

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.116 OF 2014

New Delhi, this the 8th day of January, 2016

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

Shri Balai Lal Sinha,
Son of late Sri Rajendra Nath Sinha,
Aged 61 years, resident of Flat No.4B, Raycon Park,
207, Dum Dum Park, Kolkata 700055 retired from
the post of Regional Director, North Eastern Region,
from the service of the Ministry of Corporate Affairs,
having office at Nizam Palace, 3rd Floor,
234/4, A.J.C.Bose Road, Kolkata 700020 Applicant

(In Person)

Versus

1. Union of India, through
the Secretary, Ministry of Company Affairs,
5th Floor, A-Wing, Shastri Bhawan,
Dr.R.P.Road, New Delhi 110001
2. Secretary, Department of Personnel
& Training, Ministry of Personnel, Public Grievances &
Pension, North Block, New Delhi-110001.
3. Secretary, U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

4. Shri Rakesh Chandra,
 Director,
 Office of Director General,
 5th Floor, A-Wing, Shastri Bhawan,
 Dr.R.P.Road, ,New Delhi Respondents
 (By Advocate : Shri H. K. Gangwani)

.....
ORDER

RAJ VIR SHARMA, MEMBER(J):

The applicant, who retired from service, as an officer in the Senior Administrative Grade (SAG) of the Indian Corporate Law Service (ICLS), on attaining the age of superannuation on 31.10.2010, filed the present O.A. on 18.4.2011 before Calcutta Bench of the Tribunal, seeking the following reliefs:

- õi) direct the respondents to hold the review DPCs in respect of all the DPCs held with effect from 5.10.2005 to 03.08.2007 for SAG posts;
- ii) implement first the orders dated 13th July, 2009 of the Honøble Tribunal, New Delhi, after reviewing all the DPCs and then prepare the seniority list in SAG post and then to hold the review DPC for HAG post, and DG & CEO post;
- iii) allow all consequential benefits to the applicant as per orders of the CAT and Supreme Court along with interest @ 12% per annum on arrear salaries and allowances etc. On annual rest;
- iv) award punishment to those officials who have wrongly assessed the performance of the applicant in all the DPCs and deprived him of his due promotion deliberately in higher posts in commensurate with the quantum of harassment and injury suffered by the applicant;
- v) pass orders not to fill up any higher post till disposal of this case;
- vi) award costs; and
- vii) pass any other order/direction as may be deemed

just ad proper under the facts and circumstances of the case explained above.ö

2. In support of his case, the applicant states that his ACRs for the years 1998-99 to 2002-03, as well as for the years 2005-06 to 2007-08, contained the benchmark and above benchmark for promotion to the SAG of ICLS. The DPC, which met on 5.10.2005, 14.7.2006, and 3.8.2007, illegally and arbitrarily assessed him as 'Unfit' for promotion to SAG of ICLS. It is also stated by the applicant that the fact that the Review DPC, which met on 3.3.2010, assessed him as 'Fit' on the basis of his ACRs for the relevant period and recommended his promotion against the vacancies for the year 2008-09 with effect from the date of promotion of his immediate junior, shows that the DPC, which met on 3.3.2009 and assessed him as 'Unfit' for promotion to SAG of ICLS on the basis of the very same ACRs, acted arbitrarily and *mala fide*. The applicant submits that the DPC, which met on 5.10.2005, 14.7.2006 and 3.8.2007, have not only failed to follow the relevant instructions/guidelines issued by the Government of India, but also acted arbitrarily and *mala fide*, while considering him for promotion to SAG against the vacancies for the years 2005-06, 2006-07 and 2007-08, and, therefore, the proceedings of the said DPC are liable to be reviewed. It is also submitted by the applicant that he is entitled to promotion to SAG with effect from the date of promotion of his immediate junior in

terms of the order dated 13.7.2009 passed by the Tribunal in OA No.2277 of 2007.

4. In its counter reply, respondent no.1 has, *inter alia*, stated that the grading given by the Reviewing Officer was taken as the grading of the ACRs of the applicant, and that the gradings in the applicant's ACRs for the years 1999-2000, 2000-2001, and 2002-2003 were below benchmark of 'Very Good', which was the minimum benchmark for promotion to SAG of ICLS. Therefore, the applicant cannot call in question the proceedings of the DPC, which met on 5.10.2005, 14.7.2006 and 3.8.2007, finding him as 'Unfit' for promotion to SAG against the vacancies for the years 2005-2006, 2006-07, and 2007-08. It is also stated by respondent no.1 that in compliance with the Tribunal's order dated 13.7.2009, *ibid*, the penalty order dated 30.8.2007 passed against the applicant was withdrawn by respondent no.1, and Review DPC met on 3.3.2010 to review the proceedings of the DPC, dated 3.3.2009, and that on the basis of the recommendation of the Review DPC, the applicant was granted promotion to SAG with effect from the date of promotion of his immediate junior against the vacancies for the year 2008-09. It is further stated by respondent no.1 that the recommendation of the DPC, which met on 14.7.2006, in respect of the applicant was kept in sealed cover, as the disciplinary proceeding was pending against him. After the penalty order dated 30.8.2007, *ibid*, was quashed by the

Tribunal, vide its order dated 13.7.2009, *ibid*, the sealed cover was opened, and as the DPC did not assess him as fit for promotion against the vacancies for the year 2006-07, the applicant was not granted promotion with reference to his immediate junior who was promoted on the basis of the recommendation of the DPC which met on 14.7.2006. To the same effect was the finding of the DPC which met on 3.8.2007.

5. In its counter reply, referring to the proceedings of the DPC, which met on 5.10.2005, 14.7.2006, 3.8.2007 and 3.3.2009, the proceedings of the Review DPC, which met on 3.3.2010, and the orders/judgments passed by the Tribunal and the Honøble High Court of Delhi, respondent no.2-UPSC has strongly resisted the claim of the applicant. Respondent no.2-UPSC has asserted that the DPC considered the applicant, along with other officers in the zone of consideration, in accordance with the guidelines/instructions issued by the Government of India from time to time, and that there is no substance in the claim of the applicant for review of the proceedings of the DPC which met on 5.10.2005, 14.7.2006 and 3.8.2007, and for granting him any other benefits. It has also been asserted by respondent no.2-UPSC that the Tribunal's order dated 13.7.2009, *ibid*, has been duly complied with, inasmuch as upon quashing of the penalty order dated 30.8.2007, *ibid*, the Review DPC, which met on 3.3.2010, reviewed the proceedings of the meeting of the DPC held on

3.3.2009, and assessed the applicant as 'Fit' and recommended him for promotion to SAG against the vacancy for the year 2008-09 with reference to his immediate junior who was promoted against the vacancies for the year 2008-09.

5.1 Respondent no.2 has also referred to various guidelines/instructions issued by the Government of India, vide DoP&T's O.M. No.22011/5/86-Estt.(D) dated 10.4.1989; O.M. No. 22011/3/2007-Estt.(D) dated 18.2.2008, O.M. No.22011/1/2005-Estt. dated 14.5.2009; O.M. No. 22011/1/2010-Estt.(A) dated 13.4.2010; and O.M.No. 22011/1/2010-Estt.A(Pt.II) dated 19.5.2011, and has submitted that the applicant's case was considered by the respondents/DPC in accordance with the aforesaid guidelines/instructions, and there is no illegality in the proceedings of the DPC and Review DPC, which are the subject-matter of consideration in the previous litigations and the present O.A.

5.2 In support of its contention that on the facts and in the circumstances of the present case, there is no scope for interference by the Tribunal, Respondent no.1 has relied on the following decisions:

(i) **Nutan Arvind v. UOI & another**, (1962) 2 SCC 488, where it has been held by the Hon'ble Supreme Court that when a High Level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for

promotion, Court cannot sit over the assessment made by the DPC as an appellate authority.

(ii) **UPSC v. H.L.Dev & others**, AIR 1988 SC 1069, where it has been held by the Honøble Supreme Court that how to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee, and that the jurisdiction to make selection is vested in the Selection Committee.

(iii) **Dalpat Abasaheb Solanke v. B.S.Mahajan**, AIR 1990 SC 434, where the Honøble Supreme Court has emphasized that it is not the function of the Court to hear appeals over the decisions of the Selection Committee and to scrutinize relative merits of the candidates, and that whether a candidate is fit for a particular post, or not, has to be decided by the duly constituted Selection Committee which has the expertise on the subject.

(iv) **Anil Katiyar v. UOI & others**, 1997 (1) SLR 153, where the Honøble Apex Court has held that having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgment over the selection made by

the DPC unless the selection is assailed as being vitiated by *mala fides* or on the ground of its being arbitrary.

(v) **Dr.Basaviah v. Dr.H.L.Ramesh & othes**, JT 2010(7) SC 558, where the Honøble Supreme Court has held that Courts have to show deference and consideration to the recommendation of an expert Selection Committee consisting of distinguished experts in the field, and the High Court would not sit as an appellate court on the recommendations made by such Committee.

(vi) **UOI and others v. S.K.Goel and others**, Appeal (Civil) No.689/2007 (arising out of SLP (C) No.2610 of 2001), decided on 10.2.2007, where the Honøble Supreme Court has held that the DPC enjoys full discretion to devise its methods and procedure for objective assessment of suitability and merit of the candidates being considered by it. Hence, the interference by the High Court is not called for. It is more or less well settled that evaluation made by an Expert Committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. No judicial review of the DPC proceedings, which are already conducted in accordance with the standing Government instructions and rules, is warranted.

6. We have perused the records, and have heard the applicant in person and Mr.H.K.Gangwani, the learned counsel appearing for the respondents.

7. The pleadings of the parties reveal the following undisputed facts:

7.1 A meeting of the DPC was held on 5.10.2005 to consider officers for promotion to SAG of ICLS against one vacancy each for the years 2004-05 and 2005-06. The applicant was not assessed by the DPC for the year 2004-05, as an offer senior to him meeting the prescribed benchmark of 'Very Good' was available. For the year 2005-06, the applicant was the senior most officer in the zone of consideration. The DPC assessed the applicant as 'Unfit' because he failed to attain the prescribed benchmark of 'Very Good'. Therefore, the applicant was not included in the panel.

7.1.1 Aggrieved by his non-promotion on the basis of the findings of the DPC, which met on 5.10.2005, the applicant filed OA No.128 of 2006. The Tribunal, vide its order dated 1.2.2007, dismissed O.A.No.128 of 2006 as being devoid of merit.

7.2 Meanwhile, the applicant was issued charge sheet in the departmental proceedings on 14.11.2005.

7.3 Another meeting of the DPC was held on 14.7.2006 to consider officers for promotion to SAG of ICLS against one vacancy for the year 2006-07. The applicant was at sl.no.1 of the list of officers in the zone of consideration. However, the recommendation of the DPC in his case was kept in sealed cover, as he was not given

vigilance clearance due to pendency of the departmental proceedings against him.

7.4 Another meeting of the DPC was held on 3.8.2007 to consider officers for promotion to SAG of ICLS against two vacancies for the year 2007-08. The applicant was at sl.no.1 of the list of officers in the zone of consideration. The recommendation of the DPC in his case was again kept in sealed cover, as the disciplinary proceedings initiated against him were not concluded.

7.5 The disciplinary proceedings against the applicant were concluded in August 2007. He was awarded a minor penalty of stoppage of one increment for one year with cumulative effect, vide penalty order dated 30.8.2007.

7.6 The applicant challenged the said penalty order dated 30.8.2007, by filing OA No. 2277 of 2007 before the Tribunal.

7.7 During pendency of OA No.2277 of 2007 filed by the applicant, DPC met on 3.3.2009 to consider officers for promotion to SAG of ICLS against four vacancies for the year 2008-09, and two vacancies for the year 2009-10. Though the applicant was at sl.no.1 in both the lists of officers in the zone of consideration for the vacancies for the years 2008-09 and 2009-10, yet the DPC, after taking into consideration the service records of the applicant, including the penalty order dated 30.8.2007, *ibid*, assessed him as 'Unfit'

Therefore, he was not empanelled by the DPC for promotion to SAG of ICLS against the vacancies for the years 2008-09 and 2009-10.

7.8 The Tribunal, vide its order dated 13.7.2009, allowed OA No.2277 of 2007 and set aside the punishment awarded to the applicant. The Tribunal also directed the respondents to open the sealed cover pertaining to promotion of applicant to SAG and to give effect to it from the date the others have been accorded with all consequences.

7.8.1 The Ministry of Corporate Affairs filed W.P. (C) No.11551 of 2009, challenging the Tribunal's order dated 13.7.2009, *ibid.* The Hon'ble High Court of Delhi, vide its order dated 7.1.2010, dismissed W.P. (C) No. 11551 of 2009.

7.8.2 Thereafter, the applicant filed OA No.920 of 2009 before Calcutta Bench of the Tribunal, praying, *inter alia*, for issuance of a direction to the respondents to implement the order dated 13.7.2009, *ibid.* The Tribunal, vide its order dated 24.7.2009, disposed of O.A.No.920 of 2009, with the following direction:

õ...the applicant shall make a comprehensive representation to Respondent No.1 with a copy of OA and all annexure and order of the Tribunal to the said authority within a time frame of 15 days from the date of order. On receipt of the said representation the concerned respondent will consider and dispose of the same within a period of another 15 days therefrom and pass appropriate orders and communicate it to the Applicant....ö

7.8.3 Being armed with the order dated 24.7.2009, *ibid*, the applicant made a representation dated 6.8.2009. Respondent no.1, vide its letter dated 21.8.2009, rejected the applicant's representation dated 6.8.2009, *ibid*. The relevant portion of the letter dated 21.8.2009, *ibid*, is reproduced below:

2. The representation dated 06.08.2009 submitted by Shri B.L.Sinha has been considered in the Ministry. The main contention of Shri B.L.Sinha is that in view of judgment and order dated 13.07.2009 of the Hon'ble Central Administrative Tribunal in OA No.2277/07 (M.A.1039/2009), he is entitled for grant of promotion in Senior Administrative Grade from a date earlier than those who have been given promotion through the Departmental Promotion Committee since 2005, where his case has been kept in sealed cover and promotions have been given to others subject to clearance of vigilance cases. He has further contended that upon such grant of promotion to Senior Administrative Grade from a date earlier to those who had been given promotion, he would have also become eligible for consideration for promotion to Higher Administrative Grade along with others.

3. In this connection, it is brought to notice that Shri B.L.Sinha was assessed for promotion to Senior Administrative Grade for the first time in the Departmental Promotion Committee for the year 2005-06. The Departmental Promotion Committee made the following recommendations:

- | | | |
|------|---------------------|--------------------|
| i) | Shri B.L.Sinha | Unfit |
| ii) | Shri H.Banerjee | As in sealed cover |
| iii) | Shri M.L.Sharma | As in sealed cover |
| iv) | Shri Ujjawal Ray | As in sealed cover |
| v) | Shri Rakesh Cahndra | Fit |

On the basis of above recommendations, Shri Rakesh Cahndra was promoted to Senior Administrative Grade with effect from 23.01.2006 subject to opening of sealed cover cases.

4. Shri B.L.Sinha was again considered for promotion to Senior Administrative Grade for the

years 2006-07, 2007-08, 2008-09 and 2009-10. The Departmental promotion Committee chaired by Member, UPSC recommended as follows:

Panel for 2006-07

| | | |
|------|------------------|--------------------|
| i) | Shri B.L.Sinha | As in sealed cover |
| ii) | Shri H.Banerjee | As in sealed cover |
| iii) | Shri M.L.Sharma | As in sealed cover |
| iv) | Shri Ujjawal Ray | As in sealed cover |
| v) | Shri Diwan Chand | Fit |

Panel for 2007-08

| | | |
|-------|-------------------|--------------------|
| i) | Shri B.L.Sinha | As in sealed cover |
| ii) | Shri H.Banerjee | As in sealed cover |
| iii) | Shri Ujjaiwal Roy | As in sealed cover |
| iv) | Shri B.K.Bansal | Fit |
| v) | Shri Dhan Raj | Fit |
| vi) | Shri S.S.Balani | Not assessed |
| vii) | Shri P.K.Acharjee | Not assessed |
| viii) | Dr. Navrang Saini | Not assessed. |

Panel for 2008-09

| | | |
|-------|---------------------|--------------------|
| i) | Shri B.L.Sinha | Unfit |
| ii) | Shri S.S.Balani | As in sealed cover |
| iii) | Shri P.K.Acharjee | Unfit |
| iv) | Dr. Navrang Saini | Fit |
| v) | Shri N.K.Bhala | Unfit |
| vi) | Shri K.Pandian | Fit |
| vii) | Shri Har Lal | Unfit |
| viii) | Shri E.Selvaraj | Fit |
| ix) | M.A.Kuvadia | Fit |
| x) | S.M.Ameerul Millath | Not assessed. |

Panel for 2009-10

| | | |
|------|---------------------|--------------------|
| i) | Shri B.L.Sinha | Unfit |
| ii) | Shri S.S.Balani | As in sealed cover |
| iii) | Shri N.K.Bhala | Unfit |
| v) | Shri Har Lal | Unfit |
| vi) | S.M.Ameerul Millath | Fit |
| vii) | Shri K.L.Mambaj | Fit |

5. On the basis of above recommendations, S/Shri Diwan Chand, B.K.Bansal, Dhan Raj, Dr.Navrang Saini, K.Pandian and E.Selvaraj have been promoted to Senior Administrative Grade.

6. For promotion to the post of Director General of Corporate Affairs (HAG), an officer

becomes eligible for promotion after three years of approved service in Senior Administrative Grade. Shri B.L.Sinha has contended that he is entitled for grant of promotion to Senior Administrative Grade from a date earlier than given to others through the Departmental Promotion Committee since 2005 where his case had been kept in sealed cover and promotion orders in respect of all cases were issued on the condition of clearance of vigilance cases. In this context, it is stated that Shri Sinha was found 'Unfit' for the year 2005-06 and Shri Rakesh Chandra, his junior was found 'Fit' by the Departmental Promotion Committee and accordingly he was promoted to Senior Administrative Grade with effect from 26.01.2006. Therefore, it is evident that the contention to promote him from the date of promotion of Shri Rakesh Chandra has no basis keeping in view the fact that the Departmental Promotion Committee had found him 'Unfit'.

7. Shri B.L.Sinha has further contended that on grant of promotion to Senior Administrative Grade from a date earlier than others, he would also become entitled to be considered for promotion to Higher Administrative Grade along with others. In this connection, it is brought to notice that the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, vide its order dated 13.07.2009, has set aside order of penalty imposed on Shri Sinha with a direction to open the sealed cover pertaining to promotion of Sinha with a direction to open the sealed cover pertaining to promotion of the applicant in Senior Administrative Grade and to give effect to it from the date the others have been accorded with all consequences within a period of two months from the date of receipt of said order.

8. The Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, has given two months time to implement its judgment dated 13.07.2009. The Ministry has decided to file an appeal against the judgment of the Hon'ble Central Administrative Tribunal before the High Court of Delhi. However, the representations of Shri Sinha has been examined independent of the decision of filing an appeal against the said judgment of

Central Administrative Tribunal, Principal Bench, New Delhi, before the High Court of Delhi.

9. In the representation dated 06.08.2009, Shri Sinha has asked for placing his case in the Departmental Promotion Committee for the purpose of grant of promotion to Higher Administrative Grade. In this connection, it is pointed out that the two officers namely S/Shri U.C.Nahta and R.Vasudevan are undisputedly senior to Shri B.L.Sinha and therefore he has no case against these two officers. The third officer, Shri Rakesh Chandra was also promoted from the panel of 2005-06 in which Shri B.L.Sinha was found -Unfit-. Hence, Shri Rakesh Chandra became senior to Shri B.L.Sinha in Senior Administrative Grade. The promotion of Shri Rakesh Chandra has no relevance with the recommendations of Departmental Promotion Committee in which the proceedings in respect of Shri B.L.Sinha were kept in sealed cover. Assuming not admitting, even if the sealed covers in respect of Shri B.L.Sinha are opened and he is found -Fit- for promotion, he will be promoted w.e.f. 26.12.2006, i.e., the date of promotion of his junior namely Shri Diwan Chand. As per ICLS Recruitment Rules, 2009, a Senior Administrative Grade level officer becomes eligible for promotion to Higher Administrative Grade on completion of 3 years of service. Shri Sinha, therefore, becomes eligible for promotion to Higher Administrative Grade w.e.f. 01.01.2010 at the earliest in case it is found after opening the sealed cover that he has been recommended for promotion by the Departmental Promotion Committee whose recommendations have been kept in sealed cover. Shri Diwan Chand, his immediate junior, who was promoted to Higher Administrative Grade has not been included in the panel of eligible officers to be considered for promotion to Higher Administrative Grade. Hence, Shri B.L.Sinha has no case for consideration for Higher Administrative Grade at this stage.

10. In view of foregoing, there is no merit in the representation dated 06.08.2009 of Shri B.L.Sinha and the same is hereby rejected.

11. This complies with the direction of Honøble Central Administrative Tribunal, Calcutta Bench contained in its order dated 24.07.2009 in OA No.920/2009 titled Shri B.L.Sinha-vs-Union of India and others.ö

7.9 As the Tribunal quashed the penalty order dated 30.8.2007, *ibid*, while allowing O.A.No.2277 of 2007 filed by the applicant, and consequent upon withdrawal of the said penalty by respondent no.1, vide its order dated 7.1.2010, a review of the proceedings of the DPC, which met on 3.3.2009 to consider officers including the applicant for promotion to SAG of ICLS against the four vacancies for the year 2008-09 and two vacancies for the year 2009-10, was warranted. Therefore, a meeting of the Review DPC was held on 3.3.2010. The said Review DPC assessed the applicant as -Fitø and recommended him for promotion against the vacancies for the year 2008-09 with reference to his immediate junior in the panel for the year 2008-09. Accordingly, office order dated 6.8.2010 was issued by the respondent no.1 promoting the applicant to SAG of ICLS with effect from 6.8.2009, i.e., the date of promotion of his immediate junior Dr.Navrang Saini on notional basis, and further stipulating that actual benefit of promotion would be released to the applicant from the date of his assuming charge of the higher post.

7.10 Meanwhile, alleging non-implementation of the order dated 13.7.2009, *ibid*, the applicant also filed Contempt Petition No.163 of 2010. The Tribunal, vide its order dated 23.4.2010,

disposed of Contempt Petition No.163 of 2010, with the following observation and direction:

“.....we dispose of this CP by according another opportunity to the respondents, including UPSC to hold a review DPC to consider the claim of the applicant as if no vigilance inquiry has existed for promotion in SAG from the date the others, who are his juniors, have been considered in the review DPC held on 4.7.2006. This shall be done within a period of three months from the date of receipt of a copy of this order. However, liberty is accorded to the applicant to revive it at a appropriate stage in case of non-compliance. Notices are discharged. No costs.”

7.10.1 The respondents filed W.P. (C) No.4802 of 2010, challenging the Tribunal's order dated 23.4.2010, *ibid*. The Hon'ble High Court of Delhi disposed of W.P. (C) No. 4802 of 2010, vide its order dated 18.10.2010, which is reproduced below:

W.P. (C) No.4802/1010

| | | |
|----------|--|------------|
| UOI | | Petitioner |
| | Through: Mr.H.K.Gangwani, Advocate | |
| BL SINHA | | Respondent |
| | Through: Mr.M.L.Sharma and Mr.S.C.Gupta, Advocates | |

1. Though respondent has not been served on account of process fee not being filed, counsel as above appeared for the respondent. We note that learned counsel have filed a vakalatnama executed in their favour by the respondent.

2. With consent of parties the writ petition stands disposed of quashing the impugned order dated 23.4.2010 with right reserved for the respondent to file a substantive petition questioning the decision of the DPC not finding him fit for promotion as on date when DPC met i.e. 4.7.2006(*sic*).

3. It is clarified that it would be open to the respondent to seek promotion to the SAG Grade with effect from a date when persons junior to him were promoted on the basis of the Selection Committee recommendations which met on 4.7.2006 (*sic*).

4. Writ petition stands disposed of.

5. Dasti.ö

7.11 Hence, the applicant filed the present O.A. before Calcutta Bench of the Tribunal, and, on transfer, the same was registered as OA No. 116 of 2014 on the file of the Principal Bench of the Tribunal.

8. On a perusal of the records, we find that the applicant has not filed the copies of the entire ACRs for the years 1998-99 to 2002-03 and for the years 2005-06 to 2007-08, which have been referred to by him in a tabular statement, vide paragraph 4.10 of the O.A. However, he has filed copies of the extracts of his ACRs (i) for the period 1.4.1998 to 31.3.2009 (at pages 61 to 63 of O.A.); (ii) for the period 1999-2000 (at pages 64 to 66 of O.A.); (iii) for the period ending on 31.3.2001 (at pages 67 to 69 of O.A.); (iv) for the period ending on 31.3.2002 (at pages 70 to 72 of OA); (v) for the period ending on 31.3.2004 (at pages 73 to 75 of OA); (vii) for the period ending on 31.3.2003 (at pages 76 to 78 of OA); (viii) (a) for the period from 1.4.2005 to 17.11.2005 (at pages 79 to 81 of O.A.), and (b) for the period from 18.11.2005 to 31.3.2006 (at pages 82 to 84 of O.A.); (ix) for the period ending on 31.3.2007 (at pages 85 to 87 of O.A.); and (x) for the period from 1.4.2007 to 31.3.2008 (at pages 88 to 90 of

O.A.). The said extracts cover only the first page, and the pages of the ACRs, containing the period under report, and the remarks of the Reporting Officer as well as Reviewing Officers. In his ACR for the period 1.4.1998 to 31.3.2009, the applicant has been graded as 'Very Good' by the Reporting Officer and Reviewing Officer. **In his ACR for the period 1999-2000**, the Reporting Officer has graded the applicant as 'Very Good' while **the Reviewing Officer found him 'to be generally just adequate'**. **In his ACR for the period ending on 31.3.2001**, the Reporting Officer has graded the applicant as 'Very Good' and **the Reviewing Officer has remarked: 'I agree with the remarks of reporting authority that is indicated in individual columns that he is a 'good''**. In his ACR for the period ending on 31.3.2002, the Reporting Officer has graded the applicant as 'Outstanding' and the Reviewing Officer has agreed with the said grading. **In his ACR for the period ending on 31.3.2003**, the Reporting Officer has graded the applicant as 'Very Good' and **the Reviewing Officer has graded him as 'Good'**. **In his ACR for the period ending on 31.3.2004**, the Reporting Officer has graded the applicant as 'Very Good' and **the Reviewing Officer has graded him as 'Good'**. In his ACR for the period from 1.4.2005 to 17.11.2005, the Reporting Officer has graded the applicant as 'Very Good' and the Reviewing Officer has given no general remarks about the grading. In his ACR for the period from 18.11.2005 to 31.3.2006,

the Reporting Officer has graded the applicant as 'Outstanding' and the Reviewing Officer has agreed with the Reporting Officer about the grading of the applicant. In his ACRs for the period ending on 31.3.2007 and 31.3.2008, the Reporting Officer has graded the applicant as 'Very Good' and the Reviewing Officer has agreed with the Reporting Officer. Though the applicant has mentioned that his ACRs for the years 2003-04 and 2004-05 were not furnished, yet both the applicant and the respondents have made no averment as to why the ACRs for the aforesaid two periods were not available. In the above view of the matter, we are unable to accept the contention of the applicant that his ACRs for all the relevant years, which were placed before the DPC on 5.10.2005, 14.7.2006 and 3.8.2007 contained the benchmark/grading and above benchmark/grading for promotion to SAG of ICLS. Furthermore, as per the instructions/guidelines issued by the Government of India, which have been referred to by respondent no.2-UPSC, DPC enjoys full discretion to devise its own methods and procedure for objective assessment of the suitability of the candidates who are considered by them. The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters and attributes. The DPC shall

determine the merit of those being assessed for promotion with reference to the benchmark and, accordingly, grade the officers as 'Fit' or 'Unfit' only. In view of these instructions/guidelines issued by the Government of India, and further in view of the fact that all the ACRs of the applicant for the relevant periods did not contain the benchmark of 'Very Good', we find no substance in the contention of the applicant that the DPC, which met on 5.10.2005, 14.7.2006 and 3.8.2007 for considering him and others for promotion to SAG of ICLS against the vacancies for the years 2005-06, 2006-07 and 2007-08, acted arbitrarily and *mala fide* in assessing him as 'Unfit'.

9. As regards the applicant's claim for review of the proceedings of the DPC, which met on 5.10.2005, it is found that the applicant had earlier filed OA No.128 of 2006 challenging his non-promotion, and the Tribunal, vide its order dated 1.2.2007, had dismissed the said O.A. as being devoid of merit. Thus, in the present O.A., the applicant cannot be allowed to reopen the issue of his non-promotion pursuant to the proceedings of the meeting of the DPC held on 5.10.2005, inasmuch as the Tribunal's order dated 1.2.2007, *ibid*, operates as *res judicata* and bars the trial of the same issue.

10. As regards the applicant's claim for review of the proceedings of the DPC, which met on 14.7.2006 and 3.8.2007, and considered officers including the applicant for promotion to SAG of ICLS against the vacancies for the years 2006-07 and 2007-08, it is

the admitted position between the parties that the disciplinary proceedings were pending against the applicant on those dates, and were concluded only on 30.8.2007 when order was passed imposing on him a minor penalty of stoppage of one increment for one year with cumulative effect. Therefore, the sealed cover procedure was adopted on both the occasions. After the Tribunal, vide its order dated 13.7.2009 passed in OA No.2277 of 2007, quashed the said penalty order dated 30.8.2007, the sealed covers were opened and it was found that on both the occasions, the DPC had found him "Unfit". The applicant has not brought to our notice any instruction issued by the Government of India which goes to support his claim for reviewing the said proceedings. We also do not find any instruction issued by the Government of India in support of the claim of the applicant. Therefore, we do not find any substance in the aforesaid claim of the applicant.

11. As has already been found in paragraph 7.9 of this order, after the penalty order dated 30.8.2007, *ibid*, was quashed by the Tribunal, and consequent to the withdrawal of the said penalty order by respondent no.1, vide its order dated 7.1.2010, *ibid*, a Review DPC met on 3.3.2010 to review the proceedings of the DPC dated 3.3.2009, *ibid*. The Review DPC considered the relevant service records of the applicant, excluding the penalty order dated 30.8.2007(*ibid*), and assessed him as "Fit". Accordingly, on the basis

of the recommendation of the said Review DPC, the respondent no.1 issued office order dated 6.8.2010 promoting the applicant to SAG of ICLS with effect from 6.8.2009, i.e., the date of promotion of his immediate junior Dr.Navrang Saini on notional basis, and further stipulating that actual benefit of promotion would be released to the applicant from the date of his assuming charge of the higher post. At the cost of repetition, we would like to mention here that the penalty order dated 30.8.2007, *ibid*, was taken into account by the DPC which met on 3.3.2009 and found the applicant as 'Unfit', whereas the Review DPC, which met on 3.3.2010 and assessed the applicant as 'Fit' did not take into account the penalty order dated 30.8.2007,*ibid*, because of the same having been quashed by the Tribunal and withdrawn by respondent no.1. Therefore, the applicant is not correct to say that on the same set of materials, the DPC, which met on 3.3.2009, and the Review DPC, which met on 3.3.2010, have given two different findings in respect of him.

12. The order dated 13.7.2009 passed by the Tribunal in OA No.2277 of 2007 has to be read together with the (i) order dated 24.7.2009 passed by Calcutta Bench of the Tribunal in OA No.920 of 2009, (ii) the order dated 23.4.2010 passed by Principal Bench of the Tribunal in Contempt Petition No. 163 of 2010, and (iii) the order passed by the Honøble High Court in W.P. (C) No. 4802 of 2010, which have been discussed by us in different sub-paragraphs of

paragraph 7 of this order. It is pertinent to note here that in compliance with the Tribunal's order dated 13.7.2009, *ibid*, setting aside and quashing the penalty order dated 30.8.2007, *ibid*, respondent no.1 withdrew the said penalty order, vide its order dated 7.1.2010, and opened the sealed covers containing the findings/proceedings of the DPC (which met on 14.7.2006 and 3.8.2007) in respect of the applicant. It was found that on both the said occasions, the applicant was assessed as 'Unfit'. Thereafter, Review DPC was convened to review the proceedings of the DPC dated 3.3.2009, *ibid*. Accordingly, the Review DPC met on 3.3.2010 and, after considering the applicant's relevant service records, excluding the penalty order dated 30.8.2007, *ibid*, assessed him as 'Fit' and recommended his promotion to SAG of ICLS with effect from 6.8.2009, i.e., the date of promotion of his immediate junior to SAG of ICLS on the basis of the recommendation of the DPC which met on 3.3.2009. Thus, the Tribunal's order dated 13.7.2009, *ibid*, has been fully implemented by the respondents. In the above view of the matter, we do not find any merit in the prayer made by the applicant to issue a direction to the respondents to implement the Tribunal's order dated 13.7.2009, *ibid*.

13. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties, in the light of the instructions/guidelines issued by the Government of India, and the law laid down by the Hon'ble Supreme Court in the

cases, relied on by respondent no.2, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him in the O.A., and that the O.A., being devoid of merit, is liable to be dismissed.

14. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

AN