केवल निम्नलिखित वाक्यांश अवशेष रह गया है ।

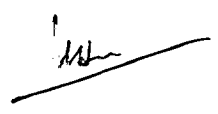
" He did not pull on well with D.M.

उक्त लाइन के औचित्य के बारे में माननीय उपरोक्त लोक सेवा अधिकरण के निर्णय दिनांक 7-5-84 में तथा माननीय उच्च न्यायालय के निम्न उद्धरणों के अवलोकन से स्थिति स्पष्ट हो जावेगी ।

माननीय उपरोक्त लोक सेवा अधिकरण के निर्णय पत्र के पृष्ठ 5-6 का उद्धरण :-

" The reply furnished by the opposite parties nos. 1 and 2 are, once again, less than satisfactory. In paragraph 24 of the written statement it has been stated that " the contents of para 24 are to be replied by O.P. no. 3 . However it is stated that the petitioner did not give required cooperation to the D.M. Jaunpur. " In reply to paragraph 25 the reliance has been placed on the documents at annexure-I to the written statement and on the confidential remarks entered in the character roll of the petitioner. The document at annexure I referred

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to supra is a copy of a confidential letter dated 27.6.1975 written by Shri O.N. Vaid to the Chief Secretary, Government of U.P., with copies endorsed there of to the Home Secretary and the Appointments Secretary to the Government of U.P. and the Commissioner of Varanasi Division. The letter speaks of non-cooperation from the Superintendent of Police, the present petitioner, and lists, in the form of a detailed annexure to the letter, a number of instances where the petitioner had exhibited a non-cooperative or unhelpful attitude in the transaction of Government business, it also contains a request that suitable instructions may be conveyed to the superintendent of police to extend full cooperation to the district administration. The opposite parties nos. 1 2 have not clarified at any stage whether any action was taken on the letter and, in the absence of any such clarification, there is no alternative except to take it as an expression of opinion by the principal officer of the district administration, and to keep in mind the fact that his motives have been impugned by the petitioner in the present petition. Paragraphs 33 to 36 and 38 to 41 of the petition have been countered by placing reliance on the letter of 27.6.1975 written by the District Magistrate referred to supra simple denials and, with reference to paragraphs 34-36, 38 and 40, the comment that "no records are available and hence no reply can be given. " The petitioner has sought to amplify his content
- tion further in his rejoinder affidavit and has also filed
extracts from Government files in support thereof. The
paucity of details furnished by the opposite party no. 1 is

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नहीं थे, तथा कुछ बातों को लेकर उनके आपसी मतभेद काफी बढ़ गये थे। उपरोक्त जाँच के आधार पर अभिसूचना विभाग ने पुलिस अधीक्षक के विरुद्ध किसी प्रकार की कार्यवाही करने की संस्तुति नहीं की क्योंकि इस संबंध में आवश्यक प्रमाण उपलब्ध किया जाना सम्भव नहीं हो सका।

मैं दोनों पत्रावलीयों का अवलोकन किया और यह पाया कि तत्कालीन जिलाधिकारी व पुलिस अधीक्षक के परस्पर सम्बन्ध ऐसे नहीं थे, जो कि वांछनीय या अनुकरणीय कहे जा सकते हैं। किसी अधिकारी पर इस सम्बन्धों को लेकर कम या अधिक उत्तरदायित्व आता है, इस विषय में निश्चित रूप से कोई बात कहना सम्भव नहीं है,"

॥ग॥ ". जिलाधिकारी द्वारा अधिकतर ऐसे आरोप प्रस्तुत किए गए हैं, जिसके सम्बन्ध में कोई उचित प्रमाण और तदनुसार कार्यवाही हो पाना संभव नहीं है। अभिसूचना विभाग द्वारा अपनी जाँच में भी इस पहलू को स्पष्ट किया गया है। गृह सचिव को ज्ञात है कि इस समय दोनों अधिकारी जिला जौनपुर से अन्यत्र स्थानान्तरित हो चुके हैं। मेरे विचार में उपरोक्त परिस्थिति को दृष्टिगत करते हुए अब कोई कार्यवाही अपेक्षित नहीं है।"

यह भी उल्लेखनीय है कि तत्कालीन जिलाधिकारी के उपरोक्त वर्णित गोपनीय पत्र दिनांक 27-6-1975 प्राथी के जनपद जौनपुर से जनपद-सहारनपुर स्थानान्तरण पर जाने के कुछ दिन पूर्व जानबूझकर द्वेष और पूर्वाग्रह के आधार पर लिखा जो वर्ष 1974-75 की अवधि 1-4-74 से 31-3-75 के बाद की अवधि का ही हो सकता है। वर्ष 1974-1975 की आलोच्य अवधि का नहीं। नितन्देह ही यह कृत्य द्वेषपूर्व है। "द्वेष" की विधिक व्याख्या स्वयं माननीय लोक सेवा अधिकरण ने अपने निर्णय पत्र दिनांक 7-5-84 के पृष्ठ 17 एवं 18 पर विस्तार पूर्वक की है। माननीय उOप्रO लोकसेवा अधिकरण के निर्णय दिनांक 7-5-84 के पृष्ठ 7-8 का उद्धरण:

" A reading of the original text of the Commissioner's entry would strongly suggest a nexus between the last sentence of the entry and the penultimate one which had made a reference to the petitioner's non-attendance of the District Magistrate's

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indeed somewhat puzzling, as is the cryptic statement that certain records are not available, even when some of them are said to concern matters that came to the notice of different members of the Council of Ministers and the Home Secretary to the Government of U.P. . . .

उपरोक्त उद्धरण के सन्दर्भ में उल्लेखनीय है कि प्रार्थी द्वारा रिज्वाइंडर स्फीडेविट के साथ दाखिल किये गये शासकीय पत्रावलियों पर कराये गये परीक्षा की विवरण सहित फोटो प्रतियों में तत्कालीन जिलाधिकारी जौनपुर के उक्त गोपनीय पत्र दिनांक 27-6-1975, जो मुख्य सचिव को सम्बोधित एवं गृह सचिव तथा नियुक्ति सचिव आदि को पृष्ठांकित था, पर शासन द्वारा कराये गये परीक्षा की टीका दिनांक 28-11-1975 सामिल है जिसके अनुसार आलोच्य मामले में शासन स्तर पर कोई आरोप न तो सिद्ध पाया गया और न कोई कार्यवाही किये जाने की आवश्यकता समझी गयी। सुविधा के लिए शासकीय स्तर पर की गयी समीक्षा और फलस्वरूप उपलब्ध टीका के अंशों को निम्नवत् पुनः अंकित कर रहा हूँ।

क। जिलाधिकारी, जौनपुर ने अपने गोपनीय पत्र दिनांक 27 जून, 1975 जो कि क्रम संख्या 22 पर उपलब्ध है, तत्कालीन पुलिस अधीक्षक श्री डी०के० तिवारी के विरुद्ध 19 आरोप लगाये गये हैं। जिन्होंने शासन का ध्यान श्री तिवारी के असहयोगात्मक कार्यशैली की ओर आकृष्ट किया था। उनके द्वारा यह कहा गया था कि श्री तिवारी के इस कार्य-प्रणाली के कारण शासनादेशों को क्रियान्वित करने में काफी कठिनाईयों का सामना करना पड़ रहा है.

ख। इस पत्र पर पुलिस महानिरीक्षक अभिसूचना से जाँच करने के लिए कहा गया और उनके द्वारा जाँच आख्या पुलिस महानिरीक्षक के पत्र दिनांक 31 अक्टूबर, 1975 के माध्यम से प्राप्त हुई। अभिसूचना विभाग अपनी जाँच के उपरान्त इस नतीजे पर पहुँचा है कि श्री तिवारी के विरुद्ध की गई शिकायत जो कि एक पत्रकार को पुलिस अधीक्षक द्वारा गलत रूप से फसाये जाने के सम्बन्ध है, किसी प्रकार का प्रमाण-पत्र ^{प्राप्त} नहीं हुआ तथा, इस सम्बन्ध में किसी निर्णय पर नहीं पहुँचा जा सकता। अभिसूचना विभाग की जाँच से यह भी स्पष्ट हो जाता है कि सम्भवतः जिलाधिकारी एवं पुलिस अधीक्षक के आपसी सम्बन्ध कुछ ठीक

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monthly staff meetings, and this in turn gives the word "attitude" in the last sentence-new expunged a connotation which tends to lose all meaning once the penultimate sentence is deleted. The sentence prior to the penultimate one reads "His relations with the Magistracy including the District Magistrate did not remain cordial", the sentence reveals a condition which prevailed and not an attitude. The conclusion that emerges is that the act of deletion of the word "attitude" seek to delink the last sentence of the Commissioner's entry ~~from~~ from its nexus with the already expunged penultimate sentence which had become non est as it were, and to bestow upon it a wholly new bound with the prior sentence which concerns the petitioner's relation with executive magistrates. We do not deny that the power to act in such a matter could be exercised by the Government of U.P. acting on behalf of the Governor, but such an action, once impugned, must be shown to have been based on equitable and rational grounds. Such impugnement has indeed been made by the petitioner with a number of assertions which seek to substantiate his claim that he ~~an~~ invariably acted in good faith and extended all possible cooperation to the District Magistrate and his subordinate executive magistrates. We have had occasion to refer in paragraph 5 supra to the fact that the reply furnished by the opposite parties nos. 1 and 2 leaves a great deal to be desired, and is essentially based on the District Magistrate's letter of 27.6.1975, at Annexure I to the written statement. We have already observed that there is no explanation regarding whether any action was taken by opposite party no. 1 on receipt of that letter, in such circumstances it has the value of an expression of opinion

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by an important public servant but it cannot ipsofacte be taken to be an expressive of the opinion of the Government of U.P. in the absence of some modicum of proof. Further, the petition is replete with allegations of personal animosity said to have been borne by the District Magistrate, Sri O.N. Vaid against the petitioner. In the event it is manifest that opposite parties nos. 1 and 2 have not been able to show sufficient facts to repel the petitioner's contention that he extended all cooperation to the executive magistrates in the district. Consequently the newly created nexus between the last sentence (after the deletion of the word "attitude") and the earlier sentence in the instant entry which relates to the lack of harmonious relations with the executive magistrates is clearly revealed to be arbitrary. The sentence, "This obviously adversely affected the District administration now and then," a sentence which could possibly lead to adverse inferences about the work and conduct of the petitioner without adequate justification therefore, is meet to be expunged.

उपरोक्त लोक सेवा अधिकरण के न्याय पत्र के पृष्ठ 12-13 का उद्धरण :-

" The same consideration does not however apply to the concluding portion of the sentence "which reflected in the administration now and then ". It is not

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illogical to presume that where there are differences between two of the principal officers in a district administration such a situation might reflect in the administration now and then, but it would surely amount to jumping to unwarranted conclusions to assume that such a situation must invariably reflect in the administration. The petitioner has impugned the remarks on several grounds and it was necessary for the opposite parties nos. 1 and 2 to show that they were based on facts which can bear judicial scrutiny. Such an opportunity was not properly availed of by the opposite parties and they have resorted to reliance on the entry as it stands by averring that it was based on facts and circumstances. The character roll of an officer plays a crucial role in determining the success or otherwise of his career and, seeking the importance of the matter under consideration, it was incumbent upon the opposite parties 1 and 2 to adduce some facts to corroborate the remarks of the Commissioner. the remarks recorded by the Inspector General of Police and the Home Secretary to the Government of U.P. also make no mention of any adverse impact of the aforesaid differences of opinion or the strained relations arising therefrom on the district administration. Under the circumstances the words "which reflected in the administration now and then" must be deemed to be arbitrary and not based on adducible facts and hence liable for expunction.

"... 3090 लोक सेवा आधिकारण के न्याय पत्र के पृष्ठ 12-13 का उद्धरणः"
 "The opposite parties nos. 1 and 2 have all through relied on the entries as recorded by the different officers on the work of the petitioner but they have not

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produced any corroborative material other than the letter written by Shri O.N. Vaid on 27.6.1975 referred to supra. We have already commented earlier about the limited value of Shri Vaid's letter in the absence of any indication about the decision of the Government of U.P. on that letter. The petitioner has, elsewhere in the petition mentioned certain specific instances where the opposite party no.1 had, after making inquiries, concluded that the petitioner was not at fault and in one matter, that the District Magistrate should be censured on certain points, but the opposite-parties, in their written statement, have claimed that the record in question are not available. This creates certain difficulties. Ordinarily, when there exist bad relations between two senior officers one might presume that both officers are responsible to some extent for such a situation but in the present instance when the petitioner has repeatedly stressed that he was not to blame in any way, it was necessary for the opposite-parties to refute such a contention with a statement of facts. Such has not been done here. Seen in this light the comment "... and both were to blame for this" must be deemed to be without adequate basis and hence arbitrary. Under the circumstances, this portion will have to be expunged from the sentence "His relations with his District Magistrate were, however, not good in Jaunpur district, and both were to blame for this."

उपरोक्त उद्धरण के रेखांकित चार वाक्यों से स्पष्ट होगा कि जिलाधिकारी और मुझे पुलिस अधीक्षक के बीच आलोच्य अवधि में आरोपित मयूर सम्बन्धों के अभाव के बारे में पुलिस अधीक्षक को दोषी नहीं पाया गया और इसी आधार पर पुलिस महानिरीक्षक श्री गोविन्द चन्द्रा द्वारा प्रदत्त मन्तव्य में से " and both were to blame for this "

शब्दों को माननीय उत्तर प्रदेश लोक सेवा अधिकरण द्वारा विलुप्त कर

दिया गया ।

निवेदन है कि माननीय उ०प्र० लोक सेवा अधिकरण तथा माननीय उच्च न्यायालय लखनऊ बेंच के निर्णय पत्रों एवं, विशेषकर, उपरोक्त उद्धरणों के परिपेक्ष्य में प्रार्थी को अतिक्रमित किये जाने हेतु दिये गये अवशेष कारण " He did not pull on well with D.M." की वस्तुस्थिति पूर्ण समीक्षा कर ली जाय । उक्त दोनों निर्णय पत्रों के शाब्दार्थ तथा विशेषकर भावार्थ के अवलोकन से यह स्पष्ट होगा कि आरोपित मध्यम सम्बन्धों के अभाव विषयक निष्कर्ष के बारे में तथा तत्काली जिलाधिकारी जौनपुर की कार्य शैली के सम्बन्ध में, प्रार्थी द्वारा रिज्वाइन्डर स्पेडेविट के साथ संलग्न किये गये अभिलेखों के परीक्षा के फलस्वरूप, जिसके अनुसार शासन ने जिलाधिकारी को कतिपय दृष्टान्तों में दोषी पाया था, उक्त न्यायालय ने भी यही भावार्थ व्यक्त किया है । कदाचित, उक्त निर्णय पत्रों में सदाशयता के आधार पर तत्कालीन जिलाधिकारी जौनपुर के विरुद्ध कोई "Stricture, Adverse observation or obiter-dicta" व्यक्त नहीं किया गया है ।

राज्य सरकार द्वारा माननीय उत्तर प्रदेश लोक सेवा अधिकरण के निर्णय तथा माननीय उच्च न्यायालय द्वारा अधिकरण के उक्त निर्णय की पुष्टि करने के फलस्वरूप और अब शासन द्वारा उक्त निर्णय के समादर करने की पृष्ठभूमि दोषी अधिकारी के विरुद्ध अग्रेत्तर कार्यवाही करना सर्वथा सुसंगत है ।

4- शासन ने अपने उपरोक्त वर्णित पत्र लखनऊ दिनांक 20 सितम्बर, 1985 द्वारा सूचित किया है कि माननीय उच्च न्यायालय ने आलोच्य 3 रिट याचिकाओं में अपना संयुक्त निर्णय दिनांक 13-12-88 को घोषित किया जिसके अनुसार श्री डी०के० तिवारी द्वारा दायर की गयी रिट याचिका संख्या-3 को खारिज कर दिया गया । यह सूचना न केवल अधूरी वरन भ्रामक भी है । माननीय उच्च न्यायालय ने प्रार्थी द्वारा दायर रिट संख्या 3 के बारे में निम्न निर्णय दिया " Writ petition No. 3747 of 1985 is dismissed with the observation made in the Judgment.

उपरोक्त सन्दर्भ में जजमेन्ट के दौरान जो अबजरवेशन किया गया न केवल सुसंगत वरन महत्वपूर्ण है और न्यायालय के निर्णय का समादर किये का आधार है । माननीय उच्च न्यायालय के निर्णय पत्र के पृष्ठ-10 पर दि. 13-12-88 अबजरवेशन को उद्धरित करना समीचीन और व्यवहारिक होगा ।

" According to the petitioner this entry which has been given to him is adverse and is standing in the way of his

promotion. Obviously reducing the petitioner from very good to good will not amount to tantamount adverse remarks. It is only indicative of the fact that his grading has been lowered down but still it continues to be good. Earlier entry of 'very good' was given to him but this entry was changed to 'good'. Reasons for the same have been assigned by the Inspector General of P.A.C. The reasons could have been assigned elsewhere instead of placing the same in the character roll. Merely because his grading has been changed as is mentioned in the character roll, same cannot be locked or considered as adverse remark. Though he was a good officer but as some of the enquiries concerning the men in his battalion were not handled promptly as was expected from a very good officer. He was nonetheless credited to be a 'good' officer. An entry of fraud or misconduct was not given to him against which the petitioner could have been heard making complaint. The entry of 'good' without any superlative continues to be good and same does not amount to be an adverse entry and cannot be treated as such.

शासन के उपरोक्त आदेश दिनांक 20 सितम्बर, 1989 में प्रार्थी द्वारा दायर की गयी रिट याचिका संख्या-3 को खारिज किये जाने की जो सूचना है वह उपरोक्तानुसार कदापि सम्यक नहीं है। संक्षेप में माननीय न्यायमूर्ति ने प्रार्थी द्वारा संसूचित किये गये प्रतिकूल मन्तव्य के बारे में गुणावगुणा के आधार पर निष्कर्ष निकालने के बजाय इस मुद्दे पर निर्णय दिया है कि क्या संसूचित किया गया मन्तव्य प्रतिकूल माना जा सकता है? शासन ने कृपा करके न्यायालय के निर्णय का समादर करने का फैसला अपने उपरोक्त पत्र दिनांक 20 सितम्बर, 1989 द्वारा दिया है, अतः यह न्याय संगत ही होगा कि पूर्व में प्रार्थी को वर्ष 1977-78 की वार्षिक रिपोर्ट की संसूचना किये जाने के कृत्य को निरस्त करते हुए तदनुसार प्रार्थी के कैरेक्टर रोल में सुधार किया जाय और तदनुसार प्रार्थी को भी संसूचित किया जाय।

उपरोक्त सन्दर्भ में ही शासन के आदेश दिनांक 20 सितम्बर, 1989

के प्रस्तर-4 की ओर ध्यान आकृष्ट करना आवश्यक है जिसके द्वारा निम्नवत् सूचित किया गया है :-

"चूँकि 1976-77 तथा 1977-78 की वार्षिक गोपनीय रिपोर्ट में अंकित प्रतिकूल मन्तव्य के विरुद्ध भी श्री डी०के० तिवारी द्वारा मा०उ०प्र० लोक सेवा अधिकरण लखनऊ में निदेश याचिका सं० 104/एफ/पाँच/83 वर्ष 1983 में दायर की गयी थी और इसमें भी मा० लोक सेवा अधिकरण ने अपना निर्णय दिनांक 2-4-85 को घोषित किया । श्री तिवारी द्वारा इस निर्णय के विरुद्ध मा० उच्च न्यायालय लखनऊ बेंच के समक्ष एक रिट याचिका सं० 3747/85 प्रस्तुत की गयी । मा० उच्च न्यायालय ने इस रिट याचिका को भी उपरोक्त दोनों रिट याचिकाओं के साथ club कर दिया, "

उक्त आदेश दिनांक 20 सितम्बर, 1989 के प्रस्तर-4 की उपरोक्त उद्धरित सूचना न केवल पूर्वाग्रह पर आधारित है वरन तथ्यों के भी विपरीत है। वस्तुस्थिति यह है कि प्राचीन ने उ०प्र० लोक सेवा अधिकरण के समक्ष अपनी निदेश याचिका संख्या 104/एफ/पाँच/1983 द्वारा वर्ष 1976-77 तथा वर्ष 1977-78 की वार्षिक गोपनीय रिपोर्ट में अंकित दो प्रतिकूल मन्तव्यों के विरुद्ध दाखिल की थी । मासनीय लोक सेवा अधिकरण ने अपने निर्णय दिनांक 2-4-85 द्वारा आदेश दिया था कि 1976-77 में प्राचीन को श्री श्रवण टण्डन विपक्षी सं०-3 द्वारा प्रदत्त टिप्पणी जो निम्नवत् तथा प्रतिकूल थी विलुप्त कर दी गई ।

" This officer exerted political pressure for altering his posting to P.A.C. from Saharanpur District."

शासन ने अपने आदेश दिनांक 20 सितम्बर, 1989 में वर्ष 1976-77 की प्रविष्टि को विलुप्त किये जाने के तथ्य पर न केवल प्रकाश नहीं डाला है वरन उपरोक्तानुसार अपने उक्त पत्र के प्रस्तर-4 में सूचित करने के क्रम में प्रस्तर-5 द्वारा जो सूचना प्रेषित की है, उससे केवल यही निष्कर्ष निकलता है कि रिट याचिका संख्या-3 को खारिज कर दिया गया । उक्त प्रस्तर-5 को सुविधा के लिए उद्धरित किया जा रहा है ।

" चूँकि मा० उच्च न्यायालय ने उपरोक्त तीनों रिट याचिकाओं में अपना एक संयुक्त निर्णय दिनांक 13-12-88 को घोषित किया जिसके अनुसार श्री डी०के० तिवारी द्वारा दायर

की गयी रिट याचिका संख्या-3 को खारिज कर दिया गया और 1984 में श्री तिवारी तथा राज्य द्वारा दायर की गयी क्रमशः रिट याचिकाओं संख्या 3918/84 तथा 4236/84 को आंशिक रूप से allow किया गया ।

उक्त निर्देश याचिका संख्या 104/एफ/पांच/1983 द्वारा प्रार्थी को आलोच्य याचिका में व्यय-रूप 150/- प्रदान कराये गये थे । प्रार्थी को यह धनराशि पुलिस महानिदेशक के कार्यालय से प्रदान करी दी गई है परन्तु शासन स्तर पर वर्ष 1976-77 के लिए प्रदत्त प्रविष्टि को विलुप्त कर दिये जाने की कोई सूचना न तो उपरोक्त गोपनीय आदेश दिनांक 20 सितम्बर, 1989 द्वारा और न इससे पूर्व प्रदान की गयी है । यह स्थिति निसन्देह ही न्यायिक प्रक्रिया, नैतिक उत्तर दायित्व और प्रार्थी के हितों के विपरीत है । शासन का उपरोक्त गोपनीय आदेश दिनांक 20 सितम्बर, 1989 त्रुटिपूर्ण, पूर्वाग्रह एवं द्वेष ग्रस्त प्रतीत होता है । इस बारे में भी सत्य और गुणावगुण पर आधारित निर्णय लेने एवं तदनुसार संसूचित करने की कृपा की जाय ।

5- प्रार्थी द्वारा माननीय उ०प्र० लोक सेवा अधिकरण से 29-12-1976 को सेलेक्ट लिस्ट में अनकम्प्यूनीकेटेड प्रविष्टियों, जिनके महत्वपूर्ण प्रतिकूल अंश स्वयं शासन द्वारा प्रत्यावेदन और मेमोरियल आदि देने के फलस्वरूप निरस्त कर दिये थे, के आधार पर अतिक्रमिit कर दिये जाने के नियम विरुद्ध कार्य को निरस्त करने की प्रार्थना की गयी है । माननीय उ०प्र० लोक सेवा अधिकरण के निर्णय पत्र दिनांक 7-5-84 का निम्न उद्धरण उल्लेखनीय है।

माननीय उत्तर प्रदेश लोक सेवा अधिकरण के न्याय-पत्र के पृष्ठ 15 से पृष्ठ 17 का उद्धरण :-

" paragraph 5 of the minutes states that the selection of these 40 officers " involves the supersession of the under mentioned officers for the reason that their performance in the discharge of the various functions assigned to them, on an overall assessment of their records was considered to be inferior to that of the officers junior to them in the state services who have been included in the list, the

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detailed reasons for supersession in respect of each officer are indicated below:

<u>Name of officer</u>		<u>Reasons for supersession</u>
X	X	X
X	X	X
12. D.K. Tewari		He did not pull on well with D.M. and avoided monthly meetings called by him. This attitude adversely affected the district administration.
X	X	X
X	X	X

. "

(The portions relevant to the petitioner's case have been extracted supra.)

It is manifest from the preceding paragraph that the petitioner's overall record of service was perused by the selection Committee on 29.12.1976 before the decision was taken inter alia to supersede him by preferring certain officers junior to him in the state service, and the main, if not the only, reason for doing so was the petitioner's failure to work harmoniously with the collector and magistrates of the district and attend the monthly meetings called by the latter, an attitude which adversely affected the district administration. There is no dispute about the fact that the annual remarks on which the rationale behind the supersession was based had not been communicated to the petitioner at the time of the select committee meeting. It is further beyond dubitation that significant portions of these hitherto uncommunicated remarks were expunged under the orders of the opposite party No. 1, the Government of U.P., subsequent to the petitioner's preferring a representation and then a memorial. The precise impact of such a situation was argued at length by the

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learned counsels appearing for the parties, Shri H.C. Bajpai for the petitioner and Shri H.K. Misra for the opposite parties Nos. 1 and 2 certain rulings emanating from the Supreme Court of India and the High Courts of Judicature were also cited by Shri H.C. Bajpai in support of his contentions.

" Keeping in view the facts and circumstances of the matter impugned in the present petition and the principles enunciated by the supreme Court of India in Gurdial Singh Fijji's case, there is no manner of doubt that the principles of natural justice have been violated in the petitioner's case by making use of uncommunicated adverse entries for 1973-74 and 1974-75. The nexus between the ~~en-~~ conclusions drawn from these entries and the reasons given for the petitioner's non-selection for the Indian Police Service Select List and supersession by juniors has already been referred to earlier. The lack of legal basis for the supersession is further aggravated ~~the~~ by the fact that significant portions of the remarks for 1973-74 were subsequently expunged by the Government of U.P. In the circumstances, the decision to supersede the petitioner and to omit his name from the Select List prepared for 1976 must be deemed to be violative of the principles of natural justice and is therefore meet to be quashed and set aside.

Select List are prepared and reviewed from year to year and it is not always easy to work ~~h-~~ out the logical consequences of holding that the case of a

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particular officer must be reconsidered, as is indeed the case here. At the same time it is evident that the case of the petitioner will have to be taken up and considered afresh by the Selection Committee. The adverse entries relating to the year 1973-74 and a part of 1974-75 have, since the date of the Selection Committee meeting of 29.12.1976, been communicated to the petitioner, and his representations and memorial thereon have resulted in the expunction of certain portions of those adverse remarks. In the present judgement this Tribunal is directing that certain further portions of the impugned adverse remarks be expunged. As such, the petitioner's case cannot be processed without delay, since no representations and the like are now pending with respect to the remarks awarded prior to the meeting of the Selection Committee of 29.12.1976. The Selection Committee can therefore decide without impediment whether or not the petitioner should be included in the Select List for the Indian ~~for~~ Police service for 1976. In the event of his Selection the date from which he shall be deemed to be on probation in the All Indian Service will be determined by the date from which the first officer who was junior to him in the State Service and who had found a place in the Select List for 1976 had commenced to be on like probation. We do not think it necessary to direct that a meeting of the Selection Committee be convened specially for the purpose of considering the petitioner's claims, in the changed circumstances it will suffice if his claims are fairly considered for the 1976 select List as and when the Selection Committee next meets in the normal course.





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6. शासन ने अपने उपरोक्त गोपनीय आदेश दिनांक 20 सितम्बर, 1989 के प्रस्तर-4 द्वारा स्पष्ट किया है कि लोक सेवा अधिकरण लखनऊ के निर्णय दिनांक 7-5-84 के विरुद्ध प्रार्थी श्री डी०के० तिवारी ने रिट याचिका संख्या 3918/1984 तथा साथ ही इस निर्णय के विरुद्ध राज्यसरकार द्वारा भी माननीय उच्च न्यायालय लखनऊ बैंच लखनऊ रिट याचिका संख्या 4236/1984 प्रस्तुत की गयी। माननीय उच्च न्यायालय द्वारा उक्त दोनों रिट याचिकायें

कर दी गयीं। स्पष्ट करने की अनुमति चाहूंगा कि राज्यसरकार द्वारा माननीय उच्च न्यायालय में रिट आफ शर्टियोराई प्रस्तुत की गयी थी जिसके सन्दर्भ में माननीय उच्च न्यायालय द्वारा पारित निर्णय पत्र का निम्नलिखित उद्धरण अवलोकित किया जाना न्यायिक दृष्टि से समीचीन एवं उपयुक्त होगा।

माननीय उच्च न्यायालय के निर्णय पत्र दिनांक 13-12-88 के पृष्ठ 2-3 का उद्धरण:

" These remarks were communicated to the petitioner on 23.3.77 and 27.4.78 respectively. On the representation of the petitioner, the state Government partly expunged the remarks for the year 1974-75. Thereafter the petitioner submitted a memorial to the Governor as a result of which the word 'attitude' occurring in the remaining adverse portion was also expunged. Against the entry for the year 1975-76 which was for the period 1.4.75 to 19.7.75 the petitioner submitted a representation on 28.11.78 to the Chief Secretary, Government of U.P. and some of the remarks given by the Chief Secretary were expunged by the state Government on the said representation which were to the following effect:-

" An officer of average calibre . He must learn to accept the District Magistrate as the head of the criminal administration in the district."

According to the petitioner these entries were illegally and malafidely given to him, hence he filed claim petition before the public services Tribunal impleading the then District Magistrate who did not file any counter affidavit but his claim was contested by the State Government. The public Services Tribunal considered the case exhaustively and felt somewhat dissatisfied in the way the case was conducted on behalf of state Government inasmuch as even relevant records were not available to show nexus between the conclusion drawn from these entries and the reasons given for the petitioner's non-selection for the Indian Police service select list and supersession by juniors.

उपरोक्त क्रम में माननीय उच्च न्यायालय ने प्रार्थी के सन्दर्भ में माननीय उ०प्र० लोक सेवा अधिकरण के निर्णय के बाद अवशेष प्रविष्टियों के नेचर प्रकार विषयक अपना अभिमत निम्नवत् प्रकट किया ।
माननीय उच्च न्यायालय का निर्णय दिनांक 13-12-88 के पृष्ठ 5-6 का उद्धरण:-
". These remarks only state the factual position that his relations were not good when he was posted in district Jaunpur and there appears to be no ground for expunging the factual entry but on this basis the Home Secretary gave a remark of "average officer".
There appears to be no such material before the Home Secretary on the basis of which he could give a remark that he was an average officer. The entries which were placed before me did not indicate anything that any such impression could have been taken because that portion has already been expunged by the Tribunal. As such the entry given by Home Secretary has got to be expunged and it is accordingly expunged. The writ petition No. 3918 of 1984 is allowed to the extent that the entry given by Home Secretary "An average officer- Regs." is expunged.

उक्त क्रम में माननीय उच्च न्यायालय ने माननीय लोक सेवा अधिकरण के निर्णय को न्यायसंगत ठहराते हुये निम्नवत् अंकित किया :-

माननीय उच्च न्यायालय के निर्णय दिनांक 13-12-88 के पृष्ठ 6, 7 और 8 का उद्धरण :- - - - -

" The reasons given by the Tribunal get support both from facts as well as in the eyes of law. The Tribunal took into consideration that the District Magistrate did not file any affidavit controverting the assertions made by the petitioner. The Tribunal also recorded its dissatisfaction in the way the reply was given by other opposite parties in which it was stated that no record was available, hence no reply can be given. In the circumstances the Tribunal rightly observed:-

" In the face of specific averments made in the petitioner it was incumbent upon the opposite parties to furnish facts and cogent reasoning to refute those averments and justify the remarks recorded by the Commissioner of the Division. The only conclusion available under the circumstances is that the remarks about the petitioner's having remained popular with only a section of political leaders is based on no known material. On the other hand the Inspector General-cum Director General of Police has reported favourably on this aspect. The remarks are therefore arbitrary liable to be expunged.

So far as other entry for the year 1974-75 is concerned,

the Tribunal noticed that the state did not furnish the details and non-submission of details by it was somewhat puzzling. The other remarks were also expunged after taking into consideration the explanation given by the State Government that certain records were not available in which the word 'attitude' was also deleted.

The petitioner also placed certain material before the court to substantiate his plea that he invariably acted in good faith and extended all possible cooperation to the District Magistrate and his subordinate executive magistrates. The reply given by the State Government in this behalf was cryptic and simply based on District Magistrate's letter dated 27.6.75 who did not file his own affidavit controverting the assertions made by the petitioner. The Tribunal has rightly observed that there is no explanation regarding whether any action was taken by opposite party no. 1 on receipt of that letter by an important public servant which has the value of an expression of his opinion but it cannot ipso facto be taken to be expression of the opinion of the Government of Uttar Pradesh in absence of some proof. There was no sufficient material to repel the contention of the petitioner that he extended all cooperation to the executive magistrates in the district.

7- प्रार्थी को वर्ष 1976 में दिसम्बर 29 को आहूत की गयी सेलेक्ट कमेटी द्वारा अतिरिक्त कर दिया गया था जिसको माननीय उ०प्र० लोक सेवा अधिकरण ने अपने आदेश दिनांक 7-5-84 द्वारा पृष्ठ 22 पर अंकित बिन्दु 11111 द्वारा निम्नवत् निरस्त और अमान्य कर दिया:-
"(iii) A decision to supersede the petitioner in the Select List prepared for the year 1976 on the basis of Selection Committee Meeting held on 29.12.1976 is quashed and

set aside. The opposite-party no. 1, State of U.P. will again place the case of the petitioner for consideration at the next meeting of the Selection Committee constituted for the purpose of preparing the Select List for promotion to the Indian Police Service, and the Selection Committee shall consider the case of the petitioner once again for the Select List of 1976. In case the petitioner is found fit for placement on the select list for 1976, the date from which he shall be deemed to be on probation in the Indian Police Service will be determined with reference to the date from which the first officer who was junior to him in the State Services gradation list and who had found a place in the Select List for 1976 had commenced to be on like probation."

उक्त प्रस्तर में रेखांकित वाक्यों को माननीय उच्च न्यायालय ने अपने निर्णय दिनांक 13-12-88 में निम्नवत् संशोधित कर दिया । उक्त निर्णय दिनांक 13-12-88 का उद्धरण सुविधा के लिए नीचे लिखा जा रहा है।

उच्च न्यायालय का निर्णय दिनांक 13-12-88 का उद्धरण पृष्ठ 9-10

" Consequently, the writ petition filed by the State deserves to be allowed to this extent that the last sentence of the order of item no. 3 beginning " In case the petitioner is found fit" upto " on like probation" deserves to be ~~quashed~~ expunged and substituted by the following words." In case he is found fit for placement on probation, his promotion shall be made in accordance with law."

8- इस प्रत्योवेदन के पृष्ठ-10 और 11 पर रिट पिटीशन संख्या-3747, वर्ष 1985 के बारे में वस्तुस्थिति स्पष्ट की जा चुकी है और माननीय उच्च न्यायालय द्वारा इस सम्बन्ध में स्पष्ट किये गये अभिमत को पुनः विप्लेखित करने की आवश्यकता प्रतीत नहीं होती है ।

शासन ने अपने उपरोक्त पत्र दिनांक 20 सितम्बर 1989 द्वारा माननीय उच्च न्यायालय इलाहाबाद, लखनऊ बेंच के निर्णय दिनांक 13-12-88 का समादर करते हुए प्रार्थी की वार्षिक गोपनीय रिपोर्ट में अंकित मन्तव्य के कुछ प्रतिकूल अंशों को विलोपित कर दिये जाने के बारे में सूचना देने के अतिरिक्त अन्य किसी फालो-अप एक्शन कराये जाने या प्रस्तावित किये जाने की कोई सूचना नहीं है। प्रार्थी द्वारा इस प्रत्यावेदन के पृष्ठ-1 पर शीर्षक " सन्दर्भ " के समच्छ दर्शाये गये पत्रों के क्रम में सम्बन्धित अनुभाग और शासन के अधिकारियों से जानकारी करने की प्रार्थना करने पर 29 दिसम्बर, 1986 में चयन समिति की बैठक के निष्कर्षों की समीक्षा 'रिव्यू' कराये जाने एवं न्यायालय के निर्णय के अनुसार अग्रेत्तर कार्यवाही शीघ्रातिशीघ्र करने हेतु आवश्यक किया जाता रहा।

सखेद निवेदन करने की अनुमति चाहूंगा कि यह प्रकरण वर्ष 1974-1975 में द्रष्टव्य वार्षिक मन्तव्य अंकित किये जाने और तत्पश्चात् 29 दिसम्बर, 1976 को असम्बैधानिक रूप से अतिक्रमिit करने से सम्बन्धित है। आलोच्य प्रकरण विषयक निर्णय लोक सेवा अधिकरण द्वारा दिनांक 7-5-1984 को तथा माननीय उच्च न्यायालय, इलाहाबाद, लखनऊ बेंच द्वारा दिनांक 13-12-88 को पारित किया जा चुका है। माननीय उच्च न्यायालय द्वारा निर्णय पारित होने के बाद से भी अब तक लगभग 14 माह व्यतीत हो गये हैं परन्तु शासकीय स्तर पर अभी तक पूर्णरूपेण या तो फालो-अप एक्शन लिया ही नहीं गया या उससे प्रार्थी को अवगत नहीं कराया जा रहा है। प्रार्थी इस प्रत्यावेदन द्वारा शासन, जो न्याय का सर्वोच्च श्रोत है, से पुनः विनम्र प्रार्थना करता है कि आलोच्य निर्णय दिनांक 7-5-1984 और 13-12-1988 के परिपेक्ष्य में शीघ्रातिशीघ्र अग्रेत्तर कार्यवाही की जाय। इस स्तर पर यह भी निवेदन करना समीचीन तथा उपयुक्त होगा कि प्रार्थी की प्रोन्नति आदि के बारे में INDIAN POLICE SERVICE (APPOINTMENT BY PROMOTION REGULATION 1955) के अनुकूल नियम और प्रक्रिया अपनाई जानी है, जो 29 दिसम्बर, 1976 को विधि सम्मत थी तथा प्रार्थी के बैच के अन्य अधिकारियों के सम्बन्ध में अपनाई गयी थी।

9-- एक महत्वपूर्ण विसंगति की ओर अब लिखित रूप में ध्यान आकृष्ट करना आवश्यक होगा। प्रार्थी को आईपीएस के सीनियर स्केल में सितम्बर 83 से 1200-1700 रु का अधिकतम वेतन 1700/- रु प्राप्त हो रहा है। इस बीच

बढ़े हुये वेतनक्रम में प्राथी का वेतन न तो उ०प्र० पुलिस सेवा में न भारतीय पुलिस सेवा में नियमानुसार निर्धारित नहीं किया गया है । माननीय लोक सेवा अधिकरण तथा उच्च न्यायालय द्वारा पारित किये गये निर्णय और उक्त निर्णय का समादर किये जाने के संकल्प के परिपेक्ष्य में प्राथी का तदनुसार वेतन निर्धारित किया जाय ।

विधि सम्मत अग्रेत्तर कार्यवाही किये जाने हेतु प्राथी सदैव आभारी रहेगा ।

भवदीय,

॥देवेन्द्र कुमार तिवारी॥
पुलिस अधीक्षक।

पत्रांक तथा दिनांक उपरोक्तानुसार ।

आदर्णीय महोदय,

उपरोक्त की प्रतिलिपि पुलिस उप महा निरीक्षक प्रशासन श्री रमेश चन्द्र दीक्षित, उ०प्र० के पत्र संख्या:डी०जी०-एसीआर-35191-79/89 दिनांक 25-10-1989 के सन्दर्भ में इस निवेदन के साथ प्रेषित कर रहा हूँ कि कृपया आलोच्य प्रकरण में आप अपने स्तर से न्याय दिलाने में सहायता करने की महती कृपा करें । उक्त पत्र की द्वितीय प्रति निर्देशानुसार हस्ताक्षर करके वापस भेज रहा हूँ ।

संलग्नक:- उपरोक्तानुसार ।

भवदीय,

श्री जैकब जैकबान,
पुलिस महा निरीक्षक, कार्मिक,
डी०जी० कार्यालय, तिलक मार्ग,
लखनऊ ।

॥देवेन्द्र कुमार तिवारी॥

Kesava

HTK

(A136)

102

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
(CIRCUIT BENCH) LUCKNOW.

C.A.No.

(L)

Between

Devendra Kumar Tewari

... Applicant

Versus

Union of India and others

... Respondents

ENCLOSURE No. A-9

रजिस्टर्ड/गोपनीय

अ०शा०पत्र संख्या 1-सी-76/30111

सहायक पुलिस महा निरीक्षक

उत्तर प्रदेश

दिनांक: लखनऊ सितम्बर 3, 1977

प्रिय तिवारी,

कृपया सूक्त श्याम लाल जायसवाल निवासी थाना
सुजानगंज, जनपद जौनपुर का दिनांक 6-4-75 को कुए से शव बरामद
होने विषयक अपने अ०शा०पत्र संख्या पर/डीकेटी-जौनपुर-75 दिनांक
जून 27/29, 1977 का अवलोकन करें।

उपरोक्त सम्बन्ध में दी गई चेतावनी आपकी व्यक्तिगत
नशती से हटा दी गई है।

भवदीय,

ह०/-

श्री वि०म० त्रिपाठी

3-9-77

श्री डी०के० तिवारी,

पुलिस अधीक्षक,
आजमगढ़।

Attested
Im A. Ch.

msu

A137

Before the Central Administrative Tribunal,
Circuit Bench, Lucknow.

_____ M P. No. 630/90(L)

O.A. No. 112/90(L)

D.K. Tewari

---- FF 29-11-90 Applicant

Versus

Union of India and other---

Respondents.

APPLICATION FOR CONDONATION OF DELAY

The abovenamed opp. party No. 3 respectfully
begs to state as under:-

That for the facts and reasons stated in the
accompanying Counter affidavit, Counter Affidavit
could not be filed within time therefore it is
respectfully prayed that the delay in filing Counter
Affidavit may be condoned and the attached Counter
Affidavit may be taken on record.

Lucknow.

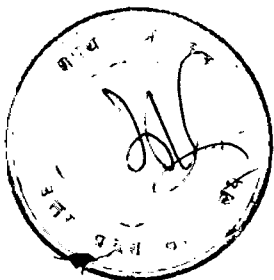
Dated: 11-10-90

22

Anoop Kumar
(Anoop Kumar)
Advocate

Counsel for opp. party No-3

? filed today
syu
22/10



A/38

Before the Central Administrative Tribunal,

Circuit Bench, Lucknow.

M.P. No. 631/90 (L)

O.A.No. 112/90 (L)

D.K. Tewari

- - - -

Applicant

Versus

Union of India and others

- - -

Respondents.

APPLICATION FOR VACATING STAY ORDER DATED
27.7.1990

The abovenamed opposite party No. (3) respectfully
begs to state as under:-

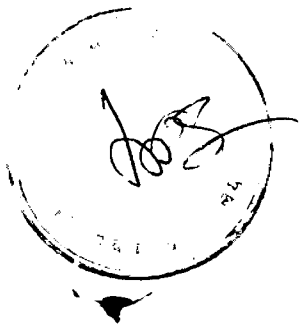
That for the facts and reasons stated in the
accompanying Counter Affidavit it is respectfully
prayed that in the ends of justice the stay order
27.7.1990 may kindly be vacated.

Lucknow.

Dated: 11/10/90
22

Anoop Kumar
(Anoop Kumar)
Advocate

Counsel for Opp.party No.-3



A139

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW.

O.A.No.112/90(L)

D.K. Tewari Applicant.

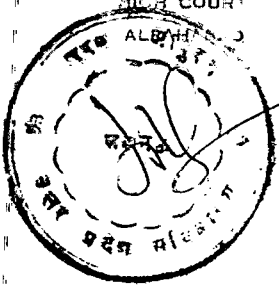
Versus

Union of India & Others Respondents.

1990
AFFIDAVIT

42

HIGH COURT
ALBANY, N.Y.



COUNTER AFFIDAVIT ON BEHALF OF STATE OF U.P.
OPP.PARTY NO.3 TO THE ORIGINAL APPLICATION OF
D.K.Tewari.

I, R.K.Singh aged about 29 years son of Sri Swami Prasad Singh presently posted as Joint Secretary, Home Department, Government of U.P., Lucknow do solemnly affirm and state on oath as under :-

1. That the deponent is posted as Joint Secretary, Home Department, Government of U.P., Lucknow and as such fully conversant with the facts of the case. The deponent has read the contents of original application of D.K.Tewari (hereinafter referred as - original application) and after fully understanding the same is filing this Counter Affidavit to controvert the same.
2. That the contents of paras 1 and 2 of the original application need no comments.
3. That in reply to the contents of para 3 of the original application it is stated that so far as the supersession of the applicant on 29.12.1976



.....2/-

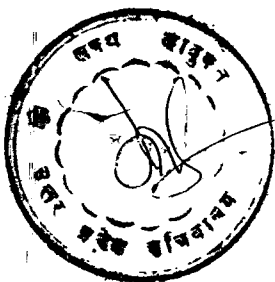
is concerned the same has already been challenged by the applicant before U.P. Public Service Tribunal and Hon'ble High Court and vide order dated 13.12.1988 passed by the Hon'ble High Court a review committee met on 21.11.1989 and found the applicant not suitable again. Now the applicant is estopped from raising the same issue again. It is further stated that it is wrong to say that the applicant was considered by the review committee in a biased, malafide and partisan manner. It is further stated that neither specific malafides or bias has been alleged nor the members of the review Selection Committee has been made parties. It is further stated that the contents of the order passed by Hon'ble U.P. Public Service Tribunal and Hon'ble Court will appear from the orders copies Annexure A-4, Annexure A-5 and Annexure A-6 to the original application itself.

4. That the contents of para 4 of the original application are denied and it is stated that the applicant had already challenged his supersession on 29.12.76 before U.P. Public Service Tribunal and Hon'ble High Court which has already been decided and the direction of the Hon'ble High Court vide order dated 13.12.88 has already been complied with therefore this claim petition challenging the same issue again is not maintainable.

5. That the contents of para 5 of the original application as written are not admitted and it is

stated that in compliance of the Hon'ble High Court's order dated 13.12.88 review Selection Committee met on 21.11.89 at Lucknow. The Selection Committee, as per direction of the Hon'ble High Court, vide order dated 13.12.88, considered the matter for inclusion of the petitioner in the Select List of 1976 with open mind and in accordance with law. It is specifically denied that the petitioner was not selected in utter disregard of the High Court's order dated on account of illegal, malafide and partisan considerations. It is further stated as the original application is not maintainable therefore no question as whether the original application is within limitation does not arise.

6. That the contents of para 6 (i) of the original application are not disputed.
7. That the reply to the contents of para 6 (ii) of the original application it is stated that the applicant was posted as Superintendent of Police simply on temporary and officiating capacity. The said posting was not the promotional posting and the same was only a stop gap arrangement. It is further stated that the said posting was due to administrative exigencies and non availability of cadre officers.
8. That in reply to the contents of para 6 (iii) of the original application it is stated that alleged entries has already been considered by the U.P. Public Service Tribunal and Hon'ble



High Court, and the directions given by the Hon'ble High Court vide order dated 13.12.88 has already been complied with and now the applicant is estopped from raising the same issue again.

9. That in reply to the contents of para 6 (iv) of the original application it is stated that the matter pertaining to Select List prepared ^{by} the Selection Committee held on 29.12.76 relating to the applicant has already been considered by the U.P. Public Service Tribunal and Hon'ble High Court, and the directions given by the Hon'ble High Court vide order dated 13.12.88 has already been complied with and now the applicant is estopped from raising the same issue again.
10. That the contents of para 6 (v) of the original application is of matters on record hence need no reply.
11. That in reply to the contents of para 6 (vi) of the original application it is stated that the allegation as alleged in the para under reply have already been considered by the U.P. Public Services Tribunal and Hon'ble High Court and now the applicant is estopped from raising the same issue again.
12. That in reply to the contents of para 6 (vii) of the original application it is stated that the contents of the order of the U.P. Public Services Tribunal dated 7.5.89 will appear from the order copy Annexure A-4 to the original application itself.



13. That in reply to the contents of para 6 (viii) of the original application need no comments.
14. That in reply to the contents of para 6 (ix) of the original application it is stated that the adverse entries as alleged in para under reply relate to the later years of the year of meeting of Selection Committee i.e. 1976 therefore they are not relevant for the purposes of this original application.
15. That the contents of para 6 (X) of the original application need no comment.
16. That the contents of para 6 (XI) of the original application as written are denied and it is stated that the contents of the judgement dated 13.12.88 passed by the Hon'ble High Court will appear from the judgement copy Annexure A-6 to the application itself.
17. That in reply to the contents of para 6 (XII) of the original application it is stated that the matter of supersession of the applicant in the year 1976 has already been considered by the Hon'ble High Court vide its order dated 13.12.88 and the direction given by the Hon'ble High Court has already been complied with and the review Selection Committee considered his case accordingly on 21.11.89.
18. That the contents of para 6 (XIII) of the original application are denied and it is stated that the applicant has wrongly mentioned the order no.



as 2628. It should be 2620 as evident from the copy of the order, copy Annexure a-7 to the original application itself. It is further stated that the order referred in para under reply was passed in compliance of the order of the Hon'ble High Court dated 13.12.1988. It is further stated that the order dated 2.4.85 passed by the Hon'ble U.P. Public Services Tribunal has already been complied with on 7.6.85. The photocopy of the said order dated 7.6.85 is being filed herewith as Annexure No. CA 1. It is further stated that the order of the Hon'ble High Court has been complied with at the earliest possible time by constituting review Committee though there was no such order and the order was to consider the case of the applicant for 1976 in the next meeting of the Selection Committee.

19. That in reply to the contents of para 6(XIV) of the original application it is stated that the no copy of the alleged written statement has been filed and the answering respondents reserve their right to reply the same when the same will be filed. It is further stated that the order dated 20.9.89 was passed in compliance of the order of the Hon'ble High Court dated 13.12.1988.

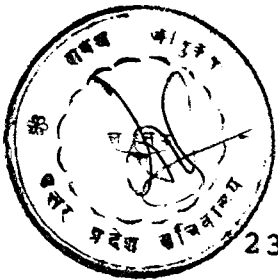
20. That the contents of para 6(XV) of the original application are denied and it is stated that the order of the U.P. Public Services Tribunal dated



Amv

2.4.85 has already been complied with vide order dated 7.6.85(Copy Annexure CA-1)

21. That the contents of para 6(XVI) of the original application are denied and it is stated that the order dated 20-9-89 was passed in accordance with the directions of the Hon'ble High Court vide order dated 13.12.88. It is further stated that the entry for the year 1977-78 is not relevant for the purposes of the Select List of 1976.
22. That the contents of para 6(XVII) of the original application as written are denied as the same are based on presumption and surmises and it is stated that prior to the representation dated 15.2.1990 the review Selection Committee had already reviewed the case of the applicant on 21.11.1989 in accordance with order dated 13.12.1988 passed by Hon'ble High Court. It is further stated that it is wrong to say that there is any malice on the part of the opp. parties 2 and 4. It is further stated that neither specific allegation of malafide and partisan action has been alleged against any member of the Selection Committee nor they are made party.



23.

- That the contents of para 6(XVIII) of the original application are specifically denied and it is stated that Selection Committee is a very high powered Committee consisting very high ranking officers of Government of India, Union Public Services Commission and that of State Government. It is further stated that the case of the applicant was reviewed by the

review Selection Committee on 21.11.89 in accordance with the orders of the Hon'ble High Court dated 13.11.88. It is further stated that ~~it~~ is wrong to say that the applicant was again superseeded on account of highly biased, subjective, malicious and partisan consideration.

24. That in reply to the contents of para 7 of the original application it ~~is~~ is stated that the relief sought by the applicant has already been considered by the U.P. Public Service Tribunal and High Court and in compliance of the order dated 13.12.88 passed by the Hon'ble High Court the case of the applicant has already been reviewed by the review Selection Committee on 21.11.89 in accordance with the law and now the applicant is estopped from claiming the same relief again. (It is further stated that the grounds No. (i) to (xxi) taken in the para under reply are not tenable in the eyes of law and the original application is liable to be dismissed with cost)

25. That the contents of para 8 of the original application are denied and it is stated that in the facts and circumstances of the case the applicant is not entitled to get any interim relief sought. It is pertinent to mention here that applicant has yet not been promoted to the I.P.S. Cadre therefore the applicant has no locus standi to get the interim relief in respect of the next higher promotional post of D.I.C. and as such the interim order granted by the Hon'ble Tribunal on 27.7.90 is liable to be vacated or modified.



26. That the contents of paras 9 to 13 of the original application need no comment.
27. That it may be pertinent to mention here that after the year 1976 the applicant has been considered everytime in the subsequent meeting of Selection Committee but he was not found suitable every time for inclusion in the I.B.S.Cadre.
28. That the original application is barred by the principles of resjudicata hence on this ground also the present original application is liable to be rejected.
29. That in view of the facts and reasons stated in this Counter Affidavit and as well as in Short Counter Affidavit filed earlier the claim petition is liable to be rejected with cost.
30. That due to unavoidable administrative reasons the Counter Affidavit could not be filed within the time allowed. The delay is bonafide and is liable to be condoned.



जमिंदारी के कानून - कानून
कानून विभाग में जोर देकर
विषय बहुत कमजोर है
उपरोक्त एवं
अनुमान अधिकारी,

VERIFICATION

अध्याय अनुभाग - १, (देखें) above named Deponent do hereby verify that the contents of this Counter Affidavit from paras 1 to 27 & 30 are true to my own knowledge on the basis of records and bracketted portion of para 24, para 28 & 29 are believed by me to be true on legal advice. No part of it is false and nothing material has been concealed. So help me God.

LUCKNOW:

DATED: OCTOBER 10TH, 1990.

DEPONENT

(A140)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A.No.112/90 (L)

D.K.Tewari Applicant

Vs.

Union of India & Others Opposite Parties

OBJECTION TO THE ADMISSION OF ORIGINAL APPLICATION
FOR THE INTERIM RELIEF.

The above named respondent no.3 & 4
respectfully beg to state as under -

That for the facts and reasons stated in
the accompanying short counter affidavit the
admission of the original application & prayer
of interim relief is opposed and it is respectfully
prayed that the same may be rejected with cost.

LUCKNOW

DATED: JULY 17, 1990

Anoop Kumar
ANOOP KUMAR
Advocate
Counsel for the
Opposite Party 3 & 4

(A149)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, AT LUCKNOW.

O.A.No.112 of 1990 (L)

D.K.Tewari Applicant.

Vs.

Union of India & others Respondent.

SHORT COUNTER AFFIDAVIT ON BEHALF OF RES.No.3 & 4

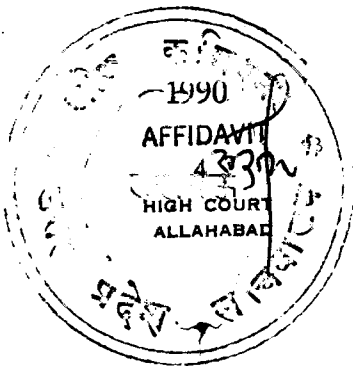
I, Rohit Nandan S/O Sri Yashoda Nandan aged about 33 years, presently posted as Joint Secretary, Home Department, U.P. Government, Lucknow do hereby solemnly affirm on oath as under :-

1- That the above named deponent is presently posted as Joint Secretary, Home Department, U.P. Govt., Lucknow and as such is fully conversant with the facts of the case. The deponent has read the contents of the original application & after fully understanding the same is filing this short counter affidavit in compliance of Hon'ble Tribunal's order dated 3.5.90 to oppose the admission & interim relief matter.

2- That the above O.A. has been preferred before the Hon'ble Tribunal for admission and the Hon'ble Tribunal vide its order dated 3.5.90 has directed to show cause why this application be not admitted and it has also been directed in the aforesaid order to elucidate in particular the action taken after the Judgement dated 13.12.88 of the Hon'ble High Court (Annexure A-6 to the application) and also to produce the Selection Committee proceeding of 21.11.1989.

3- That the proceedings of the Selection Committee dated 21.11.89 are being ~~put~~ put up for the perusal

.....2/-



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of the Hon'ble Court separately in a sealed cover and the Hon'ble Tribunal is requested to kindly peruse the same in camera and return the same after perusal as it is a secret document and taking it on record will be very much prejudicial to the public interest.

4- That precisely following three directions were given in the order dated 13.12.88 of the Hon'ble High Court

- (i) The following portions of the annual confidential remarks awarded to the petitioner, Sri D.K.Tewari for the year 1974-75 by the Commissioner, Varanasi Division be expunged-

"he remained popular with only some sections of political leaders" and the sentence "this obviously adversely affected the district administration now and then"

- (ii) The following further portions of the annual confidential remarks recorded in respect of the petitioner of the year 1975-76 be expunged-

(a) From the remarks recorded by the Commissioner, Varanasi Division, Varanasi the portion "which reflected in the administration now and then"

(b) The portion "and both were to blame for this" recorded by the Inspector General of Police.

(c) The entry given by the Home Secretary "An average officer. Rest" is expunged

- (iii) A decision to supercede the petitioner in the select list prepared for the year 1976

on the basis of the selection committee held on 29.12.76 is quashed and set aside. The opposite party no.1 i.e. State of U.P. will again



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(A51)

place the case of the petitioner for consideration at the next meeting of the selection committee constituted for the purpose of preparing the select list for promotion to the IPS and the selection committee shall consider the case of the petitioner once again for the select list of 1976. In case he is found fit for placement on probation, his promotion shall be made in accordance with the Law.

There will be no order as to costs.

5- That in the light of the orders of the Hon'ble High Court the following portions of the adverse remarks awarded to Sri D.K.Tewari were expunged vide U.P.Govt., Home Department's Order No.2628/VIII-PS-2-545(2)/85, dated 20.9.89-

- 1974-75 (a) he remained popular with only some sections of political leaders'....'This obviously adversely affected the District Administration now and then'
- 1975-76 (b) 'which reflected in the administration now and then '
- 1975-76 (c) ' and both were to blame for this'
- 1975-76 (d) ' an average officer. Rest'

6- That in respect of the decision for the placement of the case of the petitioner before the selection committee once again and getting the name of the petitioner considered for his promotion to the Indian Police Service for the select list of 1976, State Govt. initiated action to hold a meeting of the selection committee to review the case of the petitioner had been placed ³⁰³ before the selection committee headed by a senior member of the Union Public Service Commission in its meeting dated 21.11.1989. The selection committee noted that the remarks in the CR of Sri Tewari for 1974-75 and 1975-76 had been



hmsa

expunged by the State Govt. as per orders of the Hon'ble High Court and the Public Service Tribunal. The selection committee reconsidered and re-examined the records of Sri D.K.Tewari after ignoring the expunged adverse remarks in ACRs of the year 1974-75 and 1975-76 and come to the conclusion that Sri Tewari was not suitable for inclusion in the select list 1976 on the basis of over all performances.

7- That in view of the decision of the Review selection committee, given on 21.11.1989 the petitioner has not been found fit for inclusion in the select list of 1976 in accordance with Law.

8- That the petitioner had filed the claim petition earlier for inclusion in the select list of 1976 which was partly allowed and the answering respondent were directed to consider his case. In compliance of the orders of the Public Service Tribunal and Hon'ble High Court the case of the claimant was re-considered by the review Selection Committee as per directions of Hon'ble High Court and the claimant is again found unfit. (Now the claimant is estopped from raising the same issue again)

9- That in view of the action taken as per Hon'ble High Court's order dated 13.12.88 the application submitted by the petitioner is liable to be rejected with cost.

VERIFICATION

I, the above named deponent do hereby verify that the contents of this counter affidavit from paras

1 to 8, except bracketed portion, are true to my own knowledge on the basis of records and bracketed portion of para 8 & 9 are believed by me to be true on legal advice. No part of it ^{is} false and nothing material has been concealed. ^{is} So help me God.

LUCKNOW

DEPONENT

DATED:

I, Sri Narain.....do hereby declare that the person making this affidavit and alleging himself to be Sri Rohit Nandan is the person who is known to me from the perusal of record produced before me in this case.

Solemnly affirmed before me on the 23rd day of July 1990 at 2.30 a.m./p.m. who has been identified by the aforesaid.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained by me.



Sl. No. 46

A154

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, CIRCUIT BENCH, LUCKNOW.

M.P.No. 678/F.F. 19.11.90
O.A.No.112/90(L) of 1990.

Between

Devendra Kumar Tewari, aged about 54 years, s/o
Late Sri B.R. Tewari, Resident of B-405, Indira
Nagar, Lucknow.

...Applicant

Versus

Union of India, through, The Secretary, Ministry
of Home Affairs, Govt. of India, New Delhi and
three others.

...Respondents.

APPLICATION FOR INSPECTION OF REVIEW SELECTION
COMMITTEE PROCEEDINGS DATED 21.11.89 FILED BY
RESPONDENT NO.3 and 4 UNDER SEALED COVER.

The applicant most humbly submits

as under:-

1. That in the above noted original
application the applicant had challenged his
non-selection to the I.P.S. in the review
Selection Committee Proceedings dated 21.11.89
which was summoned by this Honourable Tribunal
vide order dated 3.5.1990 and the same has
been filed by the opposite respondents No.
3 and 4 under sealed cover treating it to be
a privileged document as alleged in para 3
of the short counter affidavit dated July 26
1990 filed by respondent No.3 and 4.

2. That it is the settled law that
Minutes of the Selection Committee is not
privileged document and a person/Govt. emp
fighting against the Government has got
right to see the documents against him
are in possession of the Government; the
refusal to disclose the material docu

Filed today
19.11.90

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A155

- 2 -

makes it difficult or impossible for the subject (employee) to make good his allegations against the Government.

3. That in order to substantiate his allegations, the applicant needs inspection of the Review Selection Committee proceeding dated 21.11.1989 which is liable to be allowed in the interest of justice rejecting the Claim of Privilege under Section 123 and 124, Indian Evidence Act.

P R A Y E R.

WHEREFORE it is most humbly prayed that for the facts and reasons mentioned above and in the interest of justice the applicant and his counsel may be allowed to inspect the Review Selection Committee Proceedings dated 21.11.1989 from the record of the Tribunal or from the custody of the respondent No.3 and 4.

Vishwa Mohini
(Counsel for the applicant)

Lucknow:

Dated: November 10, 1990.

~~A156~~

A156

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD, CIRCUIT, LUCKNOW.

O.A.No.112/90(L) of 1990.

Between

Devendra Kumar Tewari, aged about 54 years, s/o Late
Sri B.R.Tewari, Resident of B-405, Indira Nagar,
Lucknow.

...Applicant

Versus

Union of India, Through, The Secretary Ministry
of Home Affairs, Govt. of India, New Delhi and
three others.

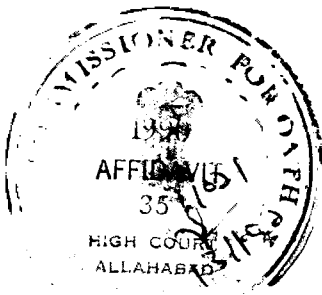
...Respondents.

REJOINDER AFFIDAVIT TO THE COUNTER AFFIDAVIT OF
RESPONDENT NO.2

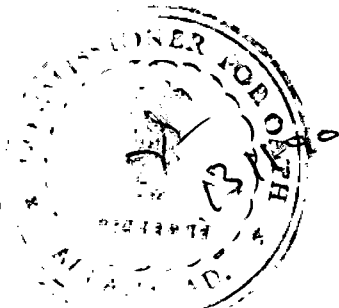
I, Devendra Kumar Tewari, aged
about 54 years, Resident of B-
405, Indira Nagar, Lucknow do
hereby solemnly affirm and state
on oath as under:-

1) That the deponent is the applicant in
the O.A.No.112/90, and is fully conversant with the
facts of the case and has fully understood the contents
of the counter affidavit submitted by the Respondent
No.2.

2) Para 1 to 4:- These paras of the afore-
said counter affidavit need no comments.

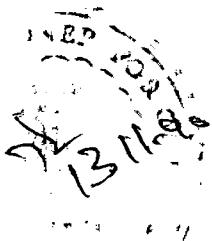


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- 2 -

3) Para 5 :- Denied as alleged. The contents of Para 6(iv) of the original application are reiterated as true. As a matter of fact and settled law on the point, reasons recorded by the Selection Committee are the link between the material considered by the Committee and the decision taken thereon. It is because of this position that the Honourable J.P. Services Tribunal observed, "it is manifest from the preceding paragraph that the petitioner's record of service was perused by the Selection Committee on 29.12.76 before the decision was taken inter-alia to supersede him by preferring certain officers junior to him in the state service, and the main, if not the only, reason for doing so was petitioner's failure to work harmoniously with the Collector and Magistrate of the district and to attend monthly meetings called by the latter, an attitude which adversely affected the district administration. There is no dispute about the fact that the annual remarks on which the rationale behind the supersession was based had not been communicated to the petitioner at the time of the selection committee meeting. It is further beyond doubt that significant portions of these hitherto uncommunicated remarks were expunged under the orders of the opposite party No.1, the Government of J.P. subsequent to petitioner's preferring a representation.


W. S. S.

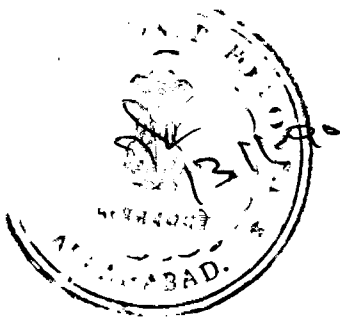
- 3 -

and then a memorial" . Hence the reply furnished by respondent No.2 is contrary to legal position, concocted and untenable.

4) Para-6:- No reply needed.

5) Para 7:- The narrative part of this para is admitted but the last lines beginning from the words "The Selection Committee examined" and ending with the words "by the committee in its proceedings"., are denied and not admitted. The Honourable High Court had dismissed the Writ Petition No.3747 of 1985 with certain significant and categorical observations in the judgement dated 13.12.88. The respondents have failed to consider these material observations while considering the case of the applicant in the review selection committee on 21.11.89. Like wise the judgement of the Honourable U.P.State Public Services Tribunal dated 2. .1985 in Claim Petition No.104/F/V/1983 was not taken into consideration and only the judgement of the Honourable U.P.State Public Services Tribunal dated 7.5.1984 passed in claim Petition No.47/1/V/ 1981 appears to have been considered to some extent.

The relevant observations of the Honourable High Court are, already, mentioned vide para 6(XI) of the original application. Besides,



12/12/89

the case was not reviewed on 21.11.89 in accordance with the same yard-stick which existed in the year 1976 and was applied in case of batch-mates of the applicant.

The ground of non-selection as mentioned in this para 'not suitable' is vague and it is no reason in the eyes of law. Under the rules applicable in 1976, the Selection Committee was required to accord detailed reasons of deponent's non-selection. Hence the whole selection procedure adopted by the Review-Selection Committee on 21.11.89 is vitiated and deserves to be quashed.

6) Para-8:- Need no reply.

7) Para 9:- In reply to this para the contents of para 5(supra) are reiterated as true.

8) Paras 10 -15:- Denied. The grounds furnished vide para 7(1) to (xiv) are reaffirmed as true. However, these grounds may be elaborated at the time of arguments.

9) Para 16:- The legal provision quoted vide this para is not disputed. Rest is denied and the ground of discrimination as alleged in para(xiv) will be elaborated at the stage of arguments.

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(A160)

- 5 -

10) Para 17:- Denied. Its reply may kindly be seen vide contents of para 5 of this rejoinder affidavit.

11) Para 18:- Denied. The grounds mentioned in para 7(XVI and XIX) are correct as the applicant has been advised to state.

12) Para-19:- Denied. The question as to whether a person is entitled to induction to the IPS only on the basis of continuous officiation is a legal one and the applicant is advised to state that this question will be argued by his counsel at the time of arguments.

13) Paras 20 and 21:- Denied in view of the averments made in the original application and further reaffirmed by this rejoinder affidavit. Accordingly the applicant is entitled fully to the reliefs claimed.

Lucknow:

M. S. Suman
(Applicant)

Dated: 13-11-90

13/11/90

VERIFICATION

I, Devenara Kumar Tewari, aged about 54 years, s/o Late Sri B.R. Tewari, working as Supt. of Police, Resident of B-405, Indira Nagar, Lucknow, do hereby verify that the contents of Para 1 to 13 are true to my personal knowledge and contents of para 1 to ~~13~~ nil are true on the basis of legal

M. S. Suman

(A16)

- 6 -

advice of my counsel. So help me God.

Signed and verified this day of
1990 at Lucknow.

Vishma Mohin
(Applicant)

I identify the deponent who has
signed before me.

Vishma Mohin
(Advocate)

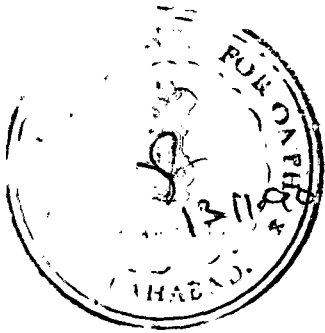
Solemnly affirmed before me on 13.11.90 at 9.30
A.M. by the deponent Surender Kumar Gauri
who is identified by Smt Vishwamini Advait
a have satisfied myself by exami-
ning the deponent that he understands the
contents of the affidavit which has been read over
and explained by me.

Smt Vishwamini Advait

Authorised by

38102f

Dat. 13.11.90



AK2

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD, CIRCUIT BENCH, LUCKNOW.

O.A.No.112/90 (L) of 1990

Between

Devendra Kumar Tewari, aged about 54 years, S/O Late
Sri B.R.Tewari, Resident of B-405, Indira Nagar,
Lucknow.

...Applicant

Versus

The Union of India, through, The Secretary, Ministry of
Home Affairs, Govt. of India, New Delhi and three
others.

...Respondents.

REJOINDER AFFIDAVIT TO THE COUNTER AFFIDAVIT OF
RESPONDENT NO.3, THE STATE OF J.P.

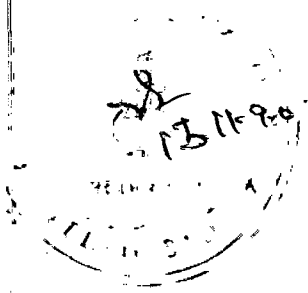
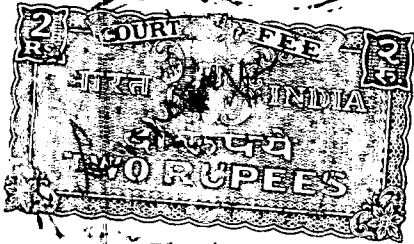
I, Devendra Kumar Tewari, aged
about 54 years, Resident of B-405,
Indira, Lucknow do hereby solemnly
affirm and state on oath as under:-

1) That the deponent is the applicant in
the above noted case and hence fully acquainted
with the facts as deposed here under after carefully
reading and understanding the contents of the
counter affidavit filed by the opposite Party No.3.

2) Para 1 & 2:- That the paras 1 & 2 of
the counter affidavit need no reply.

3) Para 3:- That the contents of this
para are entirely as wrong. The cause of action for

1990
AFFIDAVIT
36
HIGH COURT
ALLAHABAD



- 2 -

filing this application accrued to the applicant after 21.11.1989 when the review-selection committee did not select him for IPS. The principle of estoppel will not apply. The remaining portion of this para also is denied. It is not necessary to implead all the members of the selection committee, whose names are kept a closely guarded secret by the Government, as party. The malafide and bias in this case will be evident from the result of the selection committee meeting in violation of the settled law on the subject and despite these minutes having been expressly summoned by this Honorable Tribunal. This malicious act is further corroborated by ignoring the operative part of the judgement of the U.P. Public Services Tribunal dated 2.1.1985 and significant observations made by the Honorable High Court in their order dated 13.12.88 with reference to writ petition No.3747 of 1985, as submitted vide point IX & XI under caption 'Facts of the case' in the U.A.

4) Para 4:- Denied as wrong and the contents of para 4 of the original application are affirmed. In fact the U.P.No.3, the State of U.P.had filed Writ Petition No.4236 of 1984 before the Honorable High Court challenging the judgement of the U.P. Public Services Tribunal and the applicant had simply prayed against the remaining adverse portion in the

13/11/89

11/11/89

- 3 -

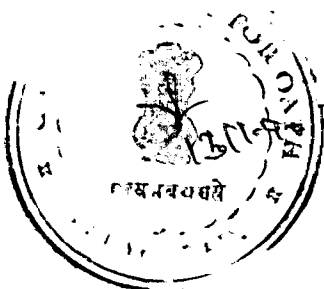
Public Services Tribunal judgement and for the issuance of mandamus as enumerated vice point VII of para 6 of the C.A.

5) Para 5:- Denied as wrong and the contents of para 5 are reaffirmed as true. The applicant begs to invite the kind attention of this Honourable Tribunal towards point No.XII to XVIII so as to call off the patently wrong version furnished against para 5 by the U.P.No.3.

6) Para 6:- No reply needed in view of the admission by the opposite party No.3 regarding averments made vice para 6 of the C.A.

7) Para 7:- Admitted to the extent that the so-called stop-gap arrangement/officiating promotion made due to administrative exigency continues till date with effect from September 1973 and the applicant was allowed to hold state level posting during this period such as joint Director, U.P.Fire Services, S.P.I/C Food Cell, Civil and Supplies Deptt, Uttar Pradesh and Supdt. of Police, U.P.Special Intelligence Directorate, Annexy Shahan, U.P. Secretariat, Lucknow.

8) Paras 8,9 and 11:- The plea of estoppel is denied. The applicant is putting relevant facts



14/11/74

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of the dispute in brief which he is required to do under the rules of the Central Administrative Tribunal Act, 1935.

9) Para 10:- Admitted.

10) Para 12:- Admitted but it is significant to point out that entry for the period 1.1.75 to 19.7.75 relating to District Jampur was communicated to the applicant vide enclosure No.4-3 filed with O.A. and the entry for the period 20.7.75 to 31.3.76 relating to District Saharapur, District-Division for the financial year 1975-76 ^{✓ was not ✓} communicated against the injunction of the G.O. on the subject, evidently ~~is~~ due to malice.

11) Para 13:- That in reply to this para, the contents of para 6 (VIII) of the original Application are reiterated. This a section lines corroboration from the Writ Petition No.4236 of 1984 which had been filed by C.P.No.3, the State of U.P. and the C.P.No.4, the D.G.P. [✓] before the Honourable High-Court.

12) Para 14:- Denied as wrong and misconceived. The adverse entries mentioned in para 6 (IX) were challenged before the U.P. Public Services Tribunal vide Claim petition No.47/I/V of 1981 and the adverse remarks for the year 1976-77 and 1977-78 were challenged

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vide Claim Petition No.104/F/V of 1983. Naturally, The Selection Committee Meeting took place on 29.12.76 and the unwarranted entry quashed later, awarded by the then IGP, Sri Shrawan Tandon, who was also an ex-officio member of the said selection committee dated 29.12.76, was valid with effect from 19.7.76 to 29.12.76, the period relating to applicant's tenure as Supdt. of Police, District Saharanpur and was taken into consideration. This adverse entry of 1976-77 was quashed in toto by the Honourable J.P.State Services Tribunal on 2.4.1985. This fact is relevant in this case because it was used as a basis for non-selection of the applicant in the years after 29.12.76 and particularly on 21.11.89. Manifestly the expunction of adverse entry for the year 1976-77 by the J.P.Public Services Tribunal has not been communicated to the applicant by the C.P.No.3 till date notwithstanding a copy of the letter dated 7.6.1985 which is addressed to D-G.P., who has just chosen not to furnish comments on this point or, for that reason, on any other para of the C.A.

13) Para 15:- Needs no comments because the purport of this para is quite obvious.

14) Para 16:- In reply to this para it may be submitted that the judgement dated 13.12.1976

appended vide annexure A-6 to the O.A. will itself make the contents of 6(XI) of the original application quite evident. Hence no further reply is being given.

15) Para 17:- Denied as wrong. The judgement of the Honourable High Court confirming the verdict of the Honourable U.P. Public Services Tribunal with slight modification regarding writ petition No. 4236 of 1984 only has not been complied with either in spirit or substance and the applicant has been superseded in the Review Selection Committee Meeting held on 21.11.1989. With this reply the contents of para 6(XII) of the original application are reiterated as true.

16) Para 18:- In reply to this para it may be submitted that the order No. 2620 has been typed wrongly as 2628, inadvertently. Incidentally, the O.P. No. 3, The State of U.P. have committed even a graver lapse on page 8 of the counter affidavit and have given the date of the order of the Honourable High Court as 13.11.88 where as it ought to be 13.12.88. The letter No. 2620 dated 20.9.1989 has been annexed vide enclosure No. A-7. It is submitted categorically that the applicant was never communicated or informed about the said letter of the



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Joint Secretary contained vide enclosure CA I dated 7.6.1985 although the opposite Party No.3 was required in all instances to inform the applicant about the verdict of the Honourable J.P.Public Services Tribunal's judgement dated 2.4.85 in the same manner as was done subsequently vide enclosure No.A-7, appended to C.A.

17) Para 19:- That in reply to this para, the applicant respectfully invites the attention of this Honourable Tribunal towards the finding of the Honourable J.P.State Services Tribunal vide page 18 of their judgement annexed as enclosure No.A-4 to the C.A. The State Services Tribunal held "...The petitioner has countered this in his rejoinder affidavit by pointing out that the adverse entry for 1961-62 had been expunged in November, 1963 and he has filed a copy of the relevant Government communication at annexure 1..." Now asking for the same written communication is redundant. The contents of para 6(XIV) are reiterated.

18) Para 20:- The contents of this para are denied as wrong and that of the para 6(XV) of the C.A. are reiterated as true. Furnishing order dated 7.6.1985 (Annexure A-1) by O.P.No.3, now, does not change its malicious nature as pointed out in the

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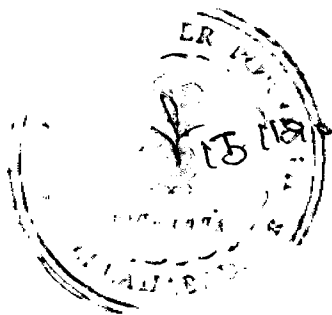
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- 8 -

by the Honourable J.P. Services Tribunal vide pages 20 to 23 of their judgement dated 7.5.1986, annexed as enclosure no.A-4 to the O.A. The contents of para 6(xv) of the O.A. are, therefore, evicent.

19) Para 21:- The contents of para 6(xvi) are reiterated and it is submitted that the entry of 1977-78 is relevant to the selection of the applicant into IPS after 29.12.1976 and particularly when the opposite parties convened a Review Selection Committee meeting on 21.11.1989, albeit, solely with a view to claim before this august Tribunal that the compliance of the order of the Honourable High Court dated 13.12.88 has been made.

20) Para 22:- The contents of para 22 are denied as wrong and that of para 6 (xii) of the O.A. are reiterated to the extent that the applicant has submitted applications dated 19.1.1989, 12.5.1989, 16.5.89 prior to last application dated 15.2.90 and the said Review Selection Committee was convened on 21.11.1989. It is further note-worthy that the applicant met personally C.P.No.3, the then Home Secretary Shri S.K.Tripathi and C.P.No.4 as enumerated vide page 1 of enclosure no.A-8 annexed along with the O.A. It is now a deliberate and malicious act on the part of C.P.No.3 to feign ^{✓ ignorance ✓} about the subject



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matter and references which are adduced on the 1st page of enclosure No.A-8.

21) Para-23:- That the contents of para 23 are denied as wrong and the contents of para 6(XVIII) are reiterated as true. It is earnestly submitted that the rank of the members of the Selection Committee which met on 29.12.1976 was identical and their verdict of non-selection of the applicant on the basis of uncommunicated and, subsequently, expunged entries, was held violative of the principles of Natural Justice and therefore, was quashed and set aside by the Honourable J.P.State Services Tribunal vide page 23 of the judgement dated 7.5.1984 and the Honourable High Court confirmed this vide judgement dated 13.12.1988. The reconsideration/ Review of the case by high ranking officers of the Govt. is no criterion of selection being held in an unbiased and honest manner as has been observed by the Honourable Supreme Court in the case of R.S.D. Vs.Union of India.

22) Para 24:- Denied as wrong and in its reply the contents of para 7(legal grounds of relief(S)numbered 1 to XXI) are reiterated as true. The applicant begs to invite particular attention of this Tribunal to number XX of para 7 and asserts ^{✓ that the ✓} the applicant is being put to hardship and pecuniary

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26) Para 28:- Denied. The plea of Res-Judicata taken by O.P.No.3 betrays untenability and does not conform to section 11 of the Civil Procedure Code. The following conditions must be proved before the plea of Res-judicata is taken.

(1) That the litigating parties must be the same;

(2) That the subject matter of the suit also must be identical;

(3) That the matter must be finally decided between the parties; and

(4) That the suit must be decided by a court of competent jurisdiction.

27) Para 29:- Denied. This counter affidavit and the short counter affidavit (which is replied hereunder) fail to controvert substantially the facts and grounds raised by the applicant in the original application and the enclosure Nos.1 to 9 appended therewith. Hence the original application deserves to be allowed and the applicant inducted into I.P.S. with effect from 29.12.1976 along with his batch-mates.

28) Para 30:- Denied. It is simply a concocted reason due to delay of the opposite Party No.3 to file the counter affidavit within stipulated time. Such delays have been reported to, and to

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perpetuate malice and, even, contempt of the court.
The following one illustration will suffice.

The applicant was threatened for having facilitated the J.P.State Services Tribunal during the course of justice by submitting the true copies of certain documents, the factum of which had been denied, by the State of J.P., C.P.No.3 and the DGP, C.P.No.4 during the course of their joint counter affidavit. Applicant's explanation was called vide letter No.FSHQ-GA(1)-82, dated February 16, 1982 by the then DIG, J.P.Fire Service and, subsequently, vide D.C.letter No.I-35(17)77, dated, Lucknow:March. 22, 1982 by the then DIG(Administration)on the behalf of C.P.No.3, the State of J.P., as would be evident from the perusal of the contents of the letter dated 22.3.1982. The applicant submitted detailed explanation on 27.3.82 but the final decision has been kept pending and the subject matter of these two letters has been, reportedly, used in a tainted manner against the applicant by opposite parties after 1976 onwards and, also, on 21.11.39 when the Review Select Committee met.

True copies of these two letters are being enclosed with this rejoinder counter affidavit as annexure No.A-1 and A-2 to bring home the gravity of malice and utter disregard to the dignity of the



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loss after he reached saturation point of Rs.1700/- in the old scale of senior IPS despite settled law enumerated vide AIR 1990 Supreme Court 371 (Writ Petitions Nos.100 and 1078 D-15.12.1989, Bhagwati Prasad Versus Delhi State Mineral Department Corporation and 1989 Supp(2) Supreme Court cases 301, Randhira Singh and others versus Board of School Education, Haryana. There is no question of estoppel as submitted in the preceding paragraphs.

23) Para 25:- Denied. The applicant is fully entitled for the interim relief prayed for and the same has been granted by this Honourable Tribunal after hearing both the parties. There is no question of modification or vacation of the interim order granted by this Honourable Tribunal.

24) Para 26:- No reply is needed in view of the admission by O.P.No.3 of the paras 9 to 13 of the original application.

25) Para 27:- Denied as apparently wrong. This Honourable Tribunal has recently held that the Selection Committee meeting was not held every year as per rules. That the applicant was not considered in a fair manner and according to the procedure and criterion as it existed on 29.12.1976.

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- 11 -

26) Para 28:- Denied. The plea of Res-Judicata taken by O.P.No.3 betrays untenability and does not conform to section 11 of the Civil Procedure Code. The following conditions must be proved before the plea of Res-judicata is taken.

(1) That the litigating parties must be the same;

(2) That the subject matter of the suit also must be identical;

(3) That the matter must be finally decided between the parties; and

(4) That the suit must be decided by a court of competent jurisdiction.

27) Para 29:- Denied. This counter affidavit and the short counter affidavit (which is replied hereunder) fail to controvert substantially the facts and grounds raised by the applicant in the original application and the enclosure Nos.1 to 9 appended therewith. Hence the original application deserves to be allowed and the applicant inducted into I.P.S. with effect from 29.12.1976 along with his batch-mates.

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13/11/90

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The following one illustration will suffice.

The applicant was threatened for having facilitated the J.P.State Services Tribunal during the course of justice by submitting the true copies of certain documents, the factum of which had been denied, by the State of U.P., C.P.No.3 and the DGP, C.P.No.4 during the course of their joint counter affidavit. Applicant's explanation was called vide letter No.FSIJ-GA(1)-82, dated February 16, 1982 by the then DIG, J.P.Fire Service and, subsequently, vide D.C.letter No.I-35(17)77, dated, Lucknow: March 22, 1982 by the then DIG(Administration) on the behalf of C.P. No.3, the State of U.P., as would be evident from the perusal of the contents of the letter dated 22.3.1982. The applicant submitted detailed explanation on 27.3.82 but the final decision has been kept pending and the subject matter of these two letters has been, reportedly, used in a tainted manner against the applicant by opposite parties after 1976 onwards and, also, on 21.11.89 when the Review Select Committee met.

True copies of these two letters are being enclosed with this rejoinder counter affidavit as annexure NO.A-1 and A-2 to bring home the gravity of malice and utter disregard to the dignity of the



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Court(The U.P.State Services Tribunal No.V). May
it further be submitted that further delay by the
opposite parties will cause great agony and suffering
to the applicant and impede his further promotion
to the post of D.I.G.

M. K. Tewari

Dated:

(APPLICANT)

Lucknow: November 13, 1990.

VERIFICATION.

I, Devendra Kumar Tewari, aged about
54 years, s/o Late Sri B.R. Tewari, working as Supat.
of Police, resident of B-405, Indira Nagar, Lucknow
do hereby verify that the contents of Para 1 to
28 are true to my personal knowledge and
contents of para 1 to N.M. are true on the basis
of legal advice of my counsel. So help me God.

Signed and verified this day of
1990 at Lucknow.

M. K. Tewari

Dated: 13-11-'90

(APPLICANT)

Lucknow: November 13 1990.

I identify the deponent who has
signed before me.

Vishwa Mohini
(ADVOCATE)

Solemnly affirm before me on 13.11.90 at 9.35 AM b.
the deponent who is identified by Mr. Vishwamohan
Advocate
I have satisfied my self by examining the
deponent that he understands the contents of this
affidavit which has been read over and explain
ed by me.

Pr. P. Singh
High Court, Allahabad
Lucknow, dist.

36/10-21
13-11-90

A175

Before The Honourable Central Administrative Tribunal, Allahabad
Circuit- Bench, Lucknow.

C.A.No. 112/90 (L)

Between

Devendra Kumar Tewari ----- Applicant.

Versus

Union of India and Three others-----Respondents

Rejoinder Counter Affidavit Enclosure No. A-1

परम गोपनीय/तुरन्त

श्री देवेन्द्र कुमार तिवारी,
संयुक्त निदेशक,
उत्तर प्रदेश फायर सर्विस,
लखनऊ।
=====

मुझे बताया गया है कि आपने लोक सेवा अधिकरण में वर्ष 1974-75 तथा 1975-76 में दी गई वार्षिक प्रविष्टियों आदि से सम्बन्धित याचिका सं. 47/एफ/5/81 श्री डी०के० तिवारी बनाम उ०प्र० सरकार एवं अन्य दायर की है।

2- इस विषय में आपके द्वारा लोक सेवा अधिकरण में रीज्वाइन्डर एफीडेविट दिनांक 22 दिसम्बर 1981 में 22 पृष्ठों में प्रस्तुत की गई है। उक्त डाकूमेन्ट का अवलोकन करने पर यह ज्ञात हुआ कि आपने अपने केस के सिलसिले में शासन के कुछ गोपनीय अभिलेख किसी प्रकार प्राप्त कर लिये हैं और अब उनकी प्रतिलिपि अथवा फोटो स्टेट प्रति अधिकरण में अपने अनुपूरक शपथ पत्र रीज्वाइन्डर एफीडेविट के साथ परिशिष्टियों के रूप में प्रस्तुत की है :-

- 1। शासनादेश सं. बी-4247-11-सी-856/1963 दिनांक 19-11-63 की प्रतिलिपि एक एक पृष्ठ में रनेक्जर-एक।
- 2। नियुक्ति अनुभाग-3 की पत्रावली संख्या 856/63 के नोट्स की प्रतिलिपि दो पृष्ठों में रनेक्जर-दो।
- 3। मुख्य मंत्री जी के वक्तव्य की फोटो स्टेट प्रति तीन पृष्ठों में रनेक्जर-3।
- 4। गृह पुलिस अनुभाग-1 की पत्रावली संख्या 1325एम/75 के आवरण एवं पृष्ठ 4 से 6 के नोट्स की फोटो स्टेट प्रति चार पृष्ठों में रनेक्जर-4।
- 5। गोपन अनुभाग-2 की पत्रावली संख्या 64/2/27/75 के आवरण तथा नोट्स की फोटो स्टेट प्रति दो पृष्ठों में रनेक्जर-5।
- 6। अभिसूचना विभाग के गोपनीय अध्यापन पत्र संख्या 1074/सी०ओ०/75 दिनांक 31-10-75 की एक पृष्ठ में फोटो स्टेट प्रति।
- 7। 29 दिसम्बर को हुई सेलेक्ट कमेटी के कार्यवृत्त की तीन पृष्ठों में फोटू स्टेट प्रति रनेक्जर-छः।
- 8। भारत सरकार गृह मंत्रालय की विज्ञप्ति सं. 1-14013/9/77-आई०पी०एस० दिनांक 25-4-1978 की प्रति एक पृष्ठ में रनेक्जर-7।

3- आप कृपया उक्त सम्बन्ध में अपना स्पष्टीकरण देवे कि ये समस्त प्रतियाँ आपको किस श्रोत से और कैसे प्राप्त हुईं। आप अपना स्पष्टीकरण तीन प्रतियों में मुझे एक सप्ताह

के अन्दर विलम्बतम् प्रस्तुत करें ताकि इसे पुलिस महानिरीक्षक को अग्रिम कार्यवाही हेतु भेजा जा सके ।

4- सम्बन्धित कागजात आप मेरे कक्ष में आकर देख लें ।

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16-2-82

पुलिस उप महानिरीक्षक

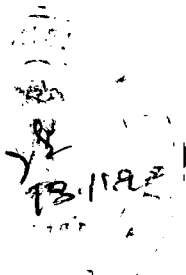
फा0 ए0 लखनऊ

संख्या : एफएसएचक्यू-सीए 1111-82

दिनांक फरवरी 16, 1982

प्रतिलिपि श्री जे0के0पी0सिंह, सहायक पुलिस महानिरीक्षक, उ0प्र0 लखनऊ को उनके अर्ध शासकीय पत्र संख्या 1-351171-77 दिनांकित 11-2-82 के सन्दर्भ में सूचनार्थ प्रेषित ।

M. A. S. S. S.



A77

Before the Honourable Central Administrative Tribunal. Allahabad,
Circuit- Bench, Lucknow.

C.A. No. 112/90 (L)

Between

Devendra Kumar Tewari -- -----Applicant.

Versus

Union of India and Three others----- Respondents.

Rejoinder Counter Affidavit Enclosure No. A- 2

गोपनीय

अर्थ शासकीय पत्र संख्या 1-351171-77

पुलिस उप महानिरीक्षक प्रशासन,
उत्तर प्रदेश ।

दिनांक: लखनऊ: मार्च 22, 1982.

प्रिय गुप्ता,

आप अपने अशासकीय पत्र संख्या एफओएसओचओ क्यूओ-सीओएसओ-1111/82 दिनांक 17 फरवरी 1982 तथा मेरे सम संख्यक अर्थ शासकीय पत्रांक दिनांक 19 फरवरी 1982 का अवलोकन करें जो श्री डीओकेओ तिवारी, संयुक्त निदेशक, अग्निशामन सेवा उत्तर प्रदेश लखनऊ द्वारा लोक सेवा अधिकारण में दायर याचिका से सम्बन्धित है ।

अनुरोध है कि कृपया श्री तिवारी को अन्तिम बार निर्देशित कर दें कि वे मामलों के संबंध में एक सप्ताह के अन्दर 30 मार्च 1982 तक अपना स्पष्टीकरण दो प्रतियों में इस कार्यालय को प्रेषित करें अन्यथा उनके विरुद्ध मामले में आवश्यक कार्यवाही किये जाने हेतु शासन को लिख दिया जायेगा ।

इस अर्थ शासकीय पत्र की दो प्रतियाँ भेजी जा रही है । अतः कृपया एक पर श्री तिवारी के प्राप्त हस्ताक्षर कराकर मुझे वापस भेज दें ।

भवदीय,

हओ/- 22.3.82

विजय शंकर माथुर

श्री बीओबीओगुप्ता,

उप महानिरीक्षक : अग्निशामन सेवा,
उओप्रओ, लखनऊ ।

13.11.90

(A) 78

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW.

C.A.NO.112/90 (L) of 1990

Between

Devendra Kumar Tewari, aged about 54 years, s/o Late
Sri B.K. Tewari, Resident of B-405, Indira Nagar, Lucknow.

.....Applicant

Versus

Union of India, through, The Secretary, Ministry of
Home Affairs, Govt. of India, New Delhi and three
others.

.....Respondents.

REJOINDER AFFIDAVIT TO THE SHORT COUNTER AFFIDAVIT
OF C.P.NO. 3 & 4

I, Devendra Kumari Tewari, aged
about 54 years, resident of B-405,
Indira Nagar, Lucknow do hereby
solemnly affirm and state on oath
as under:-

Para 1. That the deponent is the applicant in
the C.A.No.112 of 90, is fully conversant with the
facts of the case and has understood the contents of
the short counter affidavit filed by C.P.No.3, the
State of J.P. and C.P.No.4 the D.G.P.

Para 2. That the contents of para 1 and 2
of the short counter affidavit need no comments.

Para 3. That in reply to para 3 it may be

1990
AFFIDAVIT
37
HIGH COURT
ALLAHABAD



Filed today
13/11/90

13/11/90

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ART 9

- 2 -

submitted that the proceedings of the Selection Committee are not a secret document and taking these proceedings on record is not prejudicial to the public interest. Hence the production of the Selection Committee proceedings in a sealed cover is illegal and mala fide. It is being filed in a sealed cover only with the intention to deprive the applicant or his counsel from perusal of the same and pointing out the illegalities committed. The applicant prays to produce following extract from the Civil Revision No.9 of 1976, decided on 5th May, 1976 by Honourable Himanchal Pradesh, High Court.

"....We thus find that the disclosure of the minutes of the Departmental Promotion Committee also is not likely to cause any injury or prejudice to any Public Interest nor is it likely to adversely affect the functioning of the Public-Service".

Paras 4 to 7 Admitted with the submission that the Honourable High Court had decided three writ petitions vide their common order and judgement dated 13.12.88, annexed vide Enclosure No.A-6 to the J.A. Out of these three writ petitions, Writ Petition No.3747 of 1985 had been filed by the applicant resultant of the judgement, dated 2.4.1985 of the State-Services Tribunal in Claim Petition No.104/I/V/1983. The Honourable

13.11.90

M. S. M.

State Tribunal passed the following order on 2.4.1985

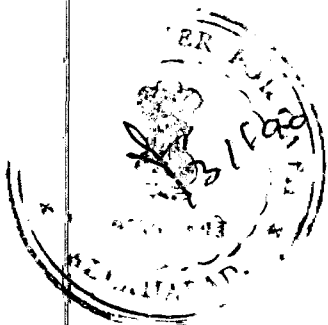
in this regard:— वर्ष 1976-77 में याची को श्री ध्रुव ठण्डन,

✓ विपक्षी सं० 3 द्वारा प्रदान रिप्ली का निम्न भाग उनकी प्रविष्टि ✓
✓ से विलुप्त किया जाता है, ✓

"This officer exerted political pressure

for altering his posting to PAC from Saharapur District"

The Honourable High Court vide their judgement dated 13.12.88 dismissed the aforesaid writ petition No.3747 of 1985 but made significant observations viz "The entry of 'good' without any superlative continues to be good and the same does not amount to be an adverse entry and can not be treated as such". Kind reference is invited to Annexure No.A-5 and A-6 filed with C.A.No.1-2/90. The opposite party No.3 and 4 were bound to consider to aforesaid observations of the Honourable High Court dated 13.12.88 and verdict dated 2.4.1985 of the Honourable State Services Tribunal No.V. Obviously this does not appear to have been done on 21.11.89 during the course of Review Selection Committee and that is why this has not been mentioned by opposite parties in their respective counter affidavits. Thus the judgement of the Honourable High Court dated 13.12.88 confirming the judgement of the U.P.Public Services Tribunal was not complied with in its spirit and substance by the opposite parties and the Selection Committee. Apart from this the same yard-stick and criterion was not applied to the applicant's case by



M. S. M.

- 4 -

the Review Selection Committee which was applied to the cases of batchmates of the applicant in the year 1976. Hence non selection of the applicant is illegal and vitiated.

Para 8. Denied as alleged. The applicant had filed a Claim Petition for the expunction of remaining portions of adverse remarks and the quashing of the supersession suffered ~~in~~ in the select list in December, 1976 on the basis of uncommunicated entries under reference. The Honourable J.P.State Services Tribunal ordered "...The opposite party No.1, State of J.P. will again place the case of the petitioner for consideration at the next meeting of the Selection Committee constituted for the purpose of preparing the select-list for promotion to the Indian Police Service and the Selection Committee shall consider the case of the petitioner once again for the select list of 1976" The opposite parties did not comply with this order till 21.11.89 despite the fact that there was no stay order from the Honourable High Court, who had confirmed the aforesaid judgment on 13.12.1988. It is totally wrong to say that the applicant was found unfit. There is no question of estoppel as the applicant is challenging the decision of the Selection Committee dated 21.11.89, which did not include the applicant in the select list of 1976

13/11/89

ms

A182

- 5 -

on the ground of alleged unfitness or unsuitability.

Para 9. The original application deserves to be allowed in view of the facts and grounds mentioned in the application and further reaffirmed by this rejoinder affidavit.

Lucknow:

Dated: 13-11-90.

Mansoor
13-12-
(APPLICANT)

VERIFICATION

I, Devendra Kumar Tewari, aged about 54 years, s/o Late Sri B.R. Tewari, working as Supdt. of Police, resident of B-405, Indira Nagar, Lucknow do hereby verify that the contents of Para 1 to ~~3.9~~ 3.9 are true to my personal knowledge and contents of Para 4 to 14 ~~AD.~~ are true on the basis of legal advice of my counsel. So help me God.

Signed and verified this day of
1990 at Lucknow.

Mansoor
(APPLICANT)

I identify the deponent who has signed
before me.

Vishma Mohini
(ADVOCATE)

Solemnly affirm before me on 13.11.90 at 9.40 AM
by the deponent who is identified by Adv. Vishma Mohini
advocate.

I have satisfied myself by examining the deponent
that he understands the contents of this affidavit
which has been read over and explained by me.



High Court, Allahabad
Lucknow Bench

13/11/90

13/11/90

103

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH AT LUCKNOW.

— M. P. No. 225/91(L)
O.A.No.112 of 1990 (L)

D.K.Tewari

...Applicant

Versus

Union of India and others ...Respondents

OBJECTION AGAINST THE APPLICATION OF RESPONDENTS
NOS. 3 and 4 SEEKING EXTENSION OF TIME FOR
COMPLIANCE OF C.A.T.'s ORDER DATED 13.2.1991.

The above named applicant most
humbly and respectfully submits as under:-

That for the facts and reasons
stated in the accompanying affidavit the
application dated 5.4.1991 soliciting extension
of time moved by respondents Nos. 3 and 4 be
kindly rejected with cost and no further
time be allowed to them.

[Signature]

Applicant/Objector.

Lucknow:

Dated: April 22, 1991.

Filed today
OSR
22/4/91

A104

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH AT LUCKNOW.

O.A.No.112 of 1990 (L)

D.K.Tewari

...Applicant

Versus

Union of India and others

...Respondents

AFFIDAVIT

I, Devendra Kumar Tewari, aged about 54 years son of Sri B.R.Tewari solemnly affirm and state on oath as under:-

1. That the deponent is the applicant in the O.A.No.112 of 1990 and is objector to the application soliciting extension of time by the respondents No. 3 and 4 and as such he is fully acquainted with the facts and circumstances deposed hereunder.

2. That the deponent has gone through the contents of the application soliciting extension of time and the affidavit filed in support thereof and has fully understood the contents of the same. Accordingly the same is being replied hereunder.

3. That the contents of paras 1 and 2 are not disputed.

4. That in reply to the contents of paras 3 to 5 it may be submitted that the copy of the order dated 13.2.91 passed by this Honourable Tribunal had been personally served on the respondents No.3 and 4 on 5.3.91 and 7.3.91 respectively and it was not received on 8.3.91 as had been wrongly stated in para 3 of the affidavit under reply. It is further submitted that the respondents have been directed to make compliance of the order

dated 18.2.91 within four months in all in three stages. The first stage, as is evident from the operative portion of the order dated 18.2.91, as quoted in para 2 of the affidavit under reply, related to the constitution of the Review Selection Committee within one month and the said review selection committee was to consider and finalise its proceedings within the next months and the third and last stage was to be concluded within one month. In the application under reply the respondents have prayed for two months more time to constitute the Review Selection Committee for which purpose this Honourable Tribunal had been pleased to grant one month time in the over all time schedule of 4 months for compliance of order dated 18.2.1991 and the time of four months was granted by this honourable Tribunal after considering all the relevant facts and circumstances. Evidently the time-schedule of four months is very much appropriate and just.

That the conduct of the respondents Nos. 3 and 4 in seeking extension of time without giving their personal and careful attention to the time schedule set by this honourable court and acting on the behest of C.P.No.2, the Union Public Service Commission, is clearly arbitrary and in furtherance of delaying tactics to nullify the effect of the Court order dated 18.2.1991. The respondents did not go in appeal against the said order for obvious reasons and appear to be resorting to procrastination.

5. That the above referred conduct of the respondents amounts to contempt of this

honourable Tribunal and hence the application under reply can in no case be allowed and deserves to be rejected with costs.

Lucknow:

Musawar

Deponent.

Dated: April 22, 1991.

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 5 of this affidavit are true to my personal knowledge.

Signed and verified this day of April 1991.

Lucknow:

Musawar

Deponent

Dated: April 22, 1991.

I identify the deponent who has signed in my presence and is personally known to me.

Alas

Advocate

(Aswatos Ran Sharma)

1127

Affidavit

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW

OA NO. 112/90(L)

D.K. Tewari- - - - - Applicant

Versus

Union of India & others - - - - - Respondents.

Application in reference to Hon'ble CAT'S order
dated 24.4.91

- - - - -

The above named O.P. No. 3&4 beg to state as under-

That for the fact mentioned in the accompanying
affidavit this application is being moved in reference
to Hon'ble CAT'S order dated 24.4.91 for their kind
information.

Lucknow

Dated 31 May, 1991

Anoop, Kumar
(Anoop Kumar)

Advocate
counsel for OP 3&4

filed today
3/6/91

A100

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW

OA NO.112 of 1990 (L)

D.K. Tewari - - - - - Applicant

Versus

Union of India & others - - - - - Respondents.

Affidavit

I Shekhar Agarwal, aged about 38 Years son of Late Sri Shushil Chandra presently Working as Special Secretary, Home Department, Government of U.P. Lucknow do hereby solemnly affirm and state on oath as under:-

1. That the deponent is posted as Special Secretary, Home Department, Govt. of U.P. Lucknow and as such is fully conversant with the facts of the case.
2. That with reference to order dated 18.2.91 of Hon'ble Central Administrative Tribunal the orders dated 24.4.91 were passed after submission of an application by the Govt of U.P. on 5.4.91. Copy of The Hon'ble CAT'S order is enclosed at Annexure A-1. Extraet of the operative portion of the order dated 24.4.91 is being given below-

" We have heard the learned counsel for Respondents. We are not convinced of the reasons for the delay in implementing the order dated 18.2.91 in OA. 112/90. The constitution of Selection Committee is laid down in the rules and a date is to be fixed in consultation with the Chairman and nominate the members. It would appear the state government which should move in the matter and coordinate with other members,



A/89

-2-

is not taking this matter with seriousness that is warranted. We consider that delay beyond the time limit set for passing final orders is not Justified, there being no other procedural hastles except to convene meeting and consider the matter. Copy of this order will be served on the Chairman of UPSC which shall be responsibility of counsel appearing before us. The State Government may also Carry out this direction and communicate the order to Chairman UPSC to fix an early date for the meeting of Review Selection Committee as for as possible in may 1991.

3. That as direceted by the Hon'ble Tribunal the orders dated 24.4.91 were brought to the notice of the Union Public Service Commission, New Delhi vide State Govt's letter no. 2425/six-PS-2-545(5)/90 dated 6.5.91 as per orders of the Hon'ble Tribunal. The State Govt had telephonic Conversations also with the UPSC, New Delhi in this regard.
4. That the Union public Service Commission in compliance of CAT's order dated 24.4.1991 has fixed 7.6.1991 for the meeting of the Review Selection Committee. The Copy of the telex dated 10.5.91 is annexed herewith as Annexure-A-2.
5. That it was not possible to fix a date prior to this in view of the Lok Sabha and Vidhan Sabha elections and prevailing circumstances.
6. That the above mentioned facts of the case are being put up for kind information of the Hon'ble Tribunal.



30.5.91
DEPONENT
(शिखर शर्मा)
विशेष सचिव, गृह
उत्तर प्रदेश शासन

-3-

A190

-3-

I The above named deponent do hereby
verity That the contents of this application
from paras 1to 6 are true to my own knowledge
on the basis of records. No part of it is
false and nothing material has been concealed.
So help me God.

Lucknow Dated 20th May, 1991

Deponent.
(शेखर अग्रवाल)
विशेष सचिव, गृह
उत्तर प्रदेश शासन

Identify the deponent
who has signed before
me.

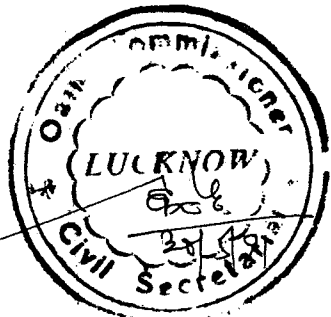
Ghanshyam ji Verma
U.D.A
Home (Police Services) Section 2
Sect. Lko.

Serial No.232/349-99
Sworn (or affirmed) by Shri Shekhar Agrawal,
Special Secy, Home Deptt. U.P. Govt. Lko.
(who was identified by Shri G. S. Verma,
U.D.A, Home (PS) Sec-2 U.P. Govt, Lko.
on the MAY 20th 1991 ...
at 4.00 P.M. in case No. O.A.No 112/
of 4990(L) in the C.A.T. Circuit
Bench, Lko.
Received a fee of Rs. 12/- (Twelve)
Oath Commissioner
& Section Officer,
Judicial (Civil Litigation) Section

The deponent has read the affidavit
and understands the contents thereof
Dated MAY 20th, 1991

Oath Commissioner
& Section Officer,
Judicial (Civil Litigation) Section

(श्रीवैद्य कुमार)
अनुभाग अधिकारी,
अनुभाग-4 दीवानी न्याय
उत्तर प्रदेश शासन



(B366)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

Registered A/D

Ghandi Bhawan
Opp. Residency
Lucknow.

Registration No. 112/40 199

No. CAT/Alld/Jud/ 2216-4414 Dated: 6/5/90

Deputy Registrar APPLICANT(S)

VERSUS

Union of India RESPONDENT(S)

① Cause of Union of India the Home
Ministry of Home Affairs
New Delhi

Please take notice that the applicant above named has represented
an application a copy of whereof is enclosed herewith has been fixed
registered in this Tribunal and the Tribunal has fixed 2-7-90
day of 1990. FOR Order

If, Deputy Registrar in your behalf, your pleader or by some
other duly authorised to act and plead on your behalf in the said
application, It will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 8
Day of 5 1990.

Deputy Registrar
FOR DEPUTY REGISTRAR
(JUDICIAL)

② Union Public Service Commission, New Delhi

③ Shashi Kumar
Secretary Home
Ministry of Home Affairs
New Delhi
④ Shashi Kumar
Secretary Home
Ministry of Home Affairs
New Delhi
⑤ Shashi Kumar
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Ministry of Home Affairs
New Delhi
⑩ Shashi Kumar
Secretary Home
Ministry of Home Affairs
New Delhi

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW (C.A. 112)

O.A. NO.112 of 1990

D.K. Tewari

.....

Applicant.

Versus

Union of India & Others

.....

Respondents.

27.7.1990

Hon'ble Mr. Justice K. Nath, V.C.

Hon'ble Mr. K. Obayya, A.M.

Km. V. Mohini for the applicant.

Dr. Dinesh Chandra for respondents 1 & 2 and says that the counter will be ready in a couple of weeks.

Shri Anoop Kumar is present for respondents 3 & 4 and files short counter on their behalf.

The respondents are directed to file a detailed counter within 3 weeks, to which the applicant may file rejoinder within one week thereafter and the case be listed for admission / final hearing on 30.8.1990.

In the matter of interim relief we have heard the parties and we direct that any promotion to the concerned post of D.I.G. will be subject to the order of this Tribunal. The respondents shall incorporate this condition in the order of promotion, if any. Copy of the order may be given to the counsel for the parties within 3 days.

Sd/-

Sd/-

A.M.

V.C.

// True Copy //

rm/

Deputy Registrar

Central Administrative Tribunal

Lucknow Bench

Lucknow

[बारी] अपीलान्त

प्रतिवादी [रैस्पान्डेन्ट]

वकालतनामा

टिकट

वादी (अपीलान्त)

४० कै० तिवारी

वकाज भारत सरकार व अन्य प्रतिवादी (रैस्पान्डेन्ट)

नं० मुकदमा 112 सन् 1990(L) पेशी की ता० 27-7-1990 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री अनूप कुमार

एडवोकेट

महोदय

वकील

नाम अदायक
मुकदमा नं०
नाम फरीकें

को अपना वकील नियुक्त करके प्रतिज्ञा (इत्तहार) करता हूं। और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देहो व प्रजोत्तर करे या कोई कामज दाखिल करे या लौटावे या हमारी ओर से हिमरी जारी करावे और रुपया वसूल करे या मुलहनाभा व इकवाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करे और तत्दीक करे मुकदमा उठावे या कोई रुपया जमा करे या हमारी विपक्षी (परकषानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे --वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होना मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

गोविन्द चन्द्र शर्मा
26/7/90

साही (गवाह) (PADMINI KAR SHIVASTAVA) साक्षी (गवाह)
Home (Police Services) Section-2.

दिनांक

महीना

सन् १९८८

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स्वीकृत

Accepted
Anup Kumar
A.K.

27-7-90

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW.

(A/A)

O.A. 112/90

24.4.91

Hon. Mr. D.K. Agrawal, J.M.

Hon. Mr. K. Obayya, A.M.

M.P. 180/91 'D.K. Tewari vs. Union of India' taken up. The above said O.A. was decided on 18.2.91 with direction to the respondents (1) to constitute a review Selection Committee within a period of one month from the date of receipt of copy of the judgment and (2) the Committee to finalise recommendations within two months thereafter and (3) the respondents to pass appropriate order within one month of receipt of its recommendations.

2. In this M.P. Respondents Nos. 3 and 4 have prayed for extension of two months more time for constitution of Review Selection Committee. Their plea is that the State Government has referred the matter to the U.P.S.C and a request has come from U.P.S.C. side for extension of time of two months to take necessary action.

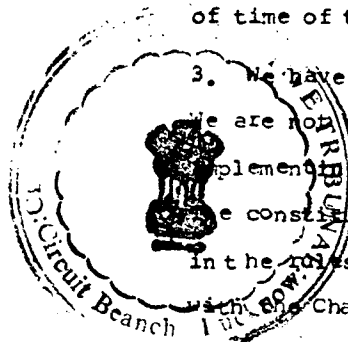
3. We have heard the learned counsel for Respondents.

We are not convinced of the reasons for the delay in implementing the order dated 18.2.91 in O.A. 112/90.

The constitution of selection committee is laid down in the rules and a date is to be fixed in consultation

with the Chairman and nominate the Members. It would appear the State Government which should move in the

matter and coordinate with other Members, is not taking that this matter with seriousness/is warranted. We consider that delay beyond the time limit set for passing final orders is not justified, there being no other procedural hurdles except to convene meeting and consider the matter. Copy of this order will be served on the



LUCKNOW

श्रीमान अग्रवाल
विशेष सचिव, गृह
उत्तर प्रदेश शासन

A/92

Chairman of U.P.S.C. which shall be responsibility of Counsel appearing before us. The State Government may also carry out this direction and communicate the order to Chairman U.P.S.C. to fix an early date for the meeting of Review Selection Committee as far as possible in May, 1991. Copy of this order shall be supplied to Shri Anoop Kumar and Dr. Dinesh Chandra Counsel for Respondents for official use.

Shakeel/

Sd/-
A.M.

Attested

Sd/-
J.M.

True copy

Section Officer

Centre Administrative Tribunal

C.T.C.

Circuit Bench

LUCKNOW

Sd/-

36/5/91

प्रति न्यायालय
विशेष सचिव, गृह
उत्तर प्रदेश सरकार

162nd
ZCZC ULWCCAD092 PPP ULWCCC

5/55/-

A193

X 1935 DA 1097 NEW DELHI 10STE 115/120

SMT NEERA YADAV SECRETARY TO GOVT OF U P
APPOINTMENT SECTION I LUCKNOW

REF TELEPHONIC CONVERSATION WITH CHIEF SECRETARY (.)
SHRI J P GUPTA CHAIRMAN UPSC ACCOMPANIED BY PRIVATE
SECRETARY REACHING LUCKNOW ON SIXTH JUNE AT SEVEN FIFTEEN HOURS BY

LUCKNOW MAIL TO PRESIDE OVER THE REVIEW SELECTION COMMITTEE MEETING
S

TO RECONSIDER THE CASE OF SHRI B S VERMA FOR PROMOTION TO IAS
AND TO RECONSIDER THE CASE OF SHRI D K TIWARI FOR PROMOTION TO IPS ON

SIXTH AND SEVENTH JUNE RESPECTIVELY AT ELEVEN THIRTY HOURS (.)
REQUEST ARRANGE THEIR RECEPTION AT THE RAILWAY STATION AND MAKE BOA
R

DING AND LODGING ARRANGEMENTS AND TREAT THEM AS STATE GUEST DURING
THEIR STAY AT LUCKNOW=

UNISERCOM

COL 1397 I IPS UNISERCOM

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DNDCCJ0029

DSFMS00261

LUCKNOW
30/5/91
30/5/91
बि. प्र. वि. गृह
लक्ष्मी नगर, गृह
लक्ष्मी नगर, गृह

A194
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT
BENCH AT LUCKNOW

M. P. No. 180/91 (4) ✓
O.A. NO. 112 OF 1990 (L)

D.K. Tewari - - - - - Applicant

Versus

Union of India & others Respondents

APPLICATION FOR EXTENSION OF TIME FOR COMPLIANCE
OF CAT'S ORDER DATED 18.2.1991.

The above named opposite parties 3 & 4
respectfully beg to state as under :-

That for the facts and reasons stated in the
accompanying affidavit it is respectfully prayed
that in the present circumstances and in the ends
of justice Hon'ble Tribunal may kindly grant
atleast two months more time for constitution of
the Review Selection Committee.

Anoop Kumar
(ANOOP KUMAR)
Advocate,
Counsel for the opposite
parties 3 & 4 .

Filed today
5/4/91

A195
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT
BENCH AT LUCKNOW

O.A.No.112 OF 1990 (L)

D.K.Tewari Applicant

Vs.

Union of India & others Respondents

APPLICATION FOR EXTENSION OF TIME FOR COMPLIANCE
OF CAT'S ORDER DATED 18.2.1991 _ _ _ _ _

I, R.K. Singh, aged about 30 years son of Sri Swami Prasad Singh presently posted as Joint Secretary, Home Department, Government of U.P., Lucknow do hereby solemnly affirm and state on oath as under :-

1. That the deponent is posted as Joint Secretary Home Department, Government of U.P., Lucknow and as such is fully conversant with the facts of the case.
2. That the above claim petition was decided by this Hon'ble Court and the following orders were passed in its judgement dated 18.2.91 :-

" . . . For the reasons recorded above, the minutes dated 21.11.89 and the recommendations of the Review Selection Committee in the case of the Applicant and consequential orders of the respondents are quashed. The respondents are directed to constitute a Review Selection Committee within a period of one month from the date of receipt of a copy of this judgement, the committee shall consider and make recommendations in the case of the applicant for inclusion or otherwise in the Select List of the IPS for the year 1976 within two months from the date of its being constituted bearing in mind the observations contained in the body of this judgement, and the respondents shall thereafter pass appropriate orders in the matter of the applicant's

....2/-



[Handwritten signature]

promotion and other benefits, if any, from the appropriate date in accordance with law within one month from the date of receipt of the recommendations of the Review Selection Committee. Parties shall bear their costs of this case."

3. That the aforesaid orders of the Hon'ble Tribunal were received by the respondent No.3 on 8.3.91 through counsel and in compliance of the same the State Government requested the Union Public Service Commission, New Delhi for nomination of the Chairman of the Review Selection Committee and also date and Venue of the Review Selection Committee vide its letter no. 1586/SIX-PS-2-545(5)/90, dated 19 March, 1991 copy enclosed herewith as ANNEXURE-I to this affidavit.

4. That in reply to the above letter the Union Public Service Commission has requested the State Govt. to seek extension of time for compliance of the orders of this Hon'ble Court.

5. That the Union Public Service Commission has also desired that the ACR of Sri D.K.Tewari may be sent to them. This CR of Sri D.K.Tewari was submitted before the Hon'ble Tribunal at the time of hearing which has been released on 4.4.1991. It is now being sent to the Union Public Service Commission, New Delhi. The copy of the telex message received from the UPSC is enclosed herewith as ANNEXURE No. II to this affidavit.

[Handwritten signature]

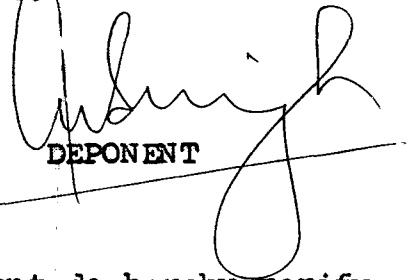


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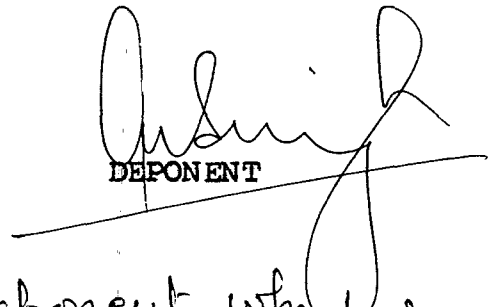
P R A Y E R

In view of the above, it is prayed that :-

1. This Hon'ble Court may kindly grant atleast two months more time for the constitution of the Review Selection Committee,
or
2. May pass suitable orders as it may deem proper in the interest of justice.


DEPONENT

I, the above named deponent do hereby verify that the contents of this application from paras 1 to 5 are true to my own knowledge on the basis of records. No part of it is false and nothing material has been concealed. So help me God.


DEPONENT

Lucknow, Dated April 5, 1991

I identify the Deponent who has signed before me.

AK Srivastava,
U.D.A. 5/4/91
Home (Police Services) Section-2
C.P. Secretariat, Lucknow



आर०के० सिंह
संयुक्त सचिव।

मुख्यमंत्री श्री श्री १५/१५/१५

अर्थात्: व. सं. 1586/8: - 4000-2-245131/90

मुख्य सचिव के आदेश-2

दिनांक: 19 मार्च, 1991

प्रति सम्बन्ध,

ओ०ए०के०-112 अंक 1990। - ओ०के० तिवारी कनाम भारत सरकार व अन्य में मा०के०के० प्रशासनाधिकरण, लखनऊ के आदेश दिनांक 18.2.1991 की प्रतिलिपि को आपकी प्रेरित करने की ओर की गई है।

2. इस सम्बन्ध में मुझे यह भी सूचित करने की ओर की गई है कि ओ०के० तिवारी को राज्य पुलिस सेवा के अधिकारी हैं, जो वर्ष 1976 की इवरेन सूची में अंकित कर दिया गया था। मा०के०के० प्रशासनाधिकरण के आदेशांक 21-11-1989 को ओ०के० तिवारी के मामले पर पुनर्विचार किया गया एवं Review Selection Committee ने ओ० तिवारी को पुनः भारतीय पुलिस सेवा में प्रोन्नति हेतु उपयुक्त नहीं पाया। समिति के कार्यवाही को मा० केन्द्रीय प्रशासनाधिकरण ने निरस्त : quash : कर दिया है तथा यह आदेश दिया है कि आदेशों की औपचारिक प्राप्ति के एक माह के भीतर पुनः रिच्यू सेलेशन कमेटी का काम किया जाये तथा ओ० तिवारी को वर्ष 1976 की इवरेन-सूची में रटे जाने के विन्दु पर पुनर्विचार कर संशुद्धि की जाये। रिच्यू कमेटी को विचार करके अपनी संशुद्धि देने के लिये मा० अधिकरण ने दो माह का समय दिया है।

3. भारतीय पुलिस सेवा प्रोन्नति द्वारा नियुक्ति। नियमावली-1954 के नियम-31.18 के अनुसार तब तक सेवा अखण्ड के अन्तर्गत प्रशासनाधिकरण समिति के अन्तर्गत होते हैं अतः पुनः पुनः समिति की बैठक की तिथि एवं समय निर्धारित कर राज्य सरकार को तत्पुनः सूचित करने का कट करें। मा० प्रशासनाधिकरण के निर्णयानुसार यह भी अनुसूचित है कि पुनः बैठक हेतु तिथि 5 अप्रैल, 1991 के पूर्व निर्धारित करने का कट करें।

सचिव,

आर०के० सिंह ।

श्री आर०के० अग्रवाल,
सचिव,
संयुक्त सेवा आयोग,
लखनऊ, उत्तर प्रदेश।

19/3

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क.म.प.सं. 1586111/61-पु000-2-545151/90 तद्विषय

प्रिय श्रीमान्,

उपरोक्त की प्रतिनिधि को आपका भेजने की
अवेका की वही है कि कृपया कृपया कृपया कृपया
प्रकार की मांग करके राज्य सरकार को सुचित करने का
हैं।

आपका है,

आपका मित्र

श्री आर०के० भार्गव,
मुख्य सचिव,
विद्युत विभाग, भारत सरकार,
नई दिल्ली।

१९

क.क.४
05/4/91

STATE

TELEGRAM

EXPRESS

To.

SHRI R.K. SINGH
JOINT SECRETARYHOME(POLICE)SERVICE) SECTION-2
LUCKNOW.

REFULET NO.D.O. 1586/SIX-PeS-2-543-(5)/90 dated NINETEENTH
MARCH REGARDING REVIEW SELECTION COMMITTEE MEETING TO RECONSIDER
D.K. TENARI FOR 1976 SELECT LIST FOR PROMOTION TO IPS IN COMPLIANCE
WITH THE JUDGEMENT IN O A NO. 112 of 1990(L) (.) KINDLY SEEK
EXTENSION FOR TWO MONTHS TO HOLD REVIEW MEETING(.) FURNISH ALSO
ACR OF D.K. TENARI (.)

UNISERCOM

Not to be telegraphed :

No.F.7/20/91-A.I.S.

Dated 22.03.1991 ✓

sd -
(I.P.TULI)
UNDER SECRETARY
UNION PUBLIC SERVICE COMMISSION
TELE.NO. 381056

No.F.7/20/91-A.I.S.

NEW DELHI

the 23rd March, 1991

✓ Copy by post in confirmation to Shri R.K. Singh, Joint
Secretary, Home (Police Service) Section-2, Lucknow.

for *Durash*
(I.P.TULI) 25/3/91
UNDER SECRETARY
UNION PUBLIC SERVICE COMMISSION
TELE. NO. 381056

sd
05/4/91