
(2001) 06 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21761 of 1995

B. Vasantha Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-06-2001

Acts Referred:

Constitution of India, 1950 — Article 335

Citation : (2001) 5 ALD 265 : (2002) 4 ALT 649

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. Nooty Rama Mohan Rao, for the Appellant; Mr. L. Narasimha Reddy, SC for Central Govt. and Mr. G. Vidya Sagar, for the Respondent

Final Decision : Allowed

Judgement

1. In this writ petition, the petitioner assailed the action of the respondent-Corporation in not considering his case for promotion to Grade "E", (i.e.) Senior Manager in middle management as illegal, arbitrary, discriminatory and opposed to the Presidential Directive relating to the Reservation Policy and seeks issuance of writ of mandamus directing the respondents to consider his case for promotion to Grade H (i.e.) General Manager in Senior management cadre by reviewing the earlier promotions given by the respondent Corporation in the posts included in Group-A.

2. The petitioner belongs to Scheduled Caste. After obtaining diploma in Mechanical Engineering he joined as "Aviation Trainee" in the respondent-Corporation in the year 1987 pursuant to the selection from out of the candidates sponsored by the Madras Employment Exchange. During the course of years, the petitioner improved his educational qualifications by passing B.A. (Economics), M.A. Public Administration from Osmania University securing higher ranks. He passed M.B.A marketing from Andhra University and secured fifth rank. He also passed M.A., Sociology from Osmania University and after filing of this writ petition he registered his name for Ph.D. in Marketing Management. The case of

the petitioner is that the post of Aviation Trainee is a preparatory post for ultimate absorption of the employee as a shift supervisor after completion of six months training in the grade of Rs.345-510. The respondent-Corporation was following the staffing pattern approved by the Bureau of Public Enterprises and the posts were divided into four groups. All the posts of Officers in the management category were included in group-A and they are again divided into various grades, i.e., from Grade "A" to Grade "H". All the posts from the lower rung i.e., from Grade "A" to Grade "I" lower to the board level (i.e.) Executive Director are grouped under Group -A posts.

3. For better appreciation of the case, all the above grades with their designation are extracted hereunder:

A Grade Officers

B Grade Asst. Managers (Junior Mgmt.)

C Grade Dy. Managers

D Grade Managers

E Grade Senior Manager (Middle Mgmt.)

F Grade Chief Managers

G Grade Dy. General Managers

H Grade General Manager (Senior Mgmt.)

I Grade Executive Directors

J Grade Directors.

4. The post of shift Supervisor is treated as a lower post among Group-A posts. The petitioner was confirmed as Grade-A Officer w.e.f. 11-11-1967. It is the case of the petitioner that for over a decade his case was not considered for promotion in the aviation department and in those circumstances he has put in a representation for change of assignment from aviation department to sales department. The respondent-Corporation having considered the request of the petitioner transferred him to the Sales Department in the year 1978. The specific case of the petitioner is that as per No.H-34011/1/82-1 OC, Ministry of Energy, Department of Petroleum dated 11-11-1992 reservations are provided in the promotional posts also for Scheduled Caste and Scheduled Tribes on the basis of seniority subject to fitness. But his case was neither considered under reservation policy or on par with others. While persons similarly situated earned promotions earlier, his promotion was delayed for a number of years. To prove this fact he has given a comparative table on the promotions earned by him and others in para 16 of the affidavit. In fact at one stage when his case was not considered from Grade-C to Grade-D, he made a representation to the Honourable Minister for Petroleum and Natural Gas and also to the National Commission for Scheduled Castes and Scheduled Tribes. The Commission having

called for the remarks of the Chairman simply forwarded the reply given by the Chairman by its covering letter dated 22-1-1993 without examining the correctness or otherwise of the report submitted by the Chairman. It is also the case of the petitioner that the respondent corporation introduced the process of selection for the posts to be filled in on the basis of seniority-cum-merit. More so, without making promotion policy known to the employees the respondent-Corporation was adopting different yardsticks at different points of time to suit their claim. In that process the respondent corporation while giving promotions to several juniors to the petitioner, who joined much later to him in the corporation did not choose to consider his case for timely promotion from time to time. The immediate provocation for filing this writ petition, according to the petitioner, is that while giving promotions from Grade-D to Grade-E in the year 1995, the respondent-Corporation while promoting several of his juniors as Grade "E" Officers did not choose to promote him for the said grade. Hence, this writ petition.

5. The respondent Corporation in its counter while admitting that though the promotion policy was kept as confidential with the management in the interests of better administration, it took a stand that reservations to the scheduled castes scheduled tribes as per the Presidential Directive were strictly adhered to. They have also taken a stand that the petitioner was never superseded for promotion, but he could not be either promoted or he could be considered in the normal course for scheduled castes and scheduled tribe categories since he was not within the zone of consideration. The respondent-Corporation farther contended that while ratings were given in the annual performance appraisals, performance counselling was introduced during the year 1989 wherein the (i) pen picture of the individual, (ii) achievements, i.e., jobs/tasks well done, (iii) areas of improvement or tasks/jobs not done well or timely or where additional improvement is needed and (iv) areas in which the officer requires help/guidance from supervisors to improve his performance were prescribed as the areas to be looked into while assessing the performance of the individual during performance counselling in its circular No.P&A Dept./SRP/APA/88, dated 21-3-1989. Keeping in view of above guidelines the petitioner's performance was assessed and the ratings were, accordingly, given by the appraising Officers to which the petitioner generally agreed. Hence, he cannot raise any dispute for not getting promotion. But, during the course of arguments the respondent-contended that no reservations are provided in promotions by selection from one grade to another grade in Group-A posts and under the Presidential Directive what was contemplated was that in promotions by selections from one grade to another grade in Group-A posts which carry an ultimate salary of Rs.2,250/- per month even if an officer belonging to scheduled castes and scheduled tribes who is within the zone of consideration, but not selected, will be considered for promotion if he is within the number of actual vacancies for which a selection list has to be drawn up would be included in that list, provided they are not considered unfit for promotion. This being a preference, it cannot be contended

that reservations are provided in promotional posts also.

6. While the petitioner based his contentions on para 10 of the Presidential Directives, the respondents placed reliance on para 9(A) of the Presidential Directives. Para 9(A) of the Presidential Directive dated 11-11-1982 is not clear whether the benefit provided under para 9(A) has to be treated as a concession or as a reservation. But the said para was substituted by Office Memorandum dated 9-4-1987 by the Bureau of Public Enterprises wherein it is made clear that there are no reservations in promotions by selection from one grade to another grade in Group-A posts. This issue was considered by the Supreme Court in *National Federation of S.B.I. and Others, etc. Vs. Union of India and Others*, wherein their Lordships while referring to a similar provision, an Office Memorandum dated 11-7-1968 supplemented by another order dated 26-3-1970 in relation to the Bank employees observed as hereunder:

"We may reiterate that both according to Sri Rajinder Sachhar as well as learned Counsel for the respondents, there is no specific order, rule or Memorandum applying the rule of reservation in favour of Scheduled Castes and Scheduled Tribes in the matter of promotions within Class-I service. In the absence of such reservation, the forty-point roster prepared by the Government of India cannot be applied or followed, for the simple reason that the roster is prepared merely in implementation of and to carry out the rule of reservation. There can be no roster in the absence of rule of reservation. If the rule of reservation is not made applicable to a particular appointment or promotion, there can be no question of following the forty-point roster therefore. The forty-point roster itself does not provide reservation. It merely specifies place for reserved categories in accordance with and consistent with the rule of reservation already made".

7. In the light of the above dicta laid down by the Supreme Court, I hold that for promotion to one grade to another in group-A posts in the respondent-Corporation, no reservations for Scheduled Caste and Scheduled Tribe people are provided. Accordingly, I answer the first contention of the petitioner in negative.

8. Now the main question that falls for consideration is whether the action of the respondent in not considering the case of the petitioner for promotion as per the promotion policy of the respondent-Corporation can be sustained in law. To answer this issue I have to refer to the salient features of the promotion policies that are being followed by the Corporation from time to time.

9. As per 1977 policy, two channels of promotions were provided for the officers - one on the basis of merit and the other on the basis of seniority. Under Clause 1 for promotion from Grade A to B while 70% of the posts were earmarked for promotion on the basis of merit 30% of the posts were provided for promotion on the basis of seniority. From Grade B to C while 75% of posts were earmarked for promotion on the basis of merit, 25% of the posts were earmarked for promotion on the basis of seniority.

10. Clause 2 speaks of the marks to be awarded for merit promotion as under:

APA/CR 40 marks

Seniority 30

Ed. Qualifications 10

DPC 20

11. Under clause 2(1)(b) an employee who has put in seven years of service and above in a grade will be given full marks i.e., 30 and for the others marks will be awarded on prorata basis.

12. Awarding of marks for educational qualifications were dealt with under clause 2(1)(d).

13. Clause 3(1) deals with awarding of marks which reads as follows:

Seniority 80 APA/CR 20

14. While senior most Officer among the Grade will be given 80 marks, all other officers will be given on prorata basis.

15. Clause 3(3) deals with awarding of marks for APA/CR as follows:

	Last year	Year before last year	2 years before last year	Total
Outstanding	7	7	6	20
Very good	6	6	6	18
Satisfactory	5	5	4	14

16. Clause 4(4) says that promotions effective from October 1977 will be made according to the above policy.

17. This policy was revised in the year 1980 after the management entered into a Memorandum of Understanding with the Officers' Association. As per this memorandum, 682 Grade-A Officers (511 Marketing and 171 R&P) have to be promoted as "B" Grade Officers and 102 Grade -B Officers have to be promoted as "C" Grade Officers upto 1984 in phased manner on annual basis. In para 2 of this Memorandum, the Management agreed to promote Grade "A" Officers to Grade "B" if there is an inordinate delay in promoting them. In Clause 3, it is stated that to achieve the above object, (i.e.) promoting the personnel in the seniority channel, the promotion policy that is being followed till then has to be kept in abeyance. Under Clause 4(b), one must have put in three years of service and must have received more than two "FAIR" performance ratings for promotion from Grade "A" to Grade "B" and Grade "B" to Grade "C". Clause 5 states that promotions under the existing merit channel shall, however, continue separately. Clause 7 speaks that the policy will be reviewed in 1982 and if necessary in 1984.

18. From this policy it is seen that while 682 Grade "A" Officers to be promoted

to Grade "B" and 102 Grade "B" Officers to Grade "C", the Corporation decided to promote the Officers who were not promoted for a long time on the basis of seniority and in achieving the objective, dual policy of promotion on the basis of merit and seniority introduced in 1977 is kept in abeyance. To my mind the language employed in this memorandum would clearly indicate that the Corporation decided to follow the rule of seniority in promotion than the rule of merit upto the year 1984. But surprisingly it is stated in Clause 5 that promotions under merit channel will continue separately. If promotions on merit channel are continued, nearly two-third of the vacancies to be reserved every year for such promotions. If that is the interpretation to be placed on this Memorandum, it has no meaning at all and it is not known for whose benefit this Memorandum was issued, more so after the negotiations with the Officers' Association. Had the promotion policy decided by the Corporation is made public, perhaps the Officers' Association would have raised an objection that the policy runs counter to the understanding entered into between the Corporation and the Association. My observation gets support from the language used in the next promotion policy dated 13-2-1985 wherein it is stated that discussions have been held between the Indian Oil Corporation Officers' Associations and the Management at Bombay on 12th and 13th February, 1985 and it has been agreed to revive the promotion policy of October, 1977 wherein two channels of promotions have been agreed to, i.e., merit-cum-seniority and seniority-cum-merit for promotion from Grade "A" to Grade "B" and Grade "B" to Grade "C".

19. It is further interesting to see the next promotion policy dated 13-2-1985 issued by the Corporation. The preamble of this policy was already extracted supra wherein the parties agreed to revive the promotion policy of October, 1977 wherein two channels of promotions have been agreed to. Clause 1 states that this particular policy now being agreed to for seniority-cum-merit will be operated for nearly two years, i.e., 1985 and 1986 and Clause 2 says that promotion policy will be reviewed in the year 1986 for future years. The Corporation estimated that about 80 officers from Grade "A" to Grade "B" and 40 Officers from Grade "B" to Grade "C" are likely to be promoted during the year 1985-86 under seniority-cum-merit channel.

20. The next promotion policy is of the year 1987, dated 16-5-1987. Under this policy, seniority-cum-merit channel will be operated for four years, i.e., from 1987 to 1990 and about 472 Officers from Grade , "A" to "B" and 547 Officers from Grade "B" to Grade "C" are likely to be promoted during these four years. Under Clause 3 minor alterations were made to the policy of the year 1985 in respect of promotions under seniority channel. Under Clause 3(1), one must have a rating of "satisfactory" or higher in the last three preceding years and under Clause 3(2) one must put in a minimum service of six years. This policy of the year 1987 seemed to have been reviewed again only on 17-2-1999. As this policy came into force after this writ petition is filed, I am not referring to it, as the case of the writ petitioner is either to stand or fall on the promotion policy of the years 1982, 1984 and 1987.

21. The next aspect to be taken into consideration is the rating criteria adopted by the Corporation in respect of promotions.

Rating Criteria/Scales:

1967 to 1969 1970 to 1974 1979 to 1993 1994 to 1999

1.

Extraordinary all round performance

Outstanding : Extraordinary all round performance

1.

Outstanding : Exceptional overall performance Distinctly stands out compared to the rest.

Exceptional performance

2.

Performance much beyond normal requirements

Above Av: beyond normal requirements

2.

Very good : Overall performance of high standard. Better than the majority performance beyond normal requirements

Superior performance

3.

satisfactory requires improvement in certain phases

Av: Performance satisfactory but requires improvement in certain phases

3.

Satisfactory: Satisfactory overall performance. Meets the job requirements.

Good performance

4.

Performance inadequate

Below Av: Performance inadequate

4.

Fair : Performance barely adequate. Requires improvement in certain spheres.

Fair

- - - 5.

Unsatisfactory : performance inadequate and well below acceptable standards.

Poor performance

22. From the above it is seen that the respondent-Corporation used different nomenclatures for ratings of the Officer from time to time. We are mostly concerned with the nomenclature used during the years 1975 to 1993 and 1994 to 1999. The rating "outstanding" is given to the officers with exceptional abilities and distinctly stands out compared to the rest and "very good" is given to the Officers having high standard of over all performance and better than the performance of majority of Officers and beyond normal requirements. From the above, it is seen that the overall performance of the officers who were given the ratings "outstanding" and "over good" is on high side and beyond normal requirement. But the respondent Corporation has not placed any information or the basis on which these officers can be sub-divided as outstanding or very good. To my mind this revision is not based on any intelligible criteria. Any division or classification of the officers should be based on objective criteria, more so with reference to their job knowledge and reaching the targets fixed by the Corporation but not subjective criteria which is likely to result in misuse of discretion vested with the Officer. Further if ratings have to be given on the basis of subjective satisfaction, the same differs from officer to Officer and in that process also some of the bright Officers have to suffer for no fault of them as happened in the case on hand. Though the petitioner secured several commendation letters, rewards and appreciation in discharge of his duties, he was given the rating "very good" but not "outstanding".

Further, we should not forget the fact that the Indians are living in a society where merit of an individual is decided on the basis of his birth but not on his merit and ability. During 1994-1999 instead of the word "satisfactory" the word used is "good performance". Hence we have to presume that the words "superior performance" used from 1994 is a synonymous to that of the nomenclature "very good" till 1993, as the respondent-Corporation did not place any material as to how the grading was given to the Officers after the change in the nomenclature during the year 1994. Keeping the promotion policy and the grading to be given to the Officers by the Corporation in mind, I have gone through the ratings given to the petitioner, which are hereunder:

Year Rating Remarks

1981 (Promoted) Satisfactory

Views of the officer during discussion on Placement and Development Plans on 14-10-1981 - he is happy with the present assignment.

1982 Satisfactory

Views of the officer during discussion on Placement and Development Plans on 9-11-1982 - he feels he is in the right job.

1983 Satisfactory

Views of the officer during discussion on Placement and Development Plans on 10-11-1983 - he feels he is in the right job.

1984 Very Good

Reaction of the officer in Record of performance Counselling on 13-2-1985 - Good.

1985 Outstanding

Reaction of the officer in Record of Performance Counselling on 19-9-1986 - Satisfied.

1986 Outstanding

Reaction of the officer in Record of Performance Counselling on 3-1-1987 - The officer has expressed disappointment at not being promoted last year, otherwise well taken.

1987 (Promoted) Very Good

Reaction of the officer in Record of Performance Counselling on 24-1-1988 - Positive.

1988 Outstanding

Reaction of the officer in Record of Performance agreement.

1989 Outstanding

Reaction of the officer in Record of Performance Counselling on 26-6-1990 - Positive.

1990 Outstanding

Reaction of the officer in Record of Performance Counselling on 19-11-1991 - Satisfied.

1991 (Promoted) Very Good

Reaction of the officer in Record of Performance Counselling on 28-8-1992 - Good.

1992 Very Good

Views of the officer during the discussion on Planning and Development - The officer feels he is not in the right job and that he is under-utilised.

1993 Outstanding

Reaction of the officer in Record of Performance Counselling - Not done.

1994 Superior

Reaction of the officer in Record of Performance Counselling - Not done.

23. The petitioner was never lagging behind in discharge of his duties. Various appraising officers assessed his work as "outstanding" or "very good". But unfortunately the petitioner could not get promotions in time even after the promotions on the basis of merit was dispensed within the year 1980 and promotions were effected on the basis of seniority from 1980 to 1986 inspite of the constitutional mandate as enshrined in Article 335 of the Constitution of India. Having seen the rating given by the Corporation officials during the relevant period and having suspected that all is not well with the Corporation, I looked into the entire profile of the Officer to satisfy myself whether at any point of time he was lagging behind or not raising upto the expectations of the superior officers of the Corporation as the Corporation did not deny the averment that the Corporation while promoting the Officers juniors to him did not consider his case for promotion. The officers of the Corporation perhaps did not know that Article 335 of the Constitution have an overriding effect over the presidential directive which mandates the employer to consider the claims of the members of Scheduled Castes and the Scheduled Tribes consistently with the maintenance of efficiency of administration, in the making of appointments to service and posts in connection with the affairs of the Union or of a State.

24. Further during the course of arguments it came to light that the Corporation was considering the claims of all the Officers in a particular grade for promotion to the higher grade without fixing any zone of consideration which is unknown to the realm of service law. The result is that while senior Officers with high rating were not considered for promotion several of their juniors were promoted under the guise that they were graded as "outstanding". From the information furnished by the respondent-Corporation, in 1980 about 241 officers in Grade "A" were promoted to Grade "B", 100 under merit channel and 141 under seniority-cum-merit channel. In that year the petitioner stands at Sl.No.298, according to the respondent-Corporation. As per the information furnished by the respondent-Corporation from Sl.No.33 to 885 were promoted to Grade "B" and the petitioner was promoted as Grade "B" Officers during 1981. Again in 1985, while 32 Officers who were juniors to the petitioner were promoted from Grade "B" to "C", 50 officers who were juniors to the petitioner were promoted from Grade "B" to "C" in 1986. The petitioner was given promotion only in the year 1987 to Grade "C". In 1990, about 25 officers juniors to the petitioner were promoted from Grade "C" to "D" while he was promoted to Grade "D" in the year 1991. Again in 1995 as many as 39 officers who were juniors to the petitioner were promoted from Grade "D" to Grade "E" without considering the case of the petitioner for promotion. When the performance of the officers is not rated as "below average" it is to be presumed that he is eligible for promotion consistently with the maintenance of efficiency of administration. Admittedly the petitioner was rated mostly as a very good officer by the assessing officers of the Corporation in the annual personal appraisal reports. When such is the rating, the action of the respondent-Corporation in not considering the case of the

petitioner for promotion is in violation of the constitutional mandate envisaged under Article 335 of the Constitution.

25. Further during the course of arguments, when the Court confronted the learned Counsel for the respondent-Corporation how the case of the petitioner was not considered under second channel, i.e., seniority-cum-merit and how juniors were promoted, the learned Counsel fairly conceded that while giving promotion under the seniority-cum-merit also Corporation followed the principle of selection. In other words, promotion through merit channel in the posts filled in on the basis of seniority-cum-merit is contrary to their own promotion policy and also the law declared by the Apex Court on this aspect. This action of the respondent-Corporation frustrated the aspirations of the senior employees in getting their due promotions.

26. In *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, , the Supreme Court made the legal position with regard to the principle of seniority-cum-merit clear in the following words:

"We have thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit".

27. Having considered the facts and circumstances in *Pinakini Grameena Bank* case, their Lordships categorically observed as follows:

"From the circular dated March 16, 1992 laying down the promotion process it is evident that selection was to be made on the basis of marks to be awarded by the Selection Committee and that out of total number of 100 marks, 55 marks were to be awarded for seniority while 25 marks were assigned for performance and 15 marks for interview. There was no indication in the said circular as to how 55 marks for seniority were to be given to the Branch Managers who were eligible for consideration for promotion on March 31, 1992. The said circular did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected and, as pointed out by the High Court, the selection was made of only those officers who secured highest number of marks amongst the eligible officers. In the circumstances, the High Court, in our view, has rightly held that this method of selection was contrary to the principle of "seniority-cum-merit" and it virtually amounts to the application of the enquiry principle of merit-cum-seniority",

28. After considering the rule position in Bastar Kshetrira Gramina Bank, their Lordships of the Supreme Court held as follows:

"We have heard the learned Counsel for the applicants. It is not disputed that the selection was made on the basis of marks assigned on the basis of interview by the Selection Committee and those who secured the highest marks were selected. The selection process adopted for the purpose of promotion to the post of Area Manager/ Senior Managers was thus not in consonance with the principle of "seniority-cum-merit" and the promotions were not made in accordance with the Rules".

29. Following the above judgment, a Full Bench of this Court in Nagarjuna Grameena Bank and Others Vs. Nagarjuna Grameena Bank Officers Association and Others, , held that no minimum standard of merit or efficiency was admittedly fixed.

30. From the decisions cited I have no manner of doubt in holding that the respondent-Corporation gravely erred in introducing the element of selection for the posts to be filled in on the basis of seniority-cum-merit. Had the respondent-Corporation followed the promotion policies of the years 1982, 1984 and 1987 and effected promotions on seniority-cum-merit, or had they fixed zone of consideration for effecting promotion for the posts to be filled in by process of selection, or had they not introduced the element of selection for filling the vacancies on seniority-cum-merit, or had they followed Article 335 of the Constitution of India, the petitioner would have secured promotion in Group-A posts much earlier.

31. As much water is flown, I am not unsettling the settled issues but I made the legal position clear so that the constitutional authorities will bestow their attention to see that legitimate expectations of the citizens are not jeopardised by the officers obsessed with caste prejudices. I have taken pains to highlight the injustice done to the petitioner. Unfortunately, the National Scheduled Caste and Scheduled Tribe Commission, which is expected to enquire into the specific complaints of depriving of rights of the Scheduled Caste and Scheduled Tribe community and to see their rights are safeguarded, it simply forwarded the reply given by the Chairman of the Corporation to the petitioner without applying its mind and washed off its hands.

32. Now let me consider whether the action of the respondent-Corporation in not giving promotion to the petitioner from Grade "D" to Grade "E" in the year 1995 can be sustained in law. After the petitioner was promoted to Grade "D" in the year 1991, he was rated as "Very Good" in the year 1992. "Outstanding" and "Superior" during the years 1993 and 1994 respectively. Admittedly several of his juniors were promoted from Grade "D" to "E" in the year 1995. I have perused the annual appraisals for the years under reference to see how the ratings were given to the petitioner and whether the appraising Officers are justified in giving those ratings, For the year 1991, the assessing Officer made

the following remarks. It is suffice to extract the notings of the Officers under the columns "Potential" and "General", thus:

"Potential: The officer has excellent potential and would got far up the ladder in IOC. He would do well in any function. It is nice to have him back in Aviation.

General: even though he is not yet fully reconciled to his posting at Begumpet, he will come around soon. Yet he has quickly made a positive distinction and has resolved to do well wherever he is posted. This is quite a positive attitude to work".

33. Even though the petitioner was rated so high, the appraising officers for the reasons best known to them graded him as "Very Good". The annual appraisal of year 1992 reveals that he was rated as "Outstanding". But in the information furnished to the Court his rating was shown as "Very Good". Perhaps the initial assessing officer rated him "Very Good" but having struck off he was rated as "Outstanding" and also written the same in his own writing on 17-12-1992. But the grading for the year 1992 shown in the information furnished to the Court is obviously wrong.

34. For the year 1993 the Appraising Officers rated the petitioner as "Outstanding".

35. Having not identified the areas for improvement, the appraising officer rated the petitioner only as "superior" for the year 1994. Though the officer outreached his targets, he was rated only as "superior". One officer by name Srinivas Sista against whom the petitioner made a written representation and in fact impleaded him as a party respondent in this writ petition stating that because of the mala fide attitude exhibited by the Officer concerned the petitioner was not given proper rating, tried to make some comments on his work. But the superior officer made endorsement to the effect that the petitioner is a better performer. Then in the counselling that has taken place on 15-1-1994, the Counselling Officer made the following endorsement:

"Discussed with E.D. (SR), GM (MO). Based on the performance of the officer during the period under review he is rated as "Superior"."

The reason for rating him as "Superior" may be on the basis of an observation made by the Assessing Officer which reads as follows:

"Very emotional. Feels very strongly about his views and gets upset if what he recommends or his suggestions are not implemented. Strongly opinionated and develops/promotes groupism".

36. As stated supra this endorsement was made by Sista who is no other than the officer against whom the "petitioner made a written complaint whether any enquiry was made on the allegations made by the petitioner or not is not known. At any rate when the officer knows job requirements and exceeded the targets it is not known how he can be rated as "Superior". On the basis of the remarks

made by an Officer who is inimically disposed towards him and without conducting any enquiry on the written complaint given by the petitioner against him, more so when the remarks relate to the personal traits of the petitioner and have nothing to do with his official functions. It is unjust to deny the right of the petitioner who is running from pillar to the post complaining against the injustice done to him by the superior officers of the respondent-Corporation. Even assuming without admitting that the rating given by the officers concerned is to be accepted, under no stretch of imagination it cannot be said that the petitioner cannot maintain minimum efficiency in administration. When once the officer is rated even as "Superior" which means that his performance is better than the performance of majority of the officers and beyond normal requirements, the action of the Corporation in not promoting the petitioner as Senior Manager in the year 1995 cannot be sustained in law as the said action of the respondent-Corporation is in violation of Article 335 of the Constitution of India.

37. I, therefore, direct the respondent-Corporation to re-consider the case of the petitioner for promotion as Senior Manager during 1995 and undertake further review of promotions if any made during this period. On promotion from Grade-D to E, the petitioner is entitled for all the consequential benefits including the arrears of pay, seniority and further promotions to the higher posts. The respondent-Corporation is given three months time to review the promotions made, and pass appropriate orders in the light of the observations made by this Court in this judgment.

38. The writ petition is accordingly allowed with costs. Advocate Fee is fixed at Rs. 2,000/-.