
(1999) 03 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 19846 of 1996

A. Sundara Raman

APPELLANT

Vs

New Mangalore Port Trust, Panambur and Others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Major Port Trusts Act, 1963 — Section 126, 28

Citation : (1999) 5 KarLJ 311

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Smt. Nalinin Ganesh, for Sri Gururaj and Sri Krishna, for the Appellant; Sri B.V. Acharya and M/s. Patil and Patil, for the Respondent

Judgement

1. An employee has no right to promotion, but only has a right to be considered for the promotion is often quoted passage. This thinking equally applies to a selection post also. In the present case an employee of New Mangalore Port Trust complains his non-selection to the promotional post and grieves at the selection of second respondent to the promotional post.

2. Facts may briefly be noticed. They are as under: petitioner and eleven others were appointed as Assistant Traffic Managers by the New Mangalore Port Trust, Mangalore, hereinafter referred to for the sake of brevity as "Port Trust" vide their letters of appointment dated 23-4-1984. By a subsequent order dated, 5-7-1985, their services came to be regularised with effect from the date of their initial appointment to the post.

3. The Port Trust has prepared and published the gradation list of Assistant Traffic Managers of its organisation. In that list petitioner was assigned ranking at Sl. No. 2 and the respondent 2 at Sl. No. 8. It appears that the prestigious post of Deputy Traffic Manager was created by the Port Trust sometime in the year 1988 and the post requires to be filled up by promotion from the feeder post of Assistant Traffic Managers failing which by direct recruitment. A vacancy for the

said post arose in the organisation for an SC/ST candidate only on 8-9-1994. The Departmental Promotion Committee ("D.P.C.", for short) which had been constituted to select and recommend the name of suitable candidate from out of eligible and qualified candidates to the post, had recommended the name of Sri Dodda Mahadevaiah, the second respondent herein for the promotional post. Basing on the recommendation so made, the Appointing Authority had appointed the second respondent to the post of Deputy Traffic Manager vide his order dated 9-10-1994. Aggrieved by his non-selection and complaining about the appointment of second respondent to the promotional post of Deputy Traffic Manager, petitioner had approached this Court on an earlier occasion in Writ Petition No. 30142 of 1994 and had questioned the correctness or otherwise of the said appointment on multifarious grounds. However, this Court, on a memo filed by the Trust, that the appointment of the second respondent to the post of Deputy Traffic Manager was only on an "ad hoc basis" was pleased to dispose off the writ petition and was further pleased to direct the Port Trust to initiate the process of fresh selection and make appointment to the post of Deputy Traffic Manager in accordance with their service regulations as expeditiously as possible and at any rate within four weeks from the date of the order. The Court was further pleased to leave open all the contentions raised by both the parties. Pursuant to the directions issued by this Court, D.P.C. once again met on 9-5-1996 and entirely basing on the Annual Confidential Records of the eligible officers for the preceding five years, again selected and recommended the name of the second respondent for appointment to the promotional post on regular basis. After accepting the recommendation so made by the D.P.C., the Appointing Authority has issued the impugned order of promotion to the second respondent to come into effect immediately. It is the legality or otherwise of the recommendation made by D.P.C. which has culminated in the order of promotion, to the selection post of Deputy Traffic Manager is called in question by the petitioner in this second round of litigation.

4. The learned Counsel for the petitioner firstly contends that the consideration of the second respondent to the promotional post by extending the normal zone of consideration by the D.P.C. is not only bad but highly illegal since the same is contrary to the instructions issued by the Ministry dated 22-4-1992. In support of that contention strongly relies upon various Official Memorandums issued by Union Government on the subject of reservation for Scheduled Castes and Scheduled Tribes in promotions made by selection. Secondly, it is urged that the Appointing Authority without independently assessing and without proper application of mind to the recommendation made by D.P.C. has mechanically endorsed the "seal of approval to the proposal of the D.P.C. Thirdly, it is asserted that participation of Sri P.K. Mohanti, who was working in the capacity of Deputy Chairman in the organisation during the relevant point of time and who was hostile to the petitioner for various known and unknown reasons in the proceedings held on 9-5-1996 has prejudiced the case and claim of the petitioner to the next promotional post and since the "Judgment" of D.P.C. is biased and

the decision so rendered should be declared as void. Fourthly, it is stated that since the employees eligible for promotion were appointed on the same date and have the same length of service, the respondents should have adopted the criteria for promotion on the basis of seniority-cum-merit since the merit has already been determined on the basis of the placement in the select list for appointment. In support of this contention reliance is placed on the observations made by the Supreme Court in the case of B.V. Sivaiah and Others v K. Addanki Babu and Others. Lastly, it is canvassed, that the promotion committee without independently assessing the merit and ability of the candidate could not have merely relied upon confidential reports while recommending the name of second respondent for the selection post. In support of this contention, reliance was placed on the observations of the Apex Court in the case of State Bank of India v Kashinath Kher and Others. It was therefore contended that the "Decision" rendered by the D.P.C. and the consequential promotion order requires to be set aside.

5. The Port Trust has filed its detailed statement of objections to the assertions made by the petitioner in the writ petition and further resist the relief sought for by him by heavily relying upon the Service Regulations of the Port Trust. Sri B.V. Acharya, learned Senior Counsel for first respondent reiterates the grounds urged in the statement of objections and ultimately submits that on the scheme of the Regulations the order of promotion made by the Appointing Authority was perfectly justified.

6. Sri R.L. Patil, learned Counsel for second respondent-promotee, while adopting the legal contentions canvassed by learned Senior Counsel, invites the attention of this Court to the observations made by Bench of this Court in the promotion process and submits that once the promotion process is in accordance with the rules and regulations and non-motivated by extraneous consideration the same should not be interfered by this Court.

7. Having considered these rival contentions carefully, I am of the view that the petitioner has made out a case for interference of this Court.

8. The well-accepted principles in the matter of promotions based on selection is that the ranking assigned in the gradation list does not confer any right on the employee/officer and it is primarily based on merit and at any rate not on the seniority alone and the aggrieved person cannot challenge his non-promotion to the selection post on the ground of seniority alone.

9. Secondly, in matters of this nature, this Court in the case of K.B. Nagendra and Another v S.P. Raghunath and Another, has laid down the parameters while exercising the jurisdiction of this Court under Article 226 of the Constitution. The observations made by this Court assumes importance while deciding the legal issues canvassed by learned Counsel for petitioner. Therefore, they are extracted and they are as under:

"(1) Firstly, that this Court while exercising the powers under Article 226 of the

Constitution of India cannot substitute its opinion by peeping into the files and ignoring the claim of the employer regarding observance of the rules. Once the promotion process is in accordance with rule and is not motivated by any extraneous consideration, the mere fact that any other conclusion or finding was possible, cannot be made a basis for disturbing or setting aside the report of the Committee entrusted with the process of making selection on the basis of comparative merit of all eligible candidates. Non-consideration of the case has to be distinguished from improper considerations. Improper consideration may be a ground to set aside by action in appeal but cannot be the basis for quashing the action in exercise of writ jurisdiction unless the violation is flagrant and apparent on the face of the record.

(2) Secondly, such a consideration regarding comparative merit with regard to financial and administrative performance was assumed to be in existence by force of Rule 13 of the Rules. In the earlier part of this judgment it has already been held that Rule 13 was not applicable in the case of promotion of Chief Managers. The overall service record of all the eligible candidates was required to be scrutinised by the Committee appointed for the purpose and if such record is shown to have perused before making the recommendation, the Court cannot interfere in exercise of its writ jurisdiction.

The learned Single Judge though noted the judgment of Supreme Court in *National Institute of Mental Health and Neuro Sciences v Dr. K. Kalyana Roman and Others*, yet failed to take note of the law laid down therein. The Supreme Court has unambiguously held that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. If the selection is shown to have been made by the assessment of the relevant merits of the rival candidates possessing the required eligibility, the Court would not interfere. The Selection Committee is not required to record reasons unless specifically provided for by the rules. It further held:

"Administrative Authority is under no legal obligation to record reasons in support of its decision. Indeed, 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. This principle has been stated by this Court in *R.S. Dass v Union of India*".

10. The contesting respondent-Port Trust mainly justifies its action by entirely relying on the scheme of the Regulations. The Regulations, 1980 which is known as *New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations*, has been framed by the Central Government in exercise of the powers conferred by Section 126 read with Section 28 of the *Major Port Trusts Act, 1963*. Apart from others, the Regulations provide for constitution of Departmental Promotion Committee and Field of Selection for Promotions. Regulation 29 provides for constitution of Promotion Committee and the said Regulation is as under:

"29. Departmental Promotion Committee.--(1) There shall be a Departmental Promotion Committee, as mentioned in sub-regulation (2) for each category or posts for the different units of the Board, the main functions of such committee being to advise and assist the Appointing Authority in the matter of making selection of candidates for appointment to different posts by promotion in accordance with these regulations.

(2) The categories of posts and the composition of the Departmental Promotion Committees therefore referred to in sub-regulation (1) shall be the following, namely.-

(a) For Class I posts and Class II posts.-

(i) Chairman;

(ii) Deputy Chairman, if appointed;

(iii) Secretary or Financial Adviser and Chief Accounts Officer as may be nominated by the Chairman for a specific period; and

(iv) Head of a Department where the vacancy exists.

Note.--The Chairman, or in his absence, the Deputy Chairman, if appointed shall preside over the meetings of this committee. If owing to unavoidable reasons, the Secretary or the Financial Adviser and Chief Accounts Officer, as the case may be, is unable to attend, a Senior Officer from their respective Department may attend with the prior approval of the Chairman or the Deputy Chairman.

(b) For Class III and Class IV posts:

(i) Head of a Department where the vacancy exists;

(ii) Secretary; and

(iii) two officers of the rank not below that of Deputies to Heads of Departments, to be nominated by the Chairman for a specific period:

Provided that where promotions to vacancies in more than one Department are made on the basis of a common selection, the composition of the Committee shall be decided by the Chairman from time to time:

Provided further that, as far as possible, the Head of Department concerned and the two other nominated as members of the Committee shall attend the meeting personally. If due to unavoidable reasons, they cannot attend a meeting personally, the next senior officer in their respective Department shall attend the meeting:

Note.--The Head of a Department concerned, if present, and in his absence, the Secretary shall preside over the meetings of the Committee".

11. Then follows Regulation 30 which deals in detail the field of selection for promotion and the principles and procedure required to be observed for making

departmental promotions and the same is as under:

"30. Field of selection for promotions.--(1) Where promotion is to be made to a non-selection post, the employees, who are senior most in the gradation list of the cadre from which promotions are made, shall ordinarily be considered for selection. Where selection is to be made to a selection post, the field of selection shall not be less than three times and shall not be more than five times the number of vacancies subject to employees with necessary qualifications and experience being available. The Departmental Promotion Committee may, at its, discretion, alter these limits to suit exceptional circumstances.

(2) The following principles and procedure shall normally be observed for making departmental promotions, namely.-

(a) No employee shall be promoted to a higher post, unless his record shows that he possesses the necessary positive qualifications for the higher post such as personality, educational qualifications, initiative, strength of character and readiness to assume individual responsibilities;

(b) In the case of promotion to a non-selection post, no employee who possesses the positive qualifications referred to in clause (a) shall be passed over by a person junior to him unless the Chairman otherwise directs for special reasons to be recorded in writing;

(c) In the case of promotion to a selection post, the Departmental Promotional Committee shall assess the merits of the employees concerned and grade them as "outstanding, Very good" and "good" and arrange their names on the relative select list in the order of their seniority, all those graded "outstanding" shall, however, be senior on the select list to those graded as Very good" and those graded Very good" shall be senior to those graded as "good" and so on;

(d) In assessing the merits of employees on comparative basis for the purpose of principles laid down in clauses (a) and (c), the ability, energy, initiative, integrity, sense of responsibility, etc., of the employee concerned shall be taken into consideration for a period of time (when possible, for not less than three years) and judgment shall be formed, wherever possible, after carefully considering the reports of three different superior officers;

(e) The Departmental Promotion Committee shall, from time to time, prepare in respect of posts which are required to be filled by promotion, select lists of eligible employees from the cadre from which promotions are to be made;

(f) The select list shall be prepared generally having regard to the provisions contained in clauses (a), (b), (c) and (d);

(g) With a view to providing for casualties and for some unforeseen vacancies, the number of employees in each select list shall normally be slightly more than the number of vacancies which are likely to arise in the higher posts in the following twelve months".

12. Then we have Schedule to the regulations which provides for requisite qualification, eligibility and method for recruitment for appointment and promotions of the employees/officers in the Port Trust. Insofar as to the posts of Deputy Traffic Manager, the method of recruitment that is provided in the Schedule is by promotion from the feeders post of Assistant Traffic Managers, failing which by direct recruitment and the promotion is purely on the comparative assessment of merit of eligible officers.

13. Having noticed the relevant Regulations necessary for the purpose of this case, let me now advert to the legal contention canvassed by the learned Counsels for the parties to the lis. Firstly, it is contended that the entire procedure adopted while making promotion to the post of Deputy Traffic Manager is wholly arbitrary and in violation of statutory provisions. In that, it is stated that the respondent-Port Trust instead of following the "normal zone of consideration" had adopted their own arbitrary selection method by assuming abnormal zone consisting of only schedule candidates resulting in the appointment of second respondent.

14. Regulation 30 provides for field of selection for promotions. It envisages that when promotions are to be made to a selection post, the field of selection shall not be less than three times and shall not be more than five times the number of vacancies subject to employees with necessary qualifications and experience being available. The departmental promotion committee is also given the discretion to alter these limits to suit exceptional circumstances. In consonance with the principles prescribed under Regulation 30 for determining the field of selection, the Government of India has issued necessary instructions by way of official memorandum clarifying the meaning of the expression "normal zone of consideration". In O.M. No. 10/41, dated 20-7-1974 as amended by O.M. No. 36021/7/75-Estt., dated 25-7-1976 on the subject "reservations in posts, filled by promotion by selection to class, within Class II and up to the lowest rung of Class I, it was instructed that selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from among those Scheduled Castes/Scheduled Tribe Officers, who are within the normal zone of consideration". The expression "normal zone of consideration" used in O.M. dated 25-7-1976 was clarified by the Central Government by issuing appropriate circulars subsequently. The said clarification is as under:

"The undersigned is directed to say that in para 2(i) of this Department O.M. No. 10/41/73-Estt. (SCT), dated 20-7-1974, it has been stated that in the case of promotions by selection from Class III to Class II, within Class II and from Class II to the lowest rung of Class I, selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from among those Scheduled Castes/Scheduled Tribes Officers who are within the "normal zone of considerations". Enquiries have been received in this Department seeking clarification whether the words "normal zone of consideration" meant that there would be only a single zone for consideration for all the vacancies including those

vacancies reserved for Scheduled Castes and Scheduled Tribes or there would be a separate zone of consideration of the reserved vacancies. It is clarified that in the case of promotions by selection from Class III to Class II, within Class II and from Class II to the lowest rung of Class I, there is no separate zone of consideration for reserved vacancies. The zone in such cases would therefore be the one fixed with reference to the total number of vacancies (in-elusive of the reserved vacancies for which a select list is being drawn.) Only those Scheduled Castes/Scheduled Tribes candidates who are within such normal zone of consideration would be considered for promotion against the reserved vacancies. As the illustration, if a selection is being made for 30 vacancies (in promotion to Class II or beyond) and there are reserved vacancies, out of the total of 30, there will be only one zone of consideration for all the 30 vacancies together, i.e., 30 x 5 or 6 times. There will be no separate zone for the 5 reserved vacancies (of 5 x 5 or 6 of Scheduled Caste or Scheduled Tribe candidates) alone.

2. Ministries/Departments etc., may kindly take note of the above clarification for appropriate action".

15. Again in O.M. No. 22011/3/76-Estt. (D), dated 24-2-1980 and O.M. No. 36011/13/83 Estt. (SCT), dated 2-5-1983, the Central Government on the topic principles for promotion to "selection" post was pleased to clarify zone of consideration for promotion to posts filled by selection. The said instructions are as under:

"3. Zone of consideration for promotion to posts filled by selection.-

Reference is invited to the Ministry of Home Affairs (now Department of Personnel and AR) O.M. No. 1/4/55 RPS, dated 16-5-1957, laying down certain principles for promotion. In the operation of these principles it has been observed that the absence of clearly defined limits on the extent of the field of choice has led to lack of uniformity in the practices being followed by the D.P.Cs.. Similarly, it is felt that a large field of choice might result in excessive supersessions. Again, despite repeated instructions of the Government to hold D.P.Cs. annually there have been quite a few cases of delays resulting in vacancies being bunched. This would enlarge the field of choice and upset the relative seniority positions in the higher post with reference to the positions which would not have resulted had the D.P.Cs. met at the appropriate time. In view of these considerations it has been decided in consultation with the UPSC as under in supersession of this Department's O.M. No. 1/4/55 RPS, dated 16-5-1957 and all other memoranda having any bearing on the matter herein dealt with.

(a) The Departmental Promotion Committee (D.P.C.) shall for the purpose of determining the number of officers who should be considered from out of those eligible officers in the feeder grade(s) restrict the field of choice as under, with reference to the number of clear regular vacancies proposed to be filled in the year.

No. of vacancies

No. of officers to be considered

1

5

2

3

10

4 or more

Three times the number of vacancies & quot;

16. By yet another O.M. No. 22011/1/90-Estt. (D), dated 12-10-1990, the Central Government has issued the revised zone of consideration of officers for promotion by selection. The said O.M. is as under:

"G.I. Dept. of Per. and Trg. O.M. No. 22011/1/90-Estt. (D), dated 12-10-1990.

Subject: Revised zone of consideration of officers for promotion by selection.

Attention of the Ministry of Finance, etc., are invited to this Department's O.M. No. 22011/3/76-Estt. (D), dated 24-12-1980, in which the zone of consideration of officers for promotion by selection is prescribed as under:

No. of vacancies

No. of officers to be considered

1

5

2

8

3

10

4

Three times the number of vacancies

It is also laid down that where adequate number of SC/ST candidates are not available within the normal field of choice as indicated above, the field of choice may be extended to five times the number of vacancies and the SC/ST (and not any other) coming within the extended field of choice be considered against the vacancies reserved for them.

(emphasis supplied)

2. The existing zone of consideration for promotion to selection posts has been examined in the light of the concept of "benchmark" introduced in the revised D.P.C. guidelines, vide O.M. No. 22011/5/86-Estt. (D), dated 10-3-1989 and dated 10-4-1989 and it has been decided to modify the zone of consideration as under:-

No. of vacancies

No. of officers to be included in the zone of consideration

1

5

2

8

3

10

4

10 +

Twice the number of vacancies in excess of three vacancies.

(see statement attached)

The existing provision relating to extension of the file of choice to five times the number of vacancies in respect of SC/ST will, however, continue.

3. These instructions will take effect from 1-11-1990.

4. Ministries/Departments are requested to bring these instructions to the notice of all concerned, including their attached and subordinate offices, for guidance and also to ensure their compliance".

17. Then we come to an important O.M. dated 24-2-1992 which prohibits the employer to extend the zone of consideration, if the number of vacancy available to SC/ST candidate is only one. The said G.O. dated 22-4-1992 and the same is as under:

"G.I. Dept. of Per. and Trg. O.M. No, 22011/1/90-Estt. (D), dated 22-4-1992.

Subject: Clarification of zone of Consideration by selection for Scheduled Castes and Scheduled Tribes.

In this Department's O.M. No. 22011/3/76-Estt. (D), dated the 24th December, 1980, the zone of consideration of officers for promotion by selection was prescribed as under:

No. of vacancies

No. of officers to be considered

1

5

2

8

3

10

4 or more

3 times the number of vacancies.

It was also laid down that where adequate number of SC/ST candidates are not available within the normal field of choice as indicated above, the field of choice may be extended to five times the number of vacancies and the SC/ST (and not any other) coming within the extended field of choice be considered against the vacancies reserved for them. This provision relating to an extended zone of five times the number of vacancies in respect of SC/ST has been retained in O.M. No. 22011 / 5 /86-Estt. (D), dated 10-3-1989 and 10-4-1989 and also in O.M. No. 22011/1/90-Estt. (D), dated 12-10-1990, in which the normal zone of consideration for general category was reduced for vacancies numbering 5 and above.

2. It is hereby clarified that the intention is to have an extended zone of five times the number of vacancies in all cases where adequate number of SC/ST candidates are not available in the normal zone of a smaller size. For a single vacancy, since the normal zone itself is 5, i.e., five times the number of vacancies, there is no intention to extend the zone. The normal zone and the extended zone for vacancies will accordingly be as follows.-

No. of vacancies

Normal Zone

Zone for consideration for SC/ST

1

5

5

2

8

10

3

10

15

4

12

20

5 and above

Twice the number of vacancies + 4

5 times the number of vacancies

(emphasis supplied)

3. All Ministries/Departments are requested to bring these instructions to the notice of all concerned including their attached and subordinate officers for guidance and compliance".

18. A conjoint reading of Regulation 30 of the Regulations and the instructions issued by the Central Government from time to time which binds the respondents also, would clearly indicate that the selection to the reserved category of SC/ST shall have to be made only from among those Scheduled Castes or Scheduled Tribes who are within the normal zone of consideration. The official memorandum dated 22-4-1992 makes it explicit clear that the normal zone consideration could be extended where adequate number of SC/ST candidates are not available within the normal field of choice and the field of choice may be extended to 5 times the number of vacancies and the SC/ST candidates alone coming within the extended field of choice should be required against the vacancies reserved for them.

19. The field of choice for selection and promotion among the eligible and qualified officers is restricted not only in the regulation but also in the guidelines issued by the Central Government to the Departmental Promotion Committee of all the departments coming under different ministries. In these guidelines, it is made clear to fill up a regular vacancy of a promotional post in the general category, if there is one vacancy to be filled up, the normal zone of consideration is five and if the number of vacancy to be filled up is 2, the normal zone of consideration is 8 and if it is 3, then the number of officers to be included in the zone of consideration is 10 and so on so forth. When it comes to filling up a vacancy in the reserved category for SC/ST candidate, where adequate number of SC/ST candidates are not available within the normal field of choice as indicated above, the field of choice may be extended to five times the number of vacancies and the SC/ST candidates alone coming within the field of choice may be considered against the vacancies reserved for them. To clarify the doubts with regard to the expression "extended zone of consideration" in the case of SC/ST

candidates, the department itself clarified in the official memorandum No. 22011/1/90-Estt. (D), dated 22-4-1992. It is as under:

"2. It is hereby clarified that the intention is to have an extended zone of five times the number of vacancies in all cases where adequate number of SC/ST candidates are not available in the normal zone of a smaller size. For a single vacancy, since the normal zone itself is 5, i.e., five times the number of vacancies, there is no intention to extend the zone. The normal zone and the extended zone for vacancies will accordingly be as follows.

No. of vacancies

Normal Zone

Zone for consideration for SC/ST

1

5

5

2

8

10

3

10

15

4

12

20

5 and above

Twice the number of vacancies + 4

5 times the number of vacancies".

20. A close look at the above guidelines/clarification issued by the Department of Personnel and Training of Government of India clearly indicates that even in the case of SC/ST candidate, if the number of vacancy is available is only one, then the zone of consideration or the number of officers to be considered is only five and if the number of vacancy that has to be filled is 2, then the normal zone of consideration is 8 and in the case of 3, it would be 10, which is the permissible extended zone of consideration.

21. In the present case in the provisional gradation list, respondent-Port Trust

has assigned the petitioner ranking at Sl. No. 2 and the respondent 2 at Sl. No. 8 in the post of Assistant Traffic Managers. The vacancy which arose in the promotional post of Deputy Traffic Manager was required to be filled up by SC/ST candidate. In view of the regulations of Port Trust and the guidelines issued by the Central Government to Departmental Promotion Committee of the departments to fill up one vacancy even in the case of SC/ST candidate, the normal zone and the extended zone of consideration is only five. The second respondent was outside the zone of consideration. However, the Departmental Promotion Committee extending the zone of consideration has included the second respondent, who was assigned ranking at Sl. No. 8 for the purpose of consideration of his case to the promotional post of Deputy Traffic Manager. This action of the Departmental Promotion Committee is contrary to their own regulation but also in total violation of the guidelines issued by the Central Government which is binding on them. Therefore, in my view, the action of the Departmental Promotion Committee to include second respondent within the normal zone of consideration is arbitrary and illegal.

22. The second issue that was canvassed before the Court was that the Appointing Authority without independently assessing and without proper application of mind, has approved the recommendation of Departmental Promotion Committee recommending the name of second respondent for appointment to the promotional post of Deputy Traffic Manager. In my view, this contention has no merit whatsoever. Regulation 30 prescribes the principles and procedures to be observed for making departmental promotions. The regulation mandates the Departmental Promotion Committee to assess the merit of the eligible candidate and grade them as "outstanding", "Very good" and "good" and arrange their names on the relative select list in the order of their seniority. It also mandates that while assessing the merits of the employees on comparative basis, the Departmental Promotion Committee will take into consideration the ability, energy, initiative, etc., for a period of time for not less than three years. After such scrutiny by the D.P.C. while assessing the comparative merit of the employee to the selection post, I do not think that the Appointing Authority once again has to do the same exercise. Even otherwise, Chairman of the Port Trust is the Appointing Authority of these promotional post and he is also one of the members of D.P.C. as required under Regulation 29 of the regulations. Having participated in the selection process and having assessed the comparative merit of eligible employees for the promotional post, I do not think that it is necessary for the Appointing Authority to once again make independent assessment of the recommendation of D.P.C. This would be nothing but an empty formality. In the absence of any stipulation to that effect in the regulation of the Port Trust, it is difficult to accept the submission of the learned Counsel for the petitioner. Accordingly, the second contention is rejected.

23. Now coming to the allegation of "bias" in view of participation of Sri Mohanti, the Deputy Chairman of the Port Trust as one of the members of D.P.C., it has been held in number of cases that when out of many is biased, the decision of

the collective body is not necessarily voided. The reference may be made to the decision of the Supreme Court in *T.P. Daver v Lodge Victoria, Belgaum*, the decision of Andhra Pradesh High Court in *K.R. Chart v Secunderabad Cantonment Board* and the decision of the Kerala High Court in *P.M. Kurien v P.S. Raghavan and Others*.

24. So touchy is the issue of bias, that if a "disqualified" person remains at a hearing or participate in the selection process, the Courts have also taken the view that the proceedings may be set aside irrespective of the fact that he didn't influence the decision or that he did not take any active part in the decision. Still the question is in the instant case, whether the participation of Sri Mohanti, who was the Deputy Chairman of the Port Trust at the relevant point has influenced the selection process in any manner is the question that remains to be considered and decided and merely because he participated in the selection process whether the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. In the present case, the D.P.C. constituted for the purpose of advising and assisting the Appointing Authority in the matter of making selection of eligible candidates for appointment to the promotional post have only taken into consideration the Annual Confidential Records for the preceding five years to assess the comparative merit of the candidates and they have awarded marks depending on the grades secured by them each year. In a selection process like this, where they have not taken into consideration any other material, the participation or non-participation of any hostile person in the selection process would not make any difference whatsoever. In my view, since no prejudice is caused to the petitioner by participation of Sri Mohanti in the D.P.C. meeting held on 9-5-1996, the selection made by D.P.C. is not vitiated on account of reasonable likelihood of bias. Therefore, the third contention canvassed by the learned Counsel for the petitioner is rejected.

25. Much was said with regard to procedure adopted by the D.P.C. while selecting and recommending the name of second respondent to the selection. The respondent-Port Trust has produced the notings of D.P.C. to justify its action. To answer the fourth contention canvassed by the learned Counsel for the petitioner, it would be useful to refer and extract the notings of the D.P.C. held on 9-5-1996. The same is as under:

"The D.P.C. consisting of the following members met at Chairman's Chamber on 9-5-1996 at 12.00 noon, as per the interim directions of the Hon"ble High Court to review the promotion of Assistant Traffic Manager to the post of Deputy Traffic Manager along with the claim of Shri A. Sundara Raman, and Shri Doddamahadevaiah, Assistant Traffic Managers. Since Shri K.S.N. Murthy, LE(C) and Liaison Officer for SC/ST/OBC is on leave, Shri Sanjeeva Kaup, A.E.E. (M), belonging to SC category was co-opted as member of the D.P.C. in place of Shri K.S.N. Murthy.

(1) Chairman in the Chair.

(2) Deputy Chairman and Traffic Manager.

(3) Shri Sanjeeva Kaup, A.E.E. CM), representing SC/ST/OBC interests in place of Shri K.S.N. Murthy, SE(C).

(4) Shri F.F. Britto, EE (Elect.), representing Minority Communities

(5) Shri H". Sathish Nayak, Secretary.

The D.P.C. went through the provisions contained ,in Clause 30(1)(2) of the N.M.P.T.E. (RSP) Regulations, 1980 regarding the procedure for promotion by selection method. Besides, the D.P.C. have also gone through the instructions contained in paras 6.3.1(i) and 6.3.2 (ii) of O.M. No. 22011/5/86-Estt. (D), dated 10-4-1989, O.M. No. 39016/9(S)89-Estt. (B), dated 16-8-1990, O.M. No. 22011/1/90-Estt. (D), dated 12-10-1990 and 22-4-1992 issued by the Government of India, Department of Personnel and Training (contained as Order No. 90 in Swamy"s Compilation on Reservations and Concessions to SCs and STs). The D.P.C. have also gone through the instructions contained in O.M. No: 22011/7/88-Estt. (D), dated 19-8-1988 of the Government of India, Department of Personnel and Training, regarding the procedure to be adopted in the matter of promotion by selection method. The D.P.C. have also gone through the confidential reports of all the 4 eligible Assistant Traffic Managers belonging to SC community for the very previous five years from 1991-92 to 1995-96. Though the name of Shri H.C. Venkatesh, appears at Sl. No. 4 of the list, the case of Shri H.C. Venkatesh, was not considered by the D.P.C. in view of the fact that he has been appointed as the Additional Traffic Manager at Cochin Port Trust arid that the lien for a period of 2 years maintained by him expired as on 14-5-1995.

Taking into consideration, the benchmarks assigned in the ACRs and making its own assessment of the records of service of all the remaining 4 Assistant Traffic Managers as required under O.M. dated 19-8-1988 referred to above, the D.P.C. made its own gradation list assigning the benchmarks to all these 4 Assistant Traffic Managers as in the Statement at Annexure II. Based on this gradation list, the D.P.C. prepared the Select List as in the Annexure III.

According to this Select List, Shri Doddamahadevaiah, Assistant Traffic Manager overrides other Assistant Traffic Managers including Shri A. Sundararaman in gradation assigned by the D.P.C.. Keeping in view the ability, energy, initiative, integrity and sense of responsibility and on the basis of the gradation in the C.Rs. assigned by the D.P.C., the D.P.C., recommends the promotion of Shri Doddamahadevaiah, as Deputy Traffic Manager on regular basis with immediate effect. The Chairman, NMPT as Chairman of the D.P.C. has also approved the recommendation of the members of the D.P.C. as above".

26. The learned Counsel for petitioner contends that neither the seniority nor the merit of the candidates need to be taken when employees eligible for promotion were appointed on the same day. In support of this contention the learned Counsel strongly relies upon certain observations made by Supreme Court in the

case of B.V. Sivaiah, supra. In my opinion, the observations made in the said decision is in no way supports the case of the petitioner. That was a case where Supreme Court was concerned with promotions to a non-selection post based on seniority-cum-merit rule and the application of the said rule to cases of employees appointed on the same date. In that factual backdrop, the Supreme Court was pleased to observe as under:

"17. On behalf of the promoted officers it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service".

27. In the instant case we are concerned with promotion to a selection post. Sub-regulation (2) of Regulation 30 provides the principles and procedures to be observed by D.P.C. while making recommendation to the promotional selection post. The sub-rule mandates that the promotional committee shall assess the comparative merits of eligible candidates and the selection and recommendation should be made on comparative assessment of merit of such officers. Therefore, among the officers who are appointed on the same date and have the same length of service, seniority alone need to be taken into consideration cannot be accepted. Therefore, even the fourth contention canvassed by the learned Counsel for petitioner deserves to be rejected.

28. Lastly, it was contended by learned Counsel for petitioner that D.P.C. while considering the case of eligible candidates to the selection post had entirely relied upon the Annual Confidential Records without making independent assessment of merit and ability of each candidate. Therefore, the process of selection is not only arbitrary but wholly illegal. In support of this contention reliance was placed on the observations of the Supreme Court in the case of State Bank of India, supra. In the said decision depending on the factual matrix in that case, was pleased to observe as under:-

"16. It would also appear from the record that the confidential reports submitted were adopted in toto by the Committee considering promotion without any cross-verification from the character rolls or the record and independent assessment of

merit and ability. That would also be clearly illegal. Being Competent Authority to consider the claim of the candidates, the "Committee for promotion has to independently assess the merit and ability of each candidate from the reports and the records etc., consistent with the weightage prescribed in the rules and then to determine the relative merit and ability of officers and then to arrange order of merit of the officers for promotion. Being selection posts, the selection record also must indicate reasons, however, brief they may be, so that when tested by judicial review, the Court would be better assisted by such record to reach correct decision in law. This exercise should also be done by the appellant. If the confidential reports written earlier are by superior officers, then the entire record could be secured by the Controlling Officers. They should be considered by the Promotion Committee and each case must be examined in the light of the record of each officer. It would be desirable to prepare a columnar statement with all relevant columns. The C.Rs. and other relevant record should be preserved. The matters considered by the Promotion Committee should also be preserved".

29. Firstly, in my opinion, the observations made by the Apex Court in the above decision would not assist the petitioner in any manner whatsoever. That was a case where promotions were based on certain eligibility criteria such as exposure to peculiar type of work, work experience in rural branches of the Bank and two years of time assignment and further that was a case where confidential and character rolls were prepared by the officers of the same rank working in the establishment-department of the same cadre of officers working elsewhere and the Supreme Court while observing that such confidential records should be written by superior officers and should be reviewed by another higher officer and that such reports could form basis for consideration for promotion. Taking into consideration the character rolls were prepared by the same rank of officers and taking into consideration the other criteria prescribed for promotion to the selection post, the Court was pleased to observe that the procedure adopted by the Committee while considering the cases of officers for promotion could not have merely relied upon the confidential records without any cross-verification from the character rolls or the record and without making independent assessment of merit and ability of each eligible candidate.

30. In the instant case, regulations clearly mandate the D.P.C. that in assessing the merit of employees on comparative basis shall look into the "record" of the candidate to find out whether he has necessary positive qualification for the higher post, such as personality, educational qualifications, initiative strength of character, a readiness to assume individual responsibilities etc., and basing on such record would grade them as outstanding, very good and good etc. The regulation also directs the Committee to take into consideration the Annual Confidential Records for not less than three years.

31. In the present case, the D.P.C. has taken into consideration the annual confidential records of the eligible officers and have graded them as excellent,

very good and good and it is only after such exercise have selected and recommended the case of second-respondent for promotion to the selection post. Since the promotion process is in accordance with the regulations of the Port Trust and is not motivated by any extraneous consideration, it is not possible for this Court to find fault with such process of selection. Therefore, even the last contention canvassed by learned Counsel for petitioner has no merit. Accordingly, it is rejected.

32. In the result, writ petition is allowed. Rule made absolute. The order made by the 1st respondent in No. 3/33/94/ADM-2, dated 9-5-1996 in appointing second respondent to the post of Deputy Traffic Manager in Port Trust is quashed. The respondent-Port Trust is directed to consider the case and claim of petitioner to the promotional post, keeping in view the observations made by this Court in a month's time from the date of receipt of copy of this Court's order. Till such time, respondent 2 will continue to hold the post of Deputy Traffic Manager. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.