

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1156/94

Date of Decision: 5.9.97

Dr.S.S.Srivastava

.. Applicant

.. Advocate for
Applicant

-VERSUS-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri B.S.Hegde, Member(J),

The Hon'ble Shri M.R.Kolhatkar, Member(A).

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

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

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1156/1994.

Presented, this the 5th day of September 1997.

Coram: Hon'ble Shri B.S. Hegde, Member (J),
Hon'ble Shri M.R. Kolhatkar, Member (A).

Dr. S.S. Srivastava,
Conservator of Forests,
Nashik Forest Circle,
Nashik - 422 002.

... Applicant.

(Applicant in person)

V/s.

1. Union of India through its, Secretary to the Government of India, Ministry of Environment, Forests and Wild Life, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, NEW DELHI - 110 003.
2. State of Maharashtra through its, Principal Secretary (Forests), Revenue & Forest Department Govt. of Maharashtra, Mantralaya, Bombay - 400 032.
3. Principal Chief Conservator of Forests, Maharashtra State, Jaika Building, Civil Lines, Nagpur - 440 001.
4. Shri M.S. Parasnisi, Chief Conservator of Forests, (Conservation) the then Conservator of Forests, Amravati Forest Circle, Amravati, Jaika Building, Civil Lines, Nagpur - 440 001.
5. Shri M.G. Gogate, Conservator of Forests, Research Circle (M.S.), New P.M.T. Building, Pune - 411 037. Respondents.

(By Advocate Shri V.S. Masurkar).

ORDER

(Per Shri M.R. Kolhatkar, Member(A))

In this O.A., the applicant who is an I.F.S. Officer of 1987 batch has challenged a series of orders issued by the Central Government/State Government which ~~have~~ the effect of : (1) Extending his probationary period by 2 years, so that he completes the probationary period on 31.3.1992 and is confirmed from the ~~next~~ date; (2) The letter of the State Government dt. 16.11.1995 (at page 191) rejecting the request for expunction of adverse remarks in the C.R. for the year 1991 - 92 and not disposing of his representation against adverse remarks in the C.R. for the earlier two years viz. 1989-90 and 1990-91; (3) Promoting his juniors to the Senior-Time-Scale and further to the Junior Administrative Grade ahead of him while he continues ~~in~~ the Junior-Time-Scale of the I.F.S. ; (4) When this Tribunal had passed interim orders directing the State Government to consider his case for promotion to Senior-Time-Scale ~~the communication dt. 7.6.1996~~ and Junior Administrative Grade as per Rules, intimating that he is not fit for these Grades.

2. At the outset, the learned counsel for the respondents has raised a preliminary objection that the O.A. suffers from the vice of multiplicity of reliefs in violation of Rule 10 of Central Administrative Tribunal (Procedure) Rules, 1987 and further that some

of the reliefs have been claimed as an after thought
an
by way of M.P. for amendment. It is true that the
applicant has prayed for a number of reliefs, but
we are not inclined to dismiss the O.A. on this
basic
preliminary ground, because, in our view, the grievance
of the applicant is the extension of probation and
causes for
non-promotion. The adverse remarks are one of the
such action and all other reliefs are consequential to
the basic relief seeking promotion. In case ~~any~~ there
is any relief which we find on an examination not to
arise out of the basic relief, we may not pass the
orders thereon.

3. The applicant is an I.F.S. Officer whose year
of allotment is 1987 (6.7.1987). He was due for
confirmation in the normal course after 3 years in
terms of I.F.S. (Probation) Rules. The applicant was
working as Probationary I.F.S. Officer in Amravati
Forest Division. He was first posted on 12.7.1989
and his posting was extended up to 31.3.1991 when
during this period his services were lent to
"Project Tiger". According to the applicant he did the
work allotted to him viz. the work relating to drawing
up of the rehabilitation plan of the Villages affected
by "Project Tiger" and there was a directive from
Conservator of Forests to relieve him on 6.11.1990,
but he was actually relieved only on 26.3.1991. According
to him when the applicant was transferred to "Project
Tiger" he had opposed shifting of his Headquarters
from Amravati to Paratwada and this annoyed the
Officer-in-charge of Project Tiger and he started

he
harassing him, his salary was withheld, was not
provided with Government vehicle for Re-habilitation
his
work and he was not given leave during wife's illness
who was required to be shifted from Amravati to
Nagpur and thereafter from Nagpur to Lucknow. He was
sanctioned leave without pay against Rules and his C.R.
was therefore spoilt by the concerned Officer in
respect of the years 1990-91 and 1991-92 (from
April, 1991 to August, 1991).

4. According to the applicant he made representation
for expunction of adverse remarks from his C.Rs. for
dt. 16.11.1995
the relevant years, but he received a reply only
in regard to representation against the adverse remarks
for the year 1991-92 and no reply has been received
in regard to the earlier years 1989-90 and 1990-91.
According to the applicant in view of the binding
ratio of the Supreme Court in The State of Haryana V/s.
Shri P.C.Wadhwa, IPS, (1987 II SVIR (L) 54) that the
[redacted] CRs in respect of which the representation has
not been disposed of should be considered without
taking into account the adverse entries, his CRs for
all the three years should be treated as having been
satisfactory and the Selection Committee ought to have
considered his case on that footing. According to him,
however, the Selection Committee which met on 3.4.1992
and 16.3.1993 considered him to be unfit for retention
and made a recommendation to the State Government
accordingly. But, subsequently on a direction of the
[redacted]

Central Government to re-examine the case, the matter was re-examined. The Government of India by their letter dt. 9.12.1993 informed the State Government that the maximum permissible period of probation of the applicant expires in July, 1993 and in terms of the Judgment of the Supreme Court in Civil Appeal No.1273/79 State of Gujarat V/s. Akhilesh C.Bhargav and Ors.

1987(5) ATC 1671 decided on 26.8.1987 it would not be possible to discharge the officer at the present stage and therefore the proposal regarding confirmation of the applicant be re-considered. Thereafter, the Review Committee met on 21.1.1994 and decided to recommend confirmation of the officer. The State Government also took into account C.R. of the Officer for the year 1992-93 which had shown improvement and recommended the applicant to be fit for confirmation and accordingly the officer was confirmed by Central Government w.e.f. 1.4.1992 i.e. with retrospective effect by notification dt. 25.9.1995.

5. Therefore, the date of confirmation viz. 1.4.1992 in the case of the applicant becomes the point of departure. It was with reference to this date that this Tribunal had passed interim orders vide order dt. 3.1.1996 as below :

"In the circumstances, we hereby direct the respondents as an interim measure to consider the applicant to the Senior Scale and Junior Administrative Grade according to the Rules within a period of two months from the date of receipt of the order. Accordingly, M.P. 11/96 is disposed of in the light of the above."

The applicant had filed C.P. 35/96 in which he had challenged the decision dt. 7.6.1996 to reject the proposal regarding promotion of the applicant to the Senior-Time-Scale and the Junior Administrative Grade as being contemptuous. This Tribunal had considered the matter and had observed as below :

" What are the conditions for considering the suitability of the officer for promotion to the Senior Time Scale? These are referred to by the State Government vide Respondents' written statement dt. 12.2.1996. Rule 6A of Indian Forest Service (Recruitment) Rules 1966 lays down that no officer shall be appointed in senior time scale of pay unless the State Government is satisfied that he is suitable for an appointment in senior time scale of pay, that is he is to complete the probation period satisfactorily, and immediately thereafter, to work for a minimum one year in the junior scale. These conditions have clearly been satisfied in the present case. The applicant has been confirmed from 1.4.1992 and he has also completed as on 1.4.1993 one year in the junior time scale. His Confidential Report for the year 1992-93 is also said to have shown improvement. There are no other criteria regarding suitability of the officer for Senior Time Scale. It is, therefore, clear that by operation of the Rules of which State Government is well aware the officer is entitled to be promoted to the senior time scale of I.F.S. from 1.4.93, if not from 1.4.91 as claimed by the applicant."

6. It may be observed that the respondents had gone in SLP to the Hon'ble Supreme Court against the interim orders of the Tribunal in C.P. The Hon'ble Supreme Court had allowed the SLP on the following short ground :

"Though the learned counsel for the appellants as well as respondent-in-person seek to raise contentions on merits, we think that this is not an appropriate stage for us to go into

the merits in the matter. In view of the stand taken by the appellants that the case of the respondent was considered by the Government and found that he was not eligible for grant of Senior Time Scale, as directed by the Tribunal, the appropriate course should be that the Tribunal may decide the matter on merits and then deal with it according to law. Instead, unfortunately, the Tribunal has exceeded its power in giving the directions, even before the matter was considered on merits. Under these circumstances, the order of the Tribunal stands set aside. The Tribunal is directed to decide the matter on merits and dispose of the main C.A. within a period of two months from the date of receipt of order."

That is how, the matter has come before us by way of early hearing.

7. The learned ~~Counsel for the~~ applicant contends that Respondents have suppressed a letter sent to them by the Central Government on 24.7.1996 in which they have directed the respondents to consider the case of the applicant not only for promotion to the Senior Time Scale as directed by the Tribunal in its orders on C.P., but also the promotion to the next grade viz. Junior Administrative Grade. Para 4 of the letter of the Central Government reads as follows:

314. In terms of sub-rule (1) of rule 3 of IFS (Pay) Rules, 1969, a member of the Service shall be appointed to the Senior scale on his completing four years of service subject to the provisions of rule 6-A of the IFS (Recruitment) Rules, 1966. In terms of sub-rule (2) of Rule 6-A of the Recruitment Rules, a direct recruit to the Service shall be appointed to a post in the Senior Time scale of pay if, having regard to his length of service and experience, the State Government

is satisfied that he is suitable for appointment to a post in the Senior Time Scale of pay. It is, however, provided in sub-rule (3)(a) of Rule 6-A of the Recruitment Rules that the State Government may withhold the appointment of such officers to a post in the Senior Time scale of pay till he is confirmed in the Service. Suitable reply in this regard may kindly be filed in the Hon'ble Tribunal. The State Government may kindly consider releasing his Junior Administrative Grade w.e.f. 1.1.1996 since he is eligible for the same as a matter of course after completion of 9 years of service w.e.f. year of allotment without any scfeening, it being non-functional."

The respondents ought to have filed this letter before the Tribunal at the time of filing the reply to the amended O.A. Unfortunately, they did so only after the matter was finally heard and the Tribunal directed the respondents to file the Central Government communication at the stage of reserving the orders. It may be noted that this communication has been issued in the context of dealing with the Contempt Petition and the same pre-dates the orders of the Supreme Court dt. 10.2.1997. The letter of the Central Government, therefore, by itself does not constitute an authority for considering the claim of the applicant. As directed by the Supreme Court, we are required to consider the claim on merits i.e. after examining the position in the Rules. We are, therefore, required first of all to consider whether the applicant is entitled to be considered for the Senior Time Scale and after he crosses that hurdle whether he can be considered for the next promotional grade viz. Junior Administrative Grade.

required

8. We are, therefore, to consider as to whether the contention of the respondents that in terms of rules & the CR's, the proceedings of Review Committee & other material, the State Government can validly deny to the applicant the promotion to Senior Time Scale. . .

9. In this connection, we may make reference to Indian Forest Service (Pay) Rules, 1968, para 3 deals with Time Scale of Pay. After enumerating the Junior Scale (Rs.2200-4000) and the Senior Time Scale (Rs.3000-4500) and the Junior Administrative Grade (Rs.3700-5000) there is a proviso which reads as below :

"Provided that a member of the service shall be appointed to the senior scale on his 'completing four years of service, subject to the provisions of sub-rule (1) of Rule 6-A of the Indian Forest Service (Recruitment) Rules, 1966, and to the Junior Administrative Grade on completing nine years of service.

10. It would thus be seen that in terms of the proviso Rule 3 of the Indian Forest Service (Pay) Rules, 1968 I.F.S. Officer is required to fulfill the conditions laid down in Rule 6-A(2) of the I.F.S. (Recruitment) Rules, 1966. The same and its sequel read as below :

"6-A. Appointment of officers in the junior time scale of pay to posts in the senior time scale of pay - (1) Appointments of officers recruited to the Service under clause (a) or clause (aa) of sub-rule (2) of rule 4 to posts in the senior time scale of pay shall be made by the State Government concerned.

Notes. - For the appointment of an officer to a senior post at any time, as a purely temporary or under local arrangement recruitment can be made by competitive

examination or by selection. (G.Sudhaker Reddy v. G.O.I., 1981 Lab IC NCC 73 A.P.)

(2) An officer, referred to in sub-rule(1) shall be appointed to a post in the senior time scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay :

(Provided that, if he is under suspension or disciplinary proceedings are instituted against him, he shall not be appointed to a post in the senior time scale of pay, until he is reinstated in service, or the disciplinary proceedings, are concluded and final orders are passed thereon, as the case may be :

Provided further that on the conclusion of the disciplinary proceedings :

(a) if he is exonerated ~~is~~ fully and the period of suspension, if any, is treated as duty for all purposes, he shall be appointed to the senior time scale of pay from the date on which he would have been so appointed, had the disciplinary proceedings not been instituted against him, and paid accordingly, and

(b) if he is not exonerated fully and if the State Government, after considering his case on merits, proposes not to appoint him to the senior time scale of pay from the date on which he would have been so appointed had the disciplinary proceeding not been instituted against him, he shall be given an opportunity to show case against such action.)

(3) Notwithstanding anything contained in sub-rule (2), the State Government may -

(a) withhold the appointment of an officer referred to in sub-rule (1), to a post in the senior time scale of pay, -

(i) till he is confirmed in the service, or

(ii) till he passes the prescribed departmental examination or examinations, and appoint, to such a post, an officer junior to him,

(iii) appoint an officer, referred to in sub-rule(1), at any time to a post in the senior time-scale of Pay as a purely temporary or local arrangement.

11. What the State Government is saying is that the applicant is undisputedly appointed according to the method of Competitive Examination in terms of Rule 4 of the I.F.S. (Recruitment) Rules and in terms of Rule 6-A(2) such an Officer shall be appointed to the post in the Senior Time-Scale of pay if the State Government is satisfied that he is suitable for appointment in the post of Senior Time Scale of the pay. The State Government is to form the satisfaction having regard to length of service and experience and although it is not disputed that the officer possesses these, the essential contention of the State Government appears to be that even after considering the length of service of the officer and experience, the State Government is still is not satisfied that the officer is suitable for appointment to the post in the Senior Time Scale of pay. The State Government, therefore, is not inclined to promote the Officer to the Senior Time Scale of pay. The satisfaction formed by the State Government evidently is based on adverse CR reports of the Officer, proceedings of the selection committee and the various circumstances relating to Dowry matter which bear on subsequent events and which are referred to in our order on C.P.

12. We have considered the CRs of the applicant for the years 1989-90, 1990-91 and 1991-92 all of which are "average". The Reporting Officer for the year 1989-90 is one Mr.M.C.Joshi, Reviewing Officer is one Mr.M.S.Parasnus and Accepting Officer is one Mr.Sardar. The Reporting Officer for the year 1990-91 is one Mr.Gogte, Reviewing Officer is one Mr.R.N.Indurkar and

and Accepting Officer is Mr.V.K.Prabhu. The Reporting Officer for the year 1991-92 (up to August, 1991) is one Mr.Sarhail Singh, Reviewing Officer is one Mr.S.G. Deshmukh and Accepting Officer is one Mr.R.N.Indurkar. The contention of the applicant basically is that Mr.M.G.Gogte was biased against him and he has spoilt his C.R.

13. At this point, however, the contention of the respondents is that when the applicant was posted to a super numerary post in Amravati Circle the rehabilitation plan for villages in Melghat Tiger Project was to be prepared at the material time. In order to utilise the services of the applicant fruitfully, he was placed at the disposal of the Field Director Project Tiger by the Conservator of Forest, Amravati. The Field Director, however, reported that the progress of the work of the applicant was not adequate, that he was afraid of touring in forest area due to threat to life by wild animals, and therefore his services be withdrawn. The respondents however, permitted the Field Director to utilise the services of the applicant until completion of the assigned work. It is further contended that the applicant then brought pressure on the Hon'ble Union Minister Smt.Maneka Gandhi regarding his relief from the Tiger Project. According to respondents, therefore, the applicant was not interested in the work assigned

to him nor he was keen on learning in the early years of his service career and therefore, the contentions of the applicant regarding mala fides are baseless.

14. We note, in this connection, that while the applicant has ~~been~~ alleged mala fides against Shri M.G.Gogte, he has made no such allegations in regard to Shri M.C.Joshi who wrote the first C.R. 1988-89 which C.R. is also assessed as 'average'. The applicant has also not ~~laid~~ ^{sustaining malafides of} the foundation for ~~any~~ Shri M.G.Gogte against him. We are therefore, not inclined to interfere with the entries of CRs themselves on the ground of malafides.

15. We next consider the contention of the applicant that remarks in the C.R. against which representation was pending were taken into account by the ~~Review~~ Committee and therefore such remarks are required to be ignored. Although the applicant has relied on the case of The State of Haryana V/s. Shri P.C.Wadhwa (1987 II SVIR(L) 54) it appears to us that Wadhwa's case basically relates to delay in communication of the remarks and the more relevant case is Gurdial Singh Fijji V/s. State of Punjab and Ors. (1979 SCC (L&S) 197). In para 17 of this Judgment, the Hon'ble Supreme Court through Y.V. Chandrachud, C.J. has observed as below :

" The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an

opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him."

16. On this point, the State Government has not taken any clear-cut stand. We have therefore gone through the relevant proceedings of the ~~Review~~ Committee to ascertain as to how the ~~Review~~ Committee dealt with the case of the applicant to ~~the~~ his C.Rs. for ~~the~~ his suitability. It may be noted that the case at that time was being considered in the context of suitability of the applicant for confirmation and not in the context of suitability of the applicant for Senior Time Scale. So far as the minutes of the Selection Committee dt. 3.4.1992 are concerned, it is seen that the Secretary, Forest has held that the Officer is not fit for retention/confirmation and also that he should be watched for another 12 months.

The Principal Chief Conservator of Forest has observed that he is not fit for retention and confirmation and it would be desirable to terminate his services and the third Member has observed that he is not fit for confirmation at present. There is no indication as to whether the Members of the Selection Committee have ignored the adverse remarks against which representation was pending.

17. So far as the minutes of the Review Committee dt. 16.3.1993 are concerned, the Chief Conservator of Forest has considered the applicant not fit for retention/unfit. The Director of Social Forestry has held him to be unfit ~~but~~ the Secretary ~~Forestry~~ has held him to be fit for confirmation. Here again there is no indication ~~observance of the~~ regarding/need for ignoring C.Rs. against which representation is pending, but it is significant to note that the seniormost Officer (Chairman of the viz. Secretary Forest Review Committee) ~~had differed~~ from the Technical Officers and had held the Officer to be fit for confirmation. The final recommendation, was however, by majority. So far as the minutes of the Review Committee dt. 21.1.1994 are concerned, the agenda ~~note~~ states that the 1992-93 C.R. shows clear improvement in the performance of the Officer and all the Officers have held the applicant to be fit for confirmation and accordingly the recommendation had gone. This recommendation, of course, had gone

after the direction from the Central Government to reconsider the case in the light of the Supreme Court Judgment and since the prerogative of final decision in regard to confirmation under the rules is that of the Central Government, the Review Committee appears to have made the recommendation that it did. Here again, however, there is no indication regarding what part of C.R. was considered by the Review Committee in the context of pendency of representation.

18. It is therefore, clear ~~from the~~ Committee proceedings of the Review ~~that there is no~~ Committee clear indication that the Members of the Review ~~had~~ had ignored the part of the adverse remarks against which representation was pending. At the same time the Members of the Review Board have also observed that while earlier C.Rs. may be adverse, there is an improvement in the performance of the Officer from 1992-93 onwards.

19. However, when this Tribunal had given interim directions to the respondents to consider the case of the applicant for promotion to Senior Time Scale and to Junior Administrative Grade as per Rules, the State Government by its letter dt. 7.6.1996 took the stand that the Officer was not found suitable for promotion according to rules. It would thus appear that the State Government had additional material apart from the C.R. to hold that the

Officer was not fit for promotion. This additional material is dealt with in para 5 of the reply to the C.P. which reads as below :

"I further say that the Government received information on 12.1.1996 from the Secretary, Home Department of Uttar Pradesh vide their letter dated 5.1.1996 that the Petitioner was involved in the offences under section 498 A, 506 and 323 of the Indian Penal Code and section 3 and 4 of the Dowry Act and the matter is subjudice in the court since February, 1994 and that the Petitioner, who is a member of Indian Forest Service, not only acted against Law but his behaviour was inconsistent with his position and status and therefore action against him was called for. I say that subsequent to the above letter the Government also inter alia received information on 22.1.1996 from the Principal Chief Conservator of Forest vide their letter No. IFS/Promotion-333, dt. 19.1.96 that the petitioner had beaten and detained a Range Forest Officer of Social Forestry for which offences under section 342, 323 and 34 Indian Penal Code were booked in Frazerpura Police Station, Amravati and for the purpose the petitioner was arrested on 20.5.1995 at Nashik and released on bail. I say that the Government took the decision in regard to the claims of the petitioner rejecting them and communicated the decision on him on 7.6.1996. I submit that the procedure for consideration for the said promotion required a scrutiny of the confidential reports and the general character of the petitioner by the officials of the Government before whom the records were circulated and thereafter the same sent to Minister concerned and the Chief Minister who took the final decision thereon."

20. To the extent Government was swayed in its decision to refuse promotion to the applicant on the ground of additional material available before them it may be pointed out that apart from the C.Rs., this Tribunal dealt with that aspect in its decision on the C.P. vide para 6 of the order dt. 17.10.1996 which reads as below :

"What are the reasons then for denying

him the promotion? These reasons essentially relate to the incidents which are subsequent to the relevant period viz., the period 1992-93. The report from the Chief Secretary (U.P.) has been received on 5.1.1996 and the applicant has filed a rejoinder in connection with the Contempt Petition in which he has made it clear that he has been keeping the State Government informed from time to time about his side of the picture viz., that his father-in-law allegedly kidnapped his wife from his custody and also caused him monetary loss in the process and that when he filed the FIR on 18.11.1993 in that connection, his father-in-law as a counter-blast had filed FIR relating to dowry offence on 19.11.1993. It is nobody's case that he was in police custody for more than 48 hours and he has also produced a copy of the order of the Ld. Magistrate enlarging him on bail. It is clear that the Ld. Magistrate, after referring to the sequence of incidents, observed that the applicant who is a Government servant if sent to jail by cancelling his bail application it would definitely affect his service career before the merits and demerits of the case are decided, which will go against the principles of natural justice. In view of the circumstances the applicant was released on bail. Even the Chief Secretary of the Uttar Pradesh has not stated that the applicant has been convicted. He has only stated that the matter is pending before the Court and as observed by the Ld. Magistrate the principles of natural justice have to be followed before holding the petitioner to be guilty of offences under IPC and Dowry Act. The State Government appears to have been influenced by the recommendations of the Chief Secretary, U.P. without further examination. Though the Government has power to conduct departmental proceedings about the conduct of the officer outside office, they failed to realise that it is very difficult to conduct parallel proceedings as the offences are under Dowry Act, all the material is with the Police of U.P. and the witnesses would be from U.P. and they are all private persons. The nature of offence therefore is such that parallel departmental proceedings would be difficult to sustain. So far as the criminal case in Amravati District for which the applicant is alleged to have been arrested is concerned, the case had essentially arisen out of the action taken in relation to R.F.O. one Shri Chauhan against whom the applicant

had taken action under provisions of Indian Forest Act on 25.12.1994. After 12 days of the incident an FIR came to be lodged by said Chauhan against the applicant. It is surprising to see that the Principal Chief Conservator of Forests has not bothered to keep the Government informed regarding the background of the criminal case at Amravati, or at least place before the Government the applicant's side of the picture, because the same would be available by contemporaneous correspondence addressed by the applicant to all his superiors. Similarly the Principal Chief Conservator of Forests has also not bothered to inform the Government regarding whether there is a fit case for granting sanction for prosecution U/s. 197 of Cr.P.C. as requested by N.T.Shaha, which is a pre-requisite for launching a criminal prosecution against a Government servant. It would thus appear that on the basis of unexamined material including the recommendation of Chief Secretary U.P., and Principal Chief Conservator of Forests, Respondents have formed a view that the applicant cannot be promoted. However, as observed above, the State Government has failed in its elementary duty, to consider the position in accordance with the Rules which was what we directed. We have already observed that all the adverse incidents held against the Applicant are subsequent developments viz., the developments arising out of events which have taken place in 1993-94 (Dowry matter) about which the State Government came to know officially for the first time in January, 1996. The State Government ought to have examined the matter a little more carefully because the whole correspondence with State of U.P. was started on the basis of Press Report that Mrs.Srivastava, wife of the applicant, has died with a dark hint that the applicant had something to do with the death of his wife. It is clear from the report of the Chief Secretary that Mrs.Srivastava, is very much alive. It is already observed by us that ~~xxxx~~ by operation of the Rules the applicant is entitled to promotion to Senior Time Scale from 1.4.1993, on the basis of notified date of confirmation which applicant has challenged."

21. From the above discussion it would be ~~clear~~ ^{clear} crystal that the State Government had no cogent material before it to deny promotion to the applicant to the Senior Time Scale. To the extent the material before the State Government consisted of CRs, the same were considered by the State Government and the State Government recommended confirmation of the Officer and the Officer was accordingly confirmed with effect from 1.4.1992. It is not the State Government's contention that the CRs for the period from 1992-93 onwards are bad on the basis of which the applicant could be denied promotion. The essential reason to applicant for denial of promotion to Senior Time Scale related to the report received from Chief Secretary, U.P. and certain other materials referred to by the Head of Department. We have dealt with this matter and we have no reason to depart from that finding that that material did not warrant denial of promotion to the Officer to the Senior Time Scale of I.F.S.

22. It is well settled that no Officer has a right to promotion, he has a right only to be considered for promotion. It is further well settled that no All India Service Officer has a right to be promoted to Senior Time Scale officer by efflux of time. The observations of the Hon'ble Supreme Court to the contrary in P.C.Wadhwa (AIR 1964 SC 423) have since been overtaken by further developments including amendment of the statutory rules, in this

particular case IFS (Recruitment) Rules, 1966. We have already extracted Rule 6-A of the relevant rules and we have already noted that an Officer can be considered for appointment to a post in Senior Time Scale only if having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to the post in Senior Time Scale of pay. In Satya Prakash Nanda V/s. State of Orissa and Ors.

(1991) 18 ATC 1961 a Division Bench of this Tribunal (CAT, Cuttack Bench) in its decision rendered on 29.1.1988 observed in relation to Rule 6-A(2) which rule pertained but
to I.A.S. which is para materia as below :

" Suitability of an officer under Rule 6-A (2) has two ingredients. These are : (1) length of service and (2) experience. This suitability is not a quantitative computation but a qualitative assessment. Whether 3 years and a few months of service, passing the prescribed departmental examination, and working of a year each as a Sub-Divisional Officer and Charge Officer will make the officer suitable for appointment to senior time-scale cannot be decided in a court room, on the basis of submissions made or measuring the time span alone. For some posts of the same rank, may be more exacting than other posts. Moreover, the degree of stress and strain in any post may vary from time to time. According to circumstances obtaining at a particular time in a particular post, the quality of experience would vary from officer to officer holding posts of the same rank. These are matters which have to be considered by the State Government, who have knowledge of the demands of the time and officer's response thereto; in other words, the quality of his performance."

23. At the same time, the State Government cannot take into account unexamined irrelevant material to deny promotion to an Officer as it appears to have done in the present case. It may also be

observed that the State Government has denied promotion still to the applicant and has not thought it fit to issue show cause notice to the applicant. Such a show cause notice appears to be necessary from a related consideration of two sets of ~~15~~ rules. Firstly, Proviso to Rule 6-A(2) refers to the contingency when the Officer is subjected to disciplinary proceedings. If the Officer is exonerated, he has to be appointed to the Senior Time Scale post retrospectively. If he is not exonerated and the State Government proposes not to appoint him to the Senior Time-Scale of pay from the day on which he would have been so appointed had the disciplinary proceedings not been initiated against him, it shall give an opportunity to the officer to show cause against such an action. Thus, even in the extreme case of a non-exoneration in a disciplinary proceedings State Government is required to observe the principles of natural justice before denying promotion to the Senior Time Scale to an Officer. When no such disciplinary proceedings have been launched against ~~and~~ Officer, the failure of the State Government to promote the Officer is required to be investigated much more closely. Thus, unfettered from this point of view also, there is no discretion with the State Government to deny promotion to the Officer to the Senior Time Scale of the I.F.S. The second set of Rules is the Discipline and Appeal Rules and in particular Explanation 3 Rule-6 of

All India Services (Discipline and Appeal) Rules.

Rule 6 enumerates Minor Penalties and Major Penalties. Withholding of ~~increments~~ ^{promotion} is one of the Minor ~~Penalties~~ ^{Penalties} Explanation (iii) states as below:

[The following shall not amount to penalty].

"(iii) non-promotion of a member of the Service, whether in a substantive or officiating capacity, to a post in the senior time-scale of pay on the ground of lack of adequate length of service and experience or non-confirmation in the service, or failure to pass the departmental examination;"

In the present case, however, it is not the State Government's case that he lacked ~~these~~ three ingredients i.e. length of service, adequate experience and non-confirmation. The State Government is taking the stand on non-suitability of the Officer for promotion to Senior Time-Scale, but this amounts to imposing the minor penalty of withholding of promotion on the applicant without enquiry and therefore, the action of the respondents is ~~also~~ not in consonance with All India Services (Discipline and Appeal) Rules .

This brings us to a subtle point regarding the harmonious construction of Rule 6-A(2) and Rule 6-A(3). Let us consider provisions of Rule 6-A(3). It is, first of all, to be noted that this Rule is preceded by the clause 'notwithstanding' and it is well settled that the clause notwithstanding "anything contained elsewhere" has the function of carving out a limited exemption from the earlier mentioned provisions as observed by the Supreme Court in connection with interpretation of Cr.P.C. in

Union of India v/s. I.C.Lala (1973(2)S.C.C.72). Thus the exemption contained in Rule 3 empowers the State Government to withhold appointment of an officer referred to in sub-rule 1 to a post in the Senior Time-Scale of pay till he is confirmed in the service or till he passes the prescribed departmental examination or examinations. Thus, the exemption in sub-rule 3 enables the State Government to withhold promotion of an officer only subject to these conditions and no other. It is not disputed that the applicant has been confirmed in service and that he has passed the departmental examination at the first attempt in January, 1990. What is contended is that the State Government does not feel satisfied that the officer is suitable for appointment in a post of Senior Time-Scale. It appears that the State Government has clearly mis-construed the import of Rule 6-A(2) which is a positive provision empowering the State Government to appoint an Officer to Senior Time-Scale. The Rule shorn of its ~~adverbial~~ clauses reads that an officer shall be appointed to a post in the Senior Time-Scale if the State Government is satisfied that he is suitable for appointment and the two ingredients as spelt out in Satya Prakash Nanda's case (supra) are fulfilled. There is however, no negative power contained in the clause for the State Government to deny the promotion to him. The Rule gives the power to the State Government to appoint an Officer to the Senior Time-Scale and while doing so it was required to have

regard to his length of service and experience, this in order to ensure that the State Government does not in its enthusiasm for grant of quick promotion to the Junior Time-Scale Officers, promote Officers without their completing minimum length of service. The prohibitions are contained in the Rule 6-A(3) preceded by "notwithstanding" clause which empowers the Government to withhold appointment. Thus the power to withhold promotion is to be read primarily in Rule 6-A(3). We are required to read Rule 6-A(2) and Rule 6-A(3) harmoniously reading the restrictive conditions into Rule 6-A(3) and reading the positive conditions in Rule 6-A(2). The State Government may conceivably hold that a very junior officer is suitable for appointment to a post in the Senior Time-Scale of pay because that is the power vested in State Government in terms of that Rule. The satisfaction of the State Government is therefore required to be read positively i.e. a satisfaction for suitability and not negatively as meaning "not being satisfied as suitable". The positive satisfaction is restricted first of all by requiring the State Government to have regard to his length of service, experience and secondly, in specific terms by empowering the State Government to withhold promotion in terms of Rule 6-A(3). If the negative power is read in Rule 6-A(2) even when an officer fulfilled the conditions of Rule 6-A(3) that would give an unlimited licence to

the State Government to withhold all promotions to a Senior experienced Officer inspite of the fact that he is not barred from promotion in terms of the conditions laid down in Rule 6-A(3) and inspite of there being no disciplinary enquiry against him.

25. We are therefore of the view that considering the fact that Review Committee took into account adverse remarks against which representation was pending, considering that there is an improvement in the performance of the applicant as revealed from the C.Rs. from the years 1992-93 onwards and considering that the State Government has taken into account irrelevant unexamined material relating to Dowry matters for denying promotion to the applicant, considering also that no show-cause notice was issued to the applicant for non-promotion which amounts to minor penalty and finally considering these facts on the touch stone of relevant rules viz. IFS (Pay) Rules, 1968, IFS(Recruitment) Rules, 1966 especially Rule 6-A and All India Services (Discipline & Appeal) Rules, 1969, the action of the State Government in denying promotion to the applicant is entirely arbitrary and is, therefore, required to be interfered with.

26. Normally, after giving this finding the Tribunal should have referred the matter back to the Competent Authority viz. the State Government to

to re-consider the case of the applicant for promotion to the Senior Time-Scale. We have, however, already noted the tortuous course of litigation of the present case. We have also a feeling that although the departmental allegations of mala fides against an individual ^{correspondence} officer may not be borne out, ~~the overall record of~~ ^{to} ~~appear~~ betray, a great amount of prejudice ^{against} ~~the officer on the part of~~ ^{Technical Departmental Establishment} ~~as distinguished from~~ ^{outsider} non-departmental ~~officer like Secretary, Forests~~ (belonging to a different service). We are, therefore, inclined to issue a direction to the ~~Central~~ Government to ^{State} ~~elsewhere~~ promote the Officer to the Senior Time-Scale. For this purpose our authority is Supreme Court decision in The Distt. Registrar, Palghat & Ors. V/s. M.B.Koyakutty and Ors. (1979 SCC (L&S) 126). The facts of ~~that~~ case were different, but the basic point is relevant and the same is set out in para 30 of the Judgment, which is reproduced below :

" The last point for consideration is, whether it was proper for the High Court to issue a positive direction requiring the appellant to promote the respondent to the Upper Division and thereafter to determine his rank in the cadre of Upper Division Clerks. Ordinarily, the court does not issue a direction in such positive terms; but the peculiar feature of this case is that it has been disputed that Koyakutty respondent satisfies the two-fold criterion for promotion laid down in the statutory Rule 28(b)(ii). Indeed, the District Registrar, Palghat, who was impleaded as respondent 3 in the writ petition, expressly admitted in paragraph 8 of his counter-affidavit filed before the High Court, "that the seniority of service is the basis of

promotion from the ranks of Lower Division Clerks to the ranks of Upper Division Clerks provided they are fully qualified by passing the departmental tests for the purpose". It was never the case of the Registrar that Koyakutty was not otherwise fit for promotion. Indeed, even in the grounds of appeal to this Court, incorporated in the Special Leave Petition, it is not alleged that Koyakutty did not satisfy the criterion of seniority-cum-fitness prescribed by Rule 28(b)(ii). The position taken by the appellant, throughout, was that this rule should be deemed to have been "supplemented" by the impugned government notification. It is not correct that the impugned notification merely "supplements" or fills up a gap in the statutory rules. It tends to supersede or superimpose by an Executive fiat on the statutory rules something inconsistent with the same. Since the existence of both the criteria viz., seniority and fitness for promotion to the Upper Division prescribed, by the statutory Rule 28(b)(ii), in the case of Koyakutty was not disputed, the High Court was justified in issuing the direction it did."

The next

27. question which arises is this: taking 1.4.1992 as the date on which the applicant got confirmed, what should be the date on which the applicant should be directed to be promoted to the Senior Time-Scale. On this point we have already referred to the State Government's contention in its written statement that an officer is normally entitled to be promoted to Senior Time-Scale one year after the date of confirmation. This statement, however, is not supported by authority. In this connection, we refer to Government of India's decision in DP & AR letter No.3/7/72-AIS (IV), dated 24.9.1973

which reads as follows :

" A question was raised what should be length of service for District recruits appointed on the basis of the competitive examinations for promotion to the posts in the senior time scale in the Indian Forest Service. (2) It has been decided that in order to determine the suitability of direct recruits to the Indian Forest Service for promotion to the posts in the senior time scale, their works and performances should be watched for a period of at least two years after have completed successfully the period of probation of three years. In other words, the direct recruits to the Indian Forest Service may be considered for promotion to senior time scale on completion of five years of service including the period of their training."

It would be seen from the Government of India decision that 5 years' service is stipulated for considering the Direct Recruit I.F.S. Officers for promotion to the Senior Time Scale. The applicant would have completed 5 years of service on 6.7.1992. In our earlier orders we had directed the respondents to promote the applicant to the Senior Time Scale after completion of 1 year after confirmation. This period is over on 1.4.1993 by which time the applicant can be said to have completed more than 5 years of service in the I.F.S. In view of the above we hold that the applicant is entitled to promotion to the Senior Time Scale w.e.f. 1.4.1993 and direct accordingly.

28. The next promotion to which the applicant is entitled is promotion to the Junior Administrative Grade. It is well settled vide DOP Order~~s~~ dt. 27.4.1987 that Junior Administrative Grade is a non-functional grade to which an Officer is entitled to be promoted after completion of 9 years ^{of} service. The applicant completes 9 years of service on 6.7.1996, but there

are orders of the Government of India viz. 11030/22-AIS(II) dt. 16.3.1993 to the effect that the promotion to the Senior Time-Scale, as well as, Junior Administrative Grade should be granted uniformly viz. on 1st of April of the relevant year. Therefore, the applicant is held entitled to the promotion to the Junior Administrative Grade w.e.f. 1.4.1996. Consequent on promotion of the applicant to the Senior Time-Scale w.e.f. 1.4.1993 and the promotion of the Officer to the JAG w.e.f. 1.4.1996, the Respondents are directed to issue orders to grant notional fixation of pay to the applicant on his promotion to the Senior Time Scale and the Junior Administrative Grade. The applicant is also held entitled to arrears of pay ~~from~~ ^{for} one year prior to the date of filing of the O.A.

29. We next consider the case of other reliefs sought by the applicant and whether they are hit by the vice of multiplicity of reliefs.

30. The applicant is claiming the relief of directing the respondents to regularise the period of 2days' extraordinary leave without pay ~~or~~ Compensatory off viz. 26th and 27th December, 1990. We direct the applicant to file a representation in this regard within a month from the date of communication of the order and the respondents are directed to dispose of the same within one month thereafter.

31. The applicant has next raised a question

regarding recovery ordered by the State Government in connection with not passing Marathi Examination and the discrimination by the State Government between the applicant on the one hand and some other officers on the other. The respondents have contended that withholding of one increment is permitted under the State Government orders dt. 30.12.1987 issued under Article No. MABHAP-1087/14/CR 2/87/20 dt. 30.12.1987. Under the Rules Maharashtra Government Servants (Other than Judicial Department Servants) Marathi Language Examination Rules, 1987, Rule 5 provides that "A Government servant who fails to pass the examination within the prescribed period shall, after the expiry of the said period, be liable to have his increments withheld until he passes the examination or examinations, as the case may be, or is exempted from passing the same under the provisions of Rule 4." Since these rules are statutory rules and rules take effect from 30.12.1987 and since the applicant appeared for the Marathi Examination only thereafter, the rules clearly apply to him. Under the circumstances, the question of any relief to the applicant in regard to action taken by the Government on this account does not arise.

Except for the rejection of this minor relief, the communication dt. 7.6.96 is quashed and set aside the O.A. stands allowed, and the respondents are directed to issue order granting to the applicant promotion to the Senior Time-Scale of I.F.S. from 1.4.1993 and the Junior Administrative Grade from 1.4.1996 within two months from the date of communication of the order. The Respondents are also directed to grant pay in terms of the notional pay to be done w.e.f. 1.4.93 fixation and arrears of pay for one year prior to the date of the filing of the O.A. Orders regarding regulating extraordinary leave as indicated earlier should also be passed on receiving the representation. There will be no orders as to costs.

M.R.K. Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J).

B.