

M.V.Thimmaiah & Ors vs Union Public Service Commission & Ors on 13 December, 2007

Author: A.K.Mathur

Bench: A.K.Mathur, Markandey Katju

CASE NO.:

Appeal (civil) 5883-5891 of 2007

PETITIONER:

M.V.Thimmaiah & Ors

RESPONDENT:

Union Public Service Commission & Ors.

DATE OF JUDGMENT: 13/12/2007

BENCH:

A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:

J U D G M E N T [Arising out of S.L.P.(c) Nos.23060-23068 of 2005] With:

Civil Appeal Nos. 5894-5902 of 2007 [Arising out of S.L.P.(c) Nos.23484-23492 of 2005] Civil Appeal Nos. 5903-5911 of 2007 [Arising out of S.L.P.(c) Nos.23571-23579 of 2005] Civil Appeal No. 5912 of 2007 [Arising out of S.L.P.(c) No.23852 of 2005] Civil Appeal Nos. 5913-5921 of 2007 [Arising out of S.L.P.(c) No.25764-25772 of 2005] Civil Appeal No. 5922 of 2007 [Arising out of S.L.P.(c) No.900 of 2006] Contempt Petition) No.131 of 2006 in S.L.P.(c) Nos.23060-23068 of 2005.

A.K.MATHUR,J.

1. Leave granted in all the Special Leave Petitions.

2. All these appeals arise against the common order dated 6.10.2005 passed by the Division Bench of the High Court of Karnataka while disposing of a bunch of petitions arising out of the common order dated 4.10.2004 passed by the Central Administrative Tribunal, Bangalore Bench (hereinafter to be referred to as the Tribunal). The Tribunal by the aforesaid order set aside the recommendations of the Selection Committee to fill up 8 vacancies belonging to the non-State Civil Service Officers of Government of Karnataka to the Indian Administrative Service (IAS) of Karnataka cadre on the ground of mala fides, arbitrariness and also on the ground that the Selection Committee without application of mind had awarded marks to the

selected candidates in a discriminatory manner. It was also held by the Tribunal that the Selection Committee was not properly constituted as per the provisions of Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter to be referred to as the Regulations of 1955). Out of the bunch of petitions which were filed before the Karnataka High Court, two petitions were filed by the Union Public Service Commission (hereinafter to be referred to as the Commission), first is that the Chairman of the Selection Committee, Shri Subir Dutta, Member, U.P.S.C. against whom the allegation of mala fide was leveled and it was upheld by the Tribunal, second one challenging the finding of the Tribunal that the Selection Committee was not properly constituted and the Selection Committee acted arbitrarily and in a discriminatory manner and awarded marks to the selected candidates. Another batch of petitions (seven in number) was filed by the selected candidates whose names were recommended for appointment to the I.A.S. and two writ petitions were filed by the persons who were not short-listed by the Screening Committee. Hence, all these petitions were clubbed together and were disposed of by the common order as aforesaid.

3. Learned Division Bench of the Karnataka High Court after hearing all the parties found that the allegation of mala fide leveled against Shri Subir Dutta, Member of the Commission was not well founded, that the Selection Committee was properly constituted and the Committee did not act in arbitrary or discriminatory manner while awarding the marks to the selected candidates. Hence the order of the Tribunal was set aside. Aggrieved against this order passed by the Division Bench of the Karnataka High Court dated 6.10.2005, the present appeals were filed by the aggrieved persons. Hence, the appeals have now finally come up before us for disposal.

4. The appointment to the I.A.S. from the State cadre can be made other than the State Civil Service in case an incumbent is having outstanding merit and ability and holds a gazetted post in a substantive capacity and has completed not less than eight years of service in the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service. The candidates shall not exceed five times the posts proposed to be filled up during the year. An incumbent should not have attained the age of 54 years, as per the Regulations of 1997. Regulation 5 says that a list shall be prepared of the suitable candidates by the Committee after scrutiny of service records and personal interview. The Committee has been defined in Regulation 2(i)(a) which means a Committee as constituted under Regulation 3 of Regulations, 1955. As per the Regulations, the Committee shall be headed by the Chairman of the Commission or if the Chairman fails to attend, by any other Member of the Commission. The Chairman or the Member of the Commission shall preside over the meetings. Regulation 3(3) further says that the absence of a member, other than the Chairman or Member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended the meeting. Regulation 3(3) which will have relevant bearing reads as under:

3(3) The absence of a member, other than the Chairman or Member of the Commission, shall not invalidate the proceedings of the Committee if more than half

the members of the Committee had attended the meetings. Apart from the Member of the Commission, as per the schedule referred to for the State, the following members shall also be the members of the Committee which includes the Chief Secretary to the Government; Additional Chief Secretary to the Government; Principal Secretary to Government, Revenue Department; Senior most Divisional Commissioner and two nominees of the Central Government. This Selection Committee after scrutiny of the records and calling for personal interview will prepare a list and recommend the names of the suitable candidates to the State Government concerned, which shall forward to the Commission for its approval along with the records of all members of the State Civil Service included in the list; the records of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list and the observations, if any, of the State Government on the recommendations of the Committee to the Central Government and the Central Government shall also forward their observations, if any, on the recommendations of the Committee to the Commission. Thereafter, the Commission as per Regulation 7 of 1997 shall consider the list prepared by the Committee; observations, if any, of the Central Government or the State Government concerned, on the recommendations of the Committee and approve the list subject to the provisions of Regulation 7(2) of the Regulations, 1997. As per Regulation 7(2); if the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account these comments, if any, of the State Government and the Central Government, may approve the list finally with such modification, as may in its opinion be just and proper. That list shall be forwarded to the Central Government and the Central Government shall make appointment on the basis of the list but if the Central Government is of the opinion that it is necessary or expedient so to do in the public interest may not appoint any person and it is within the domain of the Central Government and it need not record its reasons or communicate the same to the Commission. In this scheme of the Rules, the factual controversy shall be examined.

5. In the present case eight vacancies were advertised and the process of recruitment to these vacancies was undertaken. The State Government constituted a Screening Committee for short-listing of the Officers not belonging to the State Civil Service. The Committee was headed by Shri B.S.Patil, Chief Secretary to the Government and four other Members who were the Secretaries to the Government of Karnataka. As per Circular dated 30.3.2002 the Government had directed various Heads of the Department to send a list eligible suitable officers who fulfil the aforesaid eligibility criteria. In pursuance of this circular 79 names were received from different Departments and their cases were scrutinized by the Screening Committee with reference to their records for short-listing the names which could be sent to the Commission for selection to the I.A.S. cadre. Since the number of persons to be considered shall not exceed five times the vacancies proposed to be filled up in that year, therefore, as against eight vacancies 40 candidates were to be short-listed. The Screening Committee short-listed 40 candidates on the basis of the service records out of the 79 candidates whose names were received from different Departments. Besides, the name of one more

person was sent to the Selection Committee for selection because of the order passed by the Tribunal. Thus, in total names of 41 persons were sent for consideration against eight vacancies. The Selection Committee after scrutinizing the cases and after interviewing 39 candidates selected eight candidates and two candidates remained absent. Though a petition was filed before the Tribunal by one person who was not selected and stay order was obtained that was challenged before the High Court and the High Court allowed the writ petition and vacated the interim order passed by the Tribunal staying the selection and permitted the selection to be taken to its logical conclusion subject to the condition that the order passed by the Tribunal shall be subject to challenge before this Court. Then one Special Leave Petition was filed before this Court against the order passed by the Division Bench vacating the stay order passed by the Tribunal that Special Leave Petition was dismissed on 23.7.2004. Thereafter, the matter was finally heard by the Tribunal and the Tribunal set aside the selection of eight selected candidates of the Karnataka cadre to the I.A.S. The Tribunal was of the view that the Selection Committee was not properly constituted as per the provisions of Regulation 3 of the Regulations, 1955 and the Tribunal further took the view that the selection of eight candidates stood vitiated as a result of mala fide on the part of Shri B.S.Patil, Chief Secretary and Shri Subir Dutta, Member of the Commission who was the Chairman of the Selection Committee. It was further observed by the Tribunal that the selection was not fair and selection was being made in an arbitrary manner. However, the name of two persons who were not short-listed was rejected by the Tribunal on the ground that there was no arbitrariness for their non-inclusion. That order was challenged by them before the High Court by filing writ petition. The Division Bench of the High Court after examining the matter found that all the grounds raised by the writ petitioners were not sustainable.

6. The controversy involving the selection could be divided into two parts; (i) mala fide and (ii) the constitution of the Selection Committee and the selection of the candidates. So far as the first argument with regard to mala fide is concerned, Shri Subir Dutta was not impleaded as a party, but subsequently, he was impleaded as a party respondent. The first ground which was alleged is that the select list is not only arbitrary but also a product of favouritism shown to the selected candidates notwithstanding the fact that the appellants had outstanding records but their names were not included solely for the reason that the Selection Committee was headed by Shri Subir Dutta, Member of the Commission and Shri B.S.Patil, the Chief Secretary to the Government being one of the constituents of the Committee being interested in the candidature of Respondents 5 to 12 before the Tribunal and as a result of such selection, their candidatures have not been considered in a proper and objective manner and they did not receive a fair treatment from the Selection Committee. It is alleged that the selection was vitiated on the ground that Shri Subir Dutta, who was the Chairman of the Selection Committee was appeased with the piece of land in the city of Bangalore i.e. he was allotted a site in Bangalore irrespective of the fact that whether he was eligible or not. It was submitted that during the process of selection and on the basis of interview, a site has been bartered away in favour of Shri Subir Dutta and in that the former Chief Secretary to the Government, Shri B.S.Patil has shown a great interest. Therefore, on account of this favouritism was shown to respondents 5 to 12 before the Tribunal, the applicants before the Tribunal have been denied their legitimate selection and therefore, in sum total, the allegation of mala fide against Shri Subir Dutta is that a site was allotted to him to appease him and secure favourable selection in respect of Respondents 5 to 12. The High Court in order to verify the element of truth sent for the

original file relating to the allotment of residential site to Shri Subir Dutta from Bangalore Development Authority wherein it is noted that on 11.4.2003 a note was placed by Shri B.S.Patil, the Chief Secretary, to the Chief Minister making a request that a site be allotted to Shri Subir Dutta as he has attachment to the State of Karnataka and he has been helpful both for selecting Bangalore for bi- annual Air Shows and for grant of defence land for the purpose of road network in Bangalore. For that on 17.4.2003 the Chief Minister approved the proposal of the Chief Secretary for allotment of a residential site to Shri Subir Dutta who was at that time the Defence Secretary. After that necessary formalities for allotment was undertaken. On 17.4.2003 when a site was allotted to Shri Subir Dutta, he was the Defence Secretary to Government of India and he was not a Member of the Commission and he became a Member of the Commission only on 1.7.2003 and assumed charge on 4.7.2003 as Member of the Commission. The selection took place in November, 2003. Therefore, the Division Bench of the High Court rejected the allegation of mala fide to be far-fetched. We gave our thoughtful consideration to this allegation. There is no correlation with this selection. It is too far fetched to connect with this case that Shri Subir Dutta who was given the residential site in lieu of his service rendered to the State of Karnataka, would necessarily favour the candidates. The short-listing was done by the Screening Committee headed by the Chief Secretary along with four Secretaries of the State and there was no mala fide intention in short-listing of these persons, now to think that just because Shri Dutta was allotted some land so that necessarily he would favour these selected candidates only is nothing but figment of imagination of the appellants. To connect the selection with the previous allotment of land to Shri Subir Dutta has hardly any connection between the two. In the selection process Shri Subir Dutta was one of the Members along with others. All the Officers who were to be selected belonged to Karnataka State and it is not specific that any of the selected candidates has in any manner actively associated with the allotment of land to Shri Subir Dutta. It is too remote to connect the selection of these candidates with the allotment of the site to Shri Subir Dutta. We do not find any connection that any of the selected candidates has in any manner directly or indirectly associated himself in the allotment of the site in favour of Shri Subir Dutta. As it appears from the file which was summoned by the High Court that the proposal was mooted out by the Chief Secretary and it was approved by the Chief Minister. Therefore, there appears no direct or indirect connection with the selection of candidates and allotment of residential site in favour of Shri Subir Dutta. As such, the allegations are too far-fetched to render the entire selection invalid on the ground of so called mala fide. This is purely flight of imagination and we strongly reject the allegation of mala fide against Shri Subir Dutta, the Chairman of the Selection Committee.

7. So far as the allegation of mala fide against Shri B.S.Patil is concerned, he was not impleaded as a party. Therefore, the allegation of mala fide could not be entertained by the Tribunal. As such, the allegation of mala fide against Shri B.S.Patil could not be taken into consideration and rightly so, by the High Court as well as by the Tribunal. The allegation of mala fide is very easy to be levelled and it is very difficult to substantiate it, specially in the matter of selection or whoever is involved in the decision making process. People are prone to make such allegation but the Courts owe a duty to scrutinize the allegation meticulously because the person who is making the allegation of animous sometimes bona fidely or sometimes mala fidely due to his non-selection. He has a vested interest. Therefore, unless the allegations are substantiated beyond doubt, till that time the Court cannot draw its conclusion. Therefore, we reject the allegation of mala fide.

8. Now, coming to the constitution of the Selection Committee and the selection undertaken by the Committee, so far as the constitution of the Selection Committee is concerned, one of the submissions was that the Divisional Commissioner who was supposed to be the Member of the Selection Committee was not there. Therefore, the whole selection stood vitiated. So far as this argument is concerned, suffice it to say that the post of Divisional Commissioner was abolished by the State Government with effect from 1.4.2003 and the said fact was informed to the Commission about the abolition of the post and it was requested to suitably amend the schedule as per Regulation 3 of the Regulations of 1955. Since the post of Divisional Commissioner was not in existence and the same having been abolished there was no question of including the Divisional Commissioner as a Member of Selection Committee specially when the Government of Karnataka has already informed the Commission to amend the schedule. When the post of Divisional Commissioner was not there that would not render the selection or would not make the Selection Committee non-functional as out of the seven Members six Members participated in the Selection Committee and Regulation 3 clearly says that absence of a Member, other than the Chairman or Member of the Commission, shall not invalidate the proceedings of the Committee if more than half the Members of the Committee had attended its meetings. Therefore, this contingency has already been taken care by Regulation 3(3) that in case any Member is unable to participate in the selection process except the Member of the Commission and more than half of the members have attended the meeting, then the proceedings of the Committee shall not vitiate in the absence of such Member. As such the Selection Committee in the absence of Divisional Commissioner cannot be said to be not properly constituted. More so there is no prejudice caused to the appellants as out of the seven Members, six Members of the Selection Committee were there which is more than 50%. As such, nothing turns on this. We hold that the Selection Committee was properly constituted.

9. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit in court of appeal to examine the selection of the candidates nor is the business of the Court to examine each candidate and record its opinion. In this connection, learned senior counsel for the appellants has taken us through various following decisions of this Court.

(i) AIR 2003 SC 3044 Surya Dev Rai v. Ram Chander Rai & Ors.

(ii) (1993) 3 SCC 319 P.M.Bayas V. Union of India & Ors.

(iii) (1985) 4 SCC 417 Ashok Kumar Yadav & Ors. V. State of Haryana & Ors. Etc.

(iv) (1981) 1 SCC 722 Ajay Hasia & Ors. V. Khalid Mujib Sehravardi & Ors.

(v) 2007 (3) SCALE 219 Union Public Service Commission v.

S.Thiagarajan & Ors.

Mr.P.P.Rao, learned senior counsel appearing for the private respondents invited our attention to the following decisions of this Court.

- (i) (1976) 3 SCC 583 Dr.G.Sarana V. University of Lucknow & Ors.
- (ii) (1980) @ SCC 355 Mrs. Kunda S.Kadam v. Dr.K.K.Soman & Ors.
- (iii) (2002) 1 SCC 749 Ashok Nagar Welfare Association & Anr. V R.K.Sharma & Ors.

Learned Senior Counsel for the Commission invited our attention to the following decisions of this Court.

- (i) (1973) 2 SCC 836 Union of India v. Mohan Lal Capoor & Ors.
- (ii) (1981) 4 SCC 159 Lila Dhar V. State of Rajasthan & Ors.
- (iii) (1985) 4 SCC 417 Ashok Kumar Yadav & Ors. V. State of Haryana & Ors. Etc.
- (iv) 1986 (Supp) SCC 617 R.S.Dass V. Union of India & Ors.etc.
- (v) 1987 (Supp) SCC 401 State of U.P. V. Rafiquddin & Ors. Etc.
- (vi) (1988) 2 SCC 242 Union Public Service Commission V. Hiranyalal Dev & Ors. Etc.
- (vii) (1983) 3 SCC 241 Mehmood Alam Tariq & Ors. V. State of Rajasthan & Ors.
- (viii) (1990) 1 SCC 305 Dalpat Abasaheb Solunke & Ors. V. Dr.B.S.Mahajan & Ors.
- (ix) 1992 Supp. (2) SCC 481 National Institute of Mental Health And Neuro Sciences v. Dr.K.Kalyana Raman & Ors.
- (x) (1993) 1 SCC 17 Indian Airlines Corporation v.

Capt. K.C.Shukla & Ors.

- (xi) 1993) 3 SCC 319 P.M.Bayas v. Union of India & Ors. Etc.
- (xii) 1994 Supp. (1) SCC 454 C.P.Kalra v. Air India through its Managing Director, Bombay & Ors.
- (xiii) (1997) 1 SCC 280 Anil Katiyar (Mrs.) v. Union of India & Ors.
- (xiv) (1997) 9 SCC 151 All India State Bank Officers Federation & Ors. V. Union of India & Ors. Etc.

(xv) (1998) 3 SCC 694 Union of India & Anr. V. N.Chandrasekharan & Ors.

(xvi) (2004) 6 SCC 786 Inder Parkash Gupta v.

State of J & K & Ors.

(xvii) (2006) 6 SCC 395 K.H.Siraj v, High Court of Kerala & Ors.

10. Keeping in view the ratio laid down by this Court in several decisions, now we shall examine the argument of learned senior counsel for the appellants which had been addressed. But we may at the very outset observe that the Court while considering the proceedings of the Selection Committee does not sit in a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed. In the present case, 39 candidates were examined by the Selection Committee for being recommended for appointment to the I.A.S. The selection process took place between 24.11.2003 and 28.11.2003 whereby the Selection Committee scrutinized the service records of the individual candidates and interviewed them and the Selection Committee selected those candidates who were found to be having outstanding merit and ability. The Commission has fixed 50 marks for scrutiny of the service records and 50 marks were allotted for interview. It was also decided by the Commission that the candidates would be eligible for selection only if they secure 50% marks in each of the two components i.e. 25 marks in the scrutiny of the service records and 25 marks in the interview. The Commission has further laid down the norms for awarding marks for the scrutiny of service records. 10 marks are awarded to a candidate if on an assessment of service record he was found to be outstanding, 8 marks if the service record was found to be very good and 5 marks if it was good. Candidates who have failed to secure 25 marks in the interview were not held to be qualified. Similarly, the candidates who failed to secure 25 marks on the basis of the service records were also not held to be eligible. However, on facts no person was rejected on the ground that he failed to secure 25 marks either on the basis of the service records or on the basis of interview. The Tribunal while scrutinizing the records sent by the Selection Committee set aside the selection of eight candidates namely Sarvashri Anwar Pasha and K.Ramanna Naik, who according to the Tribunal were wrongly selected. The block period is five years for which the confidential records of the candidates were scrutinized by the Selection Committee i.e. from 1997-98 to 2001-02. It is alleged that the confidential report of Shri Anwar Pasha for the year 1998-99 was written on 14.6.2002 and for the year 1999-2000 was written on 15.6.2002. It is further alleged that these confidential reports were written beyond the time limit prescribed by Rule 8 of the Karnataka Civil Services (Performance Reports) Rules, 1994 (hereinafter to be referred to as the Rules of 1994) and the same could not have been looked into by the Selection Committee. Therefore, the selection of Shri Anwar Pasha was invalid. It was found by the Selection Committee that the Annual Confidential Reports of this Officer for these two years were not written within the time limit prescribed as required under Rule 8 of the Rules of 1994. But it was pointed out that Rule 8 of the Rules of 1994 was amended in 1999 and the time limit prescribed was done away with retrospective effect. It was provided as per clause (b) of Rule 5 of the amending Rules of 1999 that the reports written or reviewed or accepted in accordance with the 1994 Rules as amended in the year 1999 shall be deemed to be valid for the purpose of that rule. But in view of the retrospective amendment of the Rules of 1999, the time limit having been done away with the

reports could have been taken into consideration but it was further pointed out that the Rules of 1994 were repealed in 2000 and the provisions of Karnataka Civil Services (Performance Reports) Rules, 2000 (hereinafter to be referred to as the Rules of 2000) came into force. Rule 13 of the Rules of 2000 provided that the repeal shall not affect the previous operation of the 1994 Rules or anything duly done or suffered there under or affect any right, liability or obligation acquired, accrued or incurred under those Rules. Therefore, so far as the annual confidential reports in respect of Shri Anwar Pasa which were written after the period of two years should not have been taken into consideration by the Selection Committee, does not survive because the Rules of 2000 repealed the Rules of 1994 and consequential amendment of Rules of 1999 was done away with. Therefore, the reports for the years 1998-99 and 1999-2000 cannot be taken away and these two ACRs cannot be ignored and it has been rightly not ignored by the Selection Committee. More so, if the ACRs are not written or reviewed, then the incumbent is not responsible for it and why should he suffer on account of that. The authority who is under obligation to complete the formalities having failed to do so till the lapse of time why the incumbent should be punished. We fail to appreciate the submissions of the parties before the Tribunal and the view taken by the Tribunal also. It was also pointed that the operation of the Rules of 1999 was stayed by the Tribunal, that may be so. But even thereafter also when the Rules of 2000 have repealed the Rules of 1994, then what turns on the stay order granted by the Tribunal and we cannot hold the incumbent responsible for it and deprive him the due consideration if there is failure on the part of the officers to discharge their duties in writing the ACRs, the incumbent should not be allowed to suffer. Therefore, we are of opinion that it is not a case in which there was any statutory breach of Rules committed by the Selection Committee in taking into consideration the ACRs of Shri Anwar Pasha. In the case of another candidate i.e. Shri K.Ramanna Naik, his confidential reports for the years 2000-2001 and 2002-2002 were not written in time in terms of Rule 8 of the Rules of 1994. Therefore, special reports were obtained, that too is also covered by the Karnataka Civil Services (Performance Reports) (Amendment) Rules, 1996. Rule 11-A says that when performance reports in respect of officers are not available for one or more years, the appointing authority, for the reasons to be recorded in writing, may direct the concerned reporting officer or the reviewing authority to prepare and submit the report within a specified time for the entire period or for each year for which the report was not written. There again the question is failure on the part of the reporting officer or the reviewing authority not writing the report of the officer for which the officer cannot be made to suffer. Therefore, in this background, provisions have been made for special reports and in the administrative jurisprudence special reports can be sought for in respect of any officer whenever his case comes for consideration and if the Selection Committee wants to have the up to date report of that incumbent. It is the established practice to call for such kind of special reports. The idea is that for not reporting the annual confidential reports of the incumbent, why the incumbent should be made to suffer. Therefore, the Selection Committee or the concerned authority can always ask for the annual confidential reports which were not written for a particular year by the reporting authority or by the reviewing authority or in some cases it can also seek a special report. Such practice cannot be said to be unusual practice in administrative jurisprudence. In the present case, it appears that a special report in respect of Sh. K. Ramanna Naik was obtained and that was considered by the Selection Committee. Therefore, this procedure adopted by the Selection Committee cannot be found to be arbitrary or in any way discriminatory. Consideration of both these Officers cannot be faulted on that ground.

11. It is also contended that the marking given by the Selection Committee was arbitrary. The grievance was that confidential report of Shri S.Daya Shankar for the year 2000-2001 was not available and in case of Sri R. Pramapriya, the confidential report for the year 1997=98 was not available. Yet the reports of Shri S.Daya Shankar was assessed to be outstanding and Shri R.Ramapriya was assessed to be very good without there being any basis for it. This was found by the Tribunal to be patently arbitrary. It is the selection process and what prevailed with the Committee after review of the annual confidential reports of all these officers cannot be dilated in writing. When the Selection Committee sits and considers the candidature of both the officers and in case of both the officers, looking at the 5 years annual confidential reports, one is found to be over all outstanding and the other is found to be over all very good, this marking of the Selection Committee cannot be interfered with in extraordinary jurisdiction or even by the Tribunal. We fail to understand how the Tribunal can sit as an appellate authority to call for the personal records and constitute selection committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the Courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the over all view of the ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts started sitting as Selection Committee or act as an appellate authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions. Our attention was invited to a decision of this Court in R.S.Dass (supra)[1986 (Supp.) SCC 617] wherein at paragraph 28 it was held as follows:

It is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of Select List under the regulations for promotion to All India Service, ensures object and impartial selection. The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinized by the State Government and if it finds any discrimination in the selection it has power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the Select List. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrary. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power.

12. Our attention was invited to a decision of this Court in *Union Public Service Commission v. Hiranyalal Dev & Ors etc.* [(1988) 2 SCC 242] wherein it was held as follows:

The mere fact that the Selection Committee erred in taking into account the non-existent adverse remarks does not necessarily mean that the respondent should have been categorized or considered as very good vis-à-vis others who were also in the field of choice. 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. This function had to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play by making conjectures and surmises. The proper order for the Tribunal to pass under the circumstances was to direct the Selection Committee to reconsider the merits of the respondent vis-à-vis the official who was junior to him. The jurisdiction of the Supreme Court under Article 136 in this respect is, however, wider and cannot be equated with that of the Tribunal.

13. Our attention was invited to a decision of this Court in *Dalpat Abasaheb Solunke & Ors. V. Dr.B.S.Mahajan & Ors.* [(1990) 1 SCC 305] wherein it was observed as follows:

It is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. In the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.

14. Similarly in *National Institute of Mental Health and Neuro Sciences v. Dr.K.Kalyana Raman & Ors.* [1992 Supp. (2) SCC 481], this Court held that the expert committee finding should not be lightly inferred. It was held as follows :

The function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. Where selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility and there is no rule or regulation brought to the notice of the Court requiring the Selection Committee to record reasons, the Selection Committee is under no legal obligation to record reasons in support of its decision of selecting one candidate in preference to another. Even the principles of natural

justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement.

15. Our attention was invited to a decision of this Court in *P.M.Bayas v. Union of India & Ors.* [(1993) 3 SCC 319]. In this case with regard to the IAS (Recruitment) Rules, 1954 which contemplated that special cases from among persons and special circumstances occurring in the rules could justify the selection of the incumbents or not, in that context, their Lordships held as follows:

We are satisfied that there were special circumstances before the State Government to make recruitment under the Regulations. In the face of clear pleadings on the record the Tribunal was not justified in holding that there as no material on the record to show the existence of special circumstances . The Tribunal was wholly unjustified in asking the Central Government to show the existence of special circumstances in terms of Rule 8(2) of the Rules. As interpreted by us the scheme of the Rules and the Regulations clearly show that it is the State Government which has to be satisfied regarding the existence of special circumstances .

16. Our attention was invited to a decision of this Court in *Anil Katiyar (Mrs.) v. Union of India & Ors.* [(1997) 1 SCC 280], it was observed as follows:

The question is whether the action of the DPC in grading appellant as very good can be held to be arbitrary. Shri G.L.Sanghi, the learned Senior Counsel appearing for the Union Public Service Commission, has placed before us the confidential procedure followed by the DPCs in the Union Public Service Commission for giving overall gradings, including that of outstanding , to an officer. Having regard to the said confidential procedure which is followed by the Union Public Service Commission, we are unable to hold that the decision of the DPC in grading the appellant as very good instead of outstanding can be said to be arbitrary. No ground is, therefore, made out for interference with the selection of Respondent 4 by the DPC on the basis of which he has been appointed as Deputy Government Advocate. But, at the same time, it must be held that the Tribunal was in error in going into the question whether the appellant had been rightly graded as outstanding in the ACRs for the years 1990-91 and 1991-92. The observations of the Tribunal that out of the two outstanding gradings given to the appellant one outstanding grading does not flow from various parameters given and the reports entered therein, cannot, therefore, be upheld.... Therefore, in view of catena of cases, Courts normally do not sit in the court of appeal to assess the ARCs and much less the Tribunal can be given this power to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how the ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the

Selection Committee but also the views of the State Government are obtained and ultimately the Commission after scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommended and the Central Government can withhold the appointment of some persons so mentioned in the select list for reasons recorded. Therefore, if the assessment of ACRs in respect of Shri S.Dayashankar and Shri R.Ramapriya should have been made as outstanding or very good it is within the domain of the Selection Committee and we cannot sit in the court of appeal to assess whether Shri R.Ramapriya has been rightly assessed or Shri Dayashankar has been wrongly assessed. The overall assessment of ACRs of both the Officers were taken; one was found to be outstanding and the second one was found to be very good. This assessment cannot be made subject of Courts or Tribunal's scrutiny unless actuated by mala fide.

17. In the case of Shri S.B.Kolhar, Shri R.S.Phonde and Shri Puttegowda, the assessment of the reporting officers and the reviewing officers in the State have been found to be outstanding. But the Selection Committee downgraded the assessment to very good and this has provided grounds to the Tribunal to interfere with the selection of others. The Selection Committee normally abides by the assessment made by the reporting officer and the reviewing authority. But the Selection Committee is not powerless. After reviewing the candidates' performance, the Selection Committee can certainly make its own assessment. The guidelines which have been issued by the Commission also enables the Selection Committee to assess the remarks made by the reporting officer or the reviewing officer and after taking into consideration various factors like the meritorious work done or any punishment or adverse remarks made or subsequently expunged on representation can review the assessment about the candidates. Such review of the assessment is fully within the competence of the Selection Committee and in this connection the observations of this Court may be relevant in Ramanand Prasad Singh & Anr. V. Union of India & Ors. Etc. [(1996) 4 SCC 64], which reads as under :

The Committee applies its mind to the service records and makes its own assessment of the service records of the candidates marking them as outstanding, very good, good and so on. The selection Committee does not necessarily adopt the same grading which is given by the Reporting/ Reviewing Officer in respect of each of the candidates. In fact the Selection Committee makes an overall relative assessment of the confidential report dossiers of the officers in the zone of consideration. Thus, it does not evaluate the confidential report dossier of an individual in isolation. It is after this comparative assessment that the best candidates are put in the Select List.

18. Our attention was invited to a decision of this Court in UPSC v. K.Rajaiah & Ors. [(2005) 10 SCC 15] wherein it has been held as follows:

That being the legal position, the Court should not have faulted the so-called down gradation of the first respondent for one of the years. Legally speaking, the term

downgradation is an inappropriate expression. The power to classify as outstanding , very good , good and unfit is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs. That is what has been done in the instant case in respect of the year 1993-94. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons. But having regard to the nature of the function and the power confided to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision. Therefore, the view taken by the High Court is correct that it is always within the power of the Selection Committee to record its own assessment about the selection which may be at variance with that of the reporting officer or reviewing officer.

19. It was also pointed out that in the case of Shri N. Sriraman and Shri K.Ramana Naik, the Selection Committee downgraded their reports from outstanding to very good yet they were selected. Similar is the case with Sri K.L.Lokanatha who has not been selected. Like wise the Selection Committee upgraded the assessment for the year 2001-02 from very good to outstanding yet he could not be selected. Therefore, this is also the process of selection and the Selection Committee constituted by the Commission and headed by the Member of the Commission, we have to trust their assessment unless it is actuated with malice or apparent mistake committed by them. It is not in the case of pick and choose, while selection has been made rationally. The selection by expert bodies unless actuated with malice or there is apparent error should not be interfered with. Lastly, the High Court considered the case of the two candidates who were eliminated by the Selection Committee and their cases were not sent to the Commission for selection to the I.A.S.cadre. The High Court found that this was the selection process by the Screening Committee headed by the Chief Secretary and these persons were not found more meritorious to be recommended for appointment. This assessment of the Screening Committee was found by the High Court to be proper and there was nothing on record to show that the candidates who were short-listed were not meritorious.

20. As a result of our above discussion, we find that there is no merit in these appeals and consequently, the appeals are dismissed. There would be no order as to costs.

Contempt Petition) No.131 of 2006:

21. In view of the order passed in the civil appeals, we find no merit in the contempt petition and the same is dismissed.