
(1994) 03 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 31, 164 and 165 of 1994

Daya Nand Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1994) 1 WLN 320

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Since a common challenge has been made to the recommendations made by the Departmental Promotion Committee for promotion to the posts of Tehsildar which that has led to non-selection and consequential reversion of the petitioners, these petitions are being decided by a common order.

2. In brief, facts of writ petition No. 31/94 Daya Nand Sharma v. State of Rajasthan and Ors. are that the petitioner had joined service as Naib Tehsildar on being appointed on that post by order dated, 21.9.85 of the Board of Revenue for Rajasthan, Ajmer in pursuance of selection made by the Rajasthan Public Service Commission. The petitioner was confirmed as Naib Tehsildar w.e.f. 29.5.88. His name was placed at serial No. 98 in the seniority list of Naib Tehsildars issued on 6.4.90. On 29th June, 1990, he was posted as Tehsildar. The Departmental Promotion Committee which met in 1990 recommended petitioner"s promotion as Tehsildar against the vacancies of 1990-91 and on the recommendations of the Departmental Promotion Committee the Board of Revenue issued order dated, 12.3.91 promoting the petitioner as Tehsildar against the year 1990-91 on a temporary post. His promotion was described as officiating. Some of the persons who had been promoted alongwith the petitioner including one Shri Sewa Ram Swami, who was junior to the petitioner in the

cadre of Naib Tehsildar, were confirmed as Tehsildar by an order dated, 26.11.93 of the Board of Revenue. As far as the petitioner is concerned, order dated 21.12.93 (Annex.8) has been issued by the Board of Revenue reverting the petitioner from the post of Tehsildar to that of Naib Tehsildar in view of the recommendations made by the Departmental Promotion Committee. Consequential order for his posting has been issued by the Collector, Bhilwara on 24.12.93. By order dated, 18.11.93 32 persons have been promoted as Tehsildars because the Departmental Promotion Committee has included their names in the list which is subject to review and revision. These 32 persons have been promoted for a period of one year or till the next meeting of the Departmental Promotion Committee.

3. Petitioner has pleaded that his service record has been clean and his performance has been commended by the competent authorities from time to time. On 27.7.93 he was served with a memorandum by the Collector, Bhilwara for taking action against him under Rule-17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. Allegation levelled against the petitioner was that he had remained absent and has got the leave sanctioned by concealing true facts. Petitioner filed a representation and denied the allegations levelled against him. The Collector, Bhilwara issue order dated, 30.9.93 and imposed a penalty of stoppage of two grade increments without cumulative effect on the petitioner. .

4. Petitioner has pleaded that the sole cause for his reversion is the order of punishment passed on 30.9.93 by the Collector, Bhilwara. His submission is that the Departmental Promotion Committee which met in the year 1993 "for making recommendations for promotion against the vacancies of the years 1991-92, 1992-93 and 1993-94 has arbitrarily considered the punishment imposed on him by order dated, 30.9.93. His plea is that once he had been promoted as Tehsildar against the vacancy of 1990-91 on the recommendations of the Departmental Promotion Committee, it was not open to the Departmental Promotion Committee of 1993 to once again consider his candidature. Petitioner has further pleaded that in any case, the punishment imposed on him by order dated-30.9.93 or even the inquiry initiated by memo dated 27.7.93 could not have been taken into consideration by the Departmental Promotion Committee which met for making recommendations for promotion against the vacancies of the year 1991-92, 1992-93 and 1993-94. Petitioner has also questioned the legality of the order of punishment dated, 30.9.93.

5. In his writ petition, Ghanshyam Lal Sharma has stated that he was appointed as Naib Tehsildar by order dated, 21.9.85 issued by the Board of Revenue, Rajasthan Ajmer on the recommendations of the Rajasthan Public Service Commission. He was confirmed as Naib Tehsildar w.e.f. 7.12.87 and his name has been placed at serial No. 127 in the seniority list of Naib Tehsildars issued on 6.4.90. The Departmental Promotion Committee which met in the year 1990 considered the candidature of the petitioner for" promotion to the post of

Tehsildar. The Departmental Promotion Committee recommended inclusion of the name of the petitioner in the list which is subject to review and revision. After the Board of Revenue accepted the recommendations of the Departmental Promotion Committee order dated, 1.4.91 was issued and the petitioner was promoted on officiating basis. Petitioner has pleaded that his service record has, by and large remained clean, Commendation certificates have been given to him on 18th December 1989, 7.9.90 and 30th March 1991. At the same time, he was served with a Memorandum dated, 25th February 1991 for an inquiry under Rule-17 of 1958 Rules. He submitted reply and by an order dated, 23.10.92, Inspector General of Registration and Stamps Department imposed a penalty of stoppage of one grade increment without cumulative effect.

6. On the recommendations of the Departmental Promotion Committee which met in the year 1993 order dated - 21.12.93 has been issued by the Board of Revenue reverting the petitioner from the post of Tehsildar to that of Naib Tehsildar. Other orders have been issued for confirmation of existing Tehsildars as also for promotion of Naib Tehsildars to the post of Tehsildars, because, their names have been included in the list prepared by the Departmental Promotion Committee for regular promotions as well as for officiating promotions. As many as 32 persons who are junior to the petitioner in the cadre of the Naib Tehsildars have been given promotion as Tehsildar by order dated, 18.11.93, because, their names have been included in the list which is subject to review and revision. The petitioners plea is that on the basis of arbitrary recommendations made by the Departmental Promotion Committee he has been declared unsuitable and has been reverted. The Departmental Promotion Committee has completely overlooked the service record of the petitioner and the sole basis for reverting the petitioner is punishment imposed on him by way of stoppage of one grade increment without cumulative effect vide order dated, 23.12.92.

7. In Writ Petition No. 165/94, petitioner Bheru Lal Jeengar has also pleaded that he was appointed as Naib Tehsildar by order dated, 21.9.85 on the recommendations of the Rajasthan Public Service Commission. He was confirmed w.e.f. 20.12.88 and his name appears at serial No. 181 in the seniority list of Naib Tehsildars. He was promoted as Tehsildar by an order dated, 26.8.92. While asserting that his service-record has throughout remained clean except minor punishments, the petitioner has stated that his performance has been appreciated by different authorities of the Government. On the basis of additional affidavit filed on 4.2.94 the petitioner has shown that appreciation certificates were given to him by the Sub Divisional Officer, Banswara on 1.12.89 in connection with 1989 Parliamentary elections. In the same year he was given certificate for appreciable performance in revenue campaign. For the year 1990 his work relating to revenue campaign has been appreciated by letter dated, 11.10.90 of the Assistant Collector-cum-Magistrate. Similar appreciation of his work has been done for the year 1992. For the year 1993 the Government has appreciated the performance of the petitioner. The Chief Secretary, Government of Rajasthan has himself conveyed this appreciation vide letter dated 5th of July

1993 which has in turn been conveyed to the petitioner by the Collector, Jhalawar. The adverse factors which are available in the record of the petitioner show that a penalty of stoppage of two grade increments without cumulative effect was imposed on the petitioner by the Collector, Banswara vide his order dated, 29.6.90 on the basis of notice issued to the petitioner under Rule 17 of 1958 Rules. On appeal, the Divisional Commissioner has passed order dated, 9.3.92 and reduced the penalty from stoppage of two increments without cumulative effect to one grade increment without cumulative effect. On the basis of the another notice issued to the petitioner under Rule-17 of 1958 Rules vide memo dated, 5.7.90, a penalty of censure has been imposed on him vide order dated 29.11.90. Other facts enumerated in this writ petition are similar to the facts enumerated in writ petitions of Dayanand and Ghanshyam Lal of which reference has been made herein above. It is, therefore, not necessary to make a detailed reference to the other facts. However, an additional plea raised by the petitioner is that when he had been given temporary promotion in the year 1992, the Board of Revenue had considered his entire available record and had found him suitable for temporary promotion notwithstanding the punishment of stoppage of one grade increment without cumulative effect and punishment of censure. According to the petitioner, once the competent authority had found that punishments imposed on the petitioner do not in any manner affect his suitability to discharge the duties of a higher post, it is now not open to the respondents to deny regular promotion to the petitioner or to revert him on the lower post.

8. Shri Manish Bhandari, learned Counsel for the respondents, has placed before the Court the record which was placed before the Departmental Promotion Committee in its meeting held on 3rd November 1993 when it had considered cases of eligible persons for promotion to the post of Tehsildar against the vacancies of the years 1991-92, 1992-93 and 1993-94. Name of petitioner Daya Nand has been placed at serial No. 67 in the eligibility list. Name of petitioner Ghanshyam Lal has been placed at serial No. 95 in the eligibility list and name of Bherulal Jeengar has been shown at serial No. 147 in the eligibility list. All of them have been shown as officiating Tehsildars. In the statement of penalties imposed from* the year 1985-86 onwards it has been shown that the petitioner Daya Nand Sharma has been punished with stoppage of two grade increments without cumulative effect by an order dated, 30.9.93 of the Collector, Bhilwara. Ghanshyam Lal Sharma has been shown to have been punished with stoppage of one grade increment without cumulative effect by an order dated, 23.10.92 of the Inspector General of Registration and Stamps and petitioner Bheru Lal Jeengar has been shown to be punished with stoppage of two grade increments with cumulative effect by Collector, Banswara, which was reduced to stoppage of one grade increment without cumulative effect by the Divisional Commissioner and a penalty of censure. The record also shows that in its meeting held on 3.11.93, the Departmental Promotion Committee recommended promotions of 57 persons from the cadre of Naib Tehsildars. Of these 57, recommendations in

respect of ten persons were decided to be kept in sealed cover. The Committee also separately made recommendation for promotion from amongst Sadar Munsarims and Office Superintendents cadre. The same D.P.C. made recommendations for the year 1992-93 as well. It recommended 20 officers for promotion to the post of Tehsildar. Out of these 20, seven were recommended to be kept in sealed cover. Third part of the recommendations made by the D.P.C. pertain to the year 1993-94. In all 40 persons have been recommended for promotion, out of which recommendation qua 12 were to be kept in sealed cover. The committee has also recommended inclusion of another 40 persons in the reserve list. Of them recommendations qua 8 persons have been decided to be kept in sealed cover. In this year names of the three petitioners have been included in the category of officers who have been declared unsuitable.

9. When asked by the Court, Shri Bhandari admitted that the petitioner Daya Nand had been recommended for promotion against the quota of 1990-91 by the Departmental Promotion Committee, but he pleaded that promotion given to Daya Nand by order dated, 12.3.91 (Annex. 2), in S.B. Civil Writ Petition No. 31/94 was against a temporary post and therefore, no right came to vest in favour of the petitioner. Daya Nand to hold the post of Tehsildar. He also admitted that Ghanshyam Lal Sharma was promoted as Tehsildar by order dated, 1.4.91 issued under the signatures of Registrar of the Board of Revenue under Rule-31 of the Rajasthan Tehsildar Service Rules, 1956. Shri Bhandari further admitted that Bheru Lal Jeengar who is a member of Scheduled Caste was given urgent temporary promotion on the post of Tehsildar by order dated 26.8.92 issued under the signatures of the Registrar, Board of Revenue.

10. Argument of Shri Rastogi, learned Counsel for the petitioner is that promotions to the post of Tehsildar from the cadre of Naib Tehsildar is required to be made on the basis of seniority-cum- merit and therefore, a senior person has got a right to be preferred in the matter of promotion as against a junior but more meritorious person. Shri Rastogi argued that a senior person can be superseded only when he is found to be positively unfit to hold the post. He further argued that petitioner Daya Nand Sharma had already been promoted on the recommendations of the D.P.C. and therefore, the D.P.C. which met on 3.11.93 had no authority to consider his case once again for regular promotion on the post of Tehsildar. Shri Rastogi submitted that if the D.P.C. could not have considered the case of Daya Nand for promotion in the year 1993, there is little justification for treating him unsuitable and reverting him to the post of Naib Tehsildar. Another submission made by Shri Rastogi is that even though the petitioners Ghanshyam Lal Sharma and Bheru Lal Jeengar had been given urgent temporary promotions, such promotions had been given to them with the approval of the Chairman, Board of Revenue. At the time of promotion of the petitioners their past record had been taken into consideration. Having found the petitioners suitable for temporary promotion on the post of Naib Tehsildar, the respondents cannot now declare them unsuitable on the basis or adverse record, argued Shri Rastogi. He invoked the theory of wash off. Shri Rastogi made

another submission to the effect that in case of Daya Nand Sharma, the Departmental Promotion Committee had no jurisdiction to look into the inquiry initiated vide memo dated, 27.7.93 or the order of punishment passed on 30.9.93. In case of Ghanshyam Lal Sharma only one minor penalty of stoppage of one grade increment without cumulative effect had been imposed and that could not constitute basis for declaring him unsuitable. In respect of Bheru Lal Jeengar also a penalty of stoppage of one grade increment without cumulative effect and a penalty of censure imposed on the petitioner prior to his promotion as Tehsildar by order dated, 26.8.92 could not constitute valid basis for treating him unsuitable. Lastly, Shri Rastogi argued that the Departmental Promotion Committee did not have before it the entire record of the petitioners. Only adverse material had been placed before it. Merit certificates and commendations earned by different eligible persons had not been placed before the Departmental Promotion Committee and there is nothing to show that the same had been considered by the Departmental Promotion Committee on this premise Shri Rastogi submitted that the recommendations made by the Departmental Promotion Committee are arbitrary and the decision taken by the Chairman, Revenue Board to revert the petitioners on the basis of such arbitrary recommendations is also vitiated. Shri Bhandari, learned Counsel for the respondents, on the other hand argued that the promotion given to petitioner Daya Nand Sharma on temporary basis cannot be treated as a substantive promotion and therefore, it was within the competence of the Departmental Promotion Committee to have considered his case for promotion in its meeting held on 3.11.93. Shri Bhandari submitted that on the date of meeting of the Departmental Promotion Committee punishment order passed against the petitioner was in existence and therefore, no illegality has been committed by the Departmental Promotion Committee, when it took into consideration the punishment imposed on the petitioner Dayanand Sharma. Shri Bhandari argued that the Departmental Promotion Committee was fully justified in taking into consideration the punishment and in recording a conclusion that the petitioner was unsuitable. Opposing the applicability of the theory of "wash off Shri Bhandari submitted that a purely temporary promotion given to the petitioner cannot confer any right on him to hold the post of Tehsildar and mere fact that the petitioners had been given promotion on urgent temporary basis cannot in any manner be construed as having the effect of obliteration of the adverse record. Shri Bhandari argued that urgent temporary promotion is made by the Registrar Board of Revenue under the order of the Chairman without recommendation of the Departmental Promotion Committee, whereas, regular promotion is required to be made on the recommendation of the Departmental Promotion Committee. Therefore, the mere fact that the Chairman had considered it proper to accord urgent temporary promotion to the petitioner does not mean that the Departmental Promotion Committee is precluded from taking into consideration the adverse material. Shri Bhandari further argued that the Departmental Promotion Committee is not required to convey reasons for supersession of a senior person and this Court cannot sit as a Court of appeal on

the recommendations made by the Departmental Promotion Committee. He argued that no allegation of malafide has been levelled against the respondents and therefore, it is not open to the Court to make a detailed investigation into the merits and demerits of the selection made by the Departmental Promotion Committee on the basis of which impugned orders have been issued.

11. Promotion to the post of Tehsildar is regulated by the provisions contained in Part-VI of 1956 Rules. Rule-29 speaks of the source of promotion to the post of Tehsildars and reservation. Rule-29A refers to the criteria laid down in Rule- 28A. Rule-30 empowers the appointing authority to make substantive appointment in accordance with the list prepared under Rule-29A (8). Rule-31 provides for making urgent temporary appointment. Rules-29, 29A, 30..(1) and 31 of these rules read as under:

29. Sources of promotion to the post of Tehsildars and reservation.

(1) Promotion to the post of Tehsildar in the service shall be made from the following sources:

(a) by promotion of Naib Tehsildar,

(b) by selection from amongst Superintendents, Grade-1 of the Board of Revenue, Collectorates, Colonisation Department and Settlement Department who have served in their respective cadres for at least five years and are holding the post substantively on the first day of January of the year in which the selection is made.

(c) by selection from amongst Sadar Kanungos and Sadar Munsarims of Revenue, Colonisation and Settlement Department who have served in their respective cadres for at least five years and are holding the posts substantively on the first day of January of the year in which the selection is made, and

(d) by screening once only hereafter by the Committee referred to in Sub-rule (6) of rule-29A all persons who are substantively holding the post of Sub-Registrar, Registration and Stamps on the date these were encadred in the Service. Those officers who are found suitable by the said Committee shall be appointed to the Service on the post of Tehsildar straight away after consultation with the Commission.

(2) The extent of reservation of posts for sources referred to in Sub-clauses (b) and (c) of Sub-rule (1) in the cadre of Tehsildars shall be as follows:

(a) posts equal to 25% of the sanctioned strength of posts of Superintendent, Grade I of the Board of Revenue, Collectorate, Colonisation Department and Settlement Department shall be reserved for them.

(b) Posts equal to 25% of the sanctioned strength of the posts of Sadar Kanungos and Sadar Munsarims of Revenue, Colonisation and Settlement Departments shall be reserved for them.

(3) Reservation under Sub-rule (2) shall be calculated on the basis of the sanctioned strength of the relevant cadre as on first day of January of the year in which the selection is made and the adjustment of fractions shall be made over a period of five years.

(4) In filling the vacancies in the cadre of Tehsildar and Settlement Tehsildars in the Service by promotion from the sources referred to in Clauses (a), (b) and (c) of Sub-rule (1) the following order of promotion shall be followed:

first vacancy amongst Superintendent, Grade I, second vacancy from amongst Sadar Kanungos and Sadar Munsarims; and

third vacancy from amongst Naib Tehsildars, and soon;

Provided that the vacancies from amongst sources specified in Clause (b) or Clause (c) of Sub-rule (1) shall not be filled beyond the extent of reservation made under Sub-rule (2).

"29A-Criteria and procedure for promotion-(1) subject to the provisions contained in this rule, promotion to the post of Tehsildar and Settlement Tehsildar shall be made in accordance with the criteria laid down in rule-28A.

(2) As soon as it is decided by the State Government to fill certain vacancies by promotion in the Cadre of Tehsildars and Settlement Tehsildars, it shall require the Board of Revenue, Settlement Commissioner and the Colonisation Commissioner to prepare separate lists in order of seniority of eligible Naib-Tehsildars, Superintendents, Grade-I, Sadar Kanungos and Sadar Munsarims respectively and to forward the same to the State Government together with their confidential reports, personal files and a statement of service particulars in Form "B" in respect of each of them included in the respective lists.

(3) On receipt for the lists referred to in Sub-rule (2), the State Government shall cause these lists alongwith the confidential reports, personal files and service particulars to be placed before the Committee constituted by Sub-rule (4).

(4) Selection or purpose of promotion to the post of Tehsildar shall be made by a Committee consisting of:

(1) The Chairman of the Commission or a member thereof nominated by him. Chairman (2) The Chairman, Board of Revenue or a member thereof nominated by him. Member (3) The Secretary to the Government in the Revenue Department or his representative not below the rank of Deputy Secretary. Member (4) Settlement Commissioner Member (5) The Colonisation Commissioner Member (6) The Special Secretary to the Govt. in the Department of Personnel and Administrative Reforms or his representative not below the rank of Deputy Secretary Member (7) The Registrar, Board of Revenue Member-Secretary

Provided that in Case any Member or Member Secretary as the case may be, constituting the Committee has not been appointed to the post concerned, the

officer holding charge of the post for the time being shall be the Member or Member Secretary, as the case may "be, of the Committee.

(5) The Committee shall consider the cases of all eligible persons included in the lists placed before it under Sub-rule (3), it shall interview such of them as it deems necessary and shall select persons for promotion in

Accordance with rule of 28A. The persons so selected shall be equal to one and a half times the number of vacancies proposed to be filled and their names shall be arranged in the order of their respective seniority as Naib Tehsildar, Superintendent Grade I and Sadar Kanungo and Munsarim. The lists of selected persons shall be forwarded by the Committee to the State Government.

(6) Special Selection by screening for the purpose of Clause (d) of Sub-rule (1) of Rule 29 shall be made by a Committee consisting of;

(1) the chairman of the Commission or a member thereof as nominated by the Chairman. Chairman (2) the Chairman, Board of Revenue Member (3) the special Secretary, Department of Personnel or his nominee not below the rank of Deputy Secretary. Member (4) the Revenue Secretary Member (5) the Registrar, Board of Revenue Member

(7) On the basis of the lists sent by the Committee under Sub-rule (5), the State Government shall make the final selection in consultation with the Commission. No such consultation shall be made in cases of persons already working as Naib Tehsildars.

(8) A consolidated list of such finally selected persons (hereinafter called the listed Tehsildars candidates) shall be prepared by the State Government and their names in it shall be arranged in order of their respective seniority in the lower cadre and the same shall be sent to the Board of Revenue for making substantive appointments.

"30. Substantive appoints. (1) Subject to the provisions contained in these Rules, all substantive appointments to the posts of Tehsildars shall be made by the "Appointing Authority" by promotion of listed Tehsildar candidates in the same order in which they have been placed in the list prepared by the Government under Sub-rule (8) of rule-29A.

"31. Urgent Temporary Appointments-A vacancy in the Service which cannot be filled in immediately either by direct recruitment or by promotion under the rules may be filled in by the Government or by the (Authority competent to make appointments) as the case may be by appointing in an officiating capacity an officer eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the service, where such direct recruitment has been provided under the provisions of these Rules;

Provided that such an appointment will not be continued beyond a period of one year without referring the case to the Commission for concurrence where such

concurrence is necessary, and shall be terminated immediately on its refusal to concur. Provided further that in respect of the Service or a post in the Service for which both the above methods of recruitment have been prescribed, the Government or the authority competent to make appointment, as the case may be, shall not save with the specific permission of the Government in the Department of Personnel in the service for which both the above methods of recruitment have been prescribed, the Government or the authority competent to make appointment, as the case may be, shall not save with the specific permission of the Government in the Department of Personnel in the case of State Services and Government in the Administrative Department concerned in respect of other services, fill the temporary vacancy against the direct recruitment quota by a whole time appointment for a period exceeding three months, otherwise than out of persons eligible for direct recruitment and after short term advertisement.

(2) In the event of non-availability of suitable persons, fulfilling the requirements of eligibility for promotion, Government may, notwithstanding the condition of eligibility for promotion required under Sub-rule (1) above, lay down general instructions for grant of permission to fill the vacancies on urgent temporary basis subject to such conditions and restrictions regarding pay and other allowances as it may direct. Such appointments shall, however, be subject to concurrence of the Commission as required under the said sub-rule.

12. A combined reading of these rules show that one of the sources of promotion to the post of Tehsildar is Naib Tehsildar. For the purpose of making regular promotion to the post of Tehsildar a Committee headed by the Chairman, Rajasthan Public Service Commission has to consider the cases of all eligible persons included in the list got prepared by the State Government. The criteria laid down in Rule-28A is to be followed for making promotion, This list is to be forwarded to the Government. Final selection is to be made by the State Government and that list has to be sent to the State Government, for making substantive appointment. Rule-31 provides for appointment on urgent temporary basis from amongst persons who are eligible for promotion.

13. For making urgent temporary promotions the State Government in Department of Personnel and Administrative Reforms, has from time to time issued different circulars laying down criteria for Urgent temporary promotions and the record which is required to be taken into consideration while making such urgent temporary promotions. Shri Bhandari, learned Counsel for the respondents, has been fair enough to make statement before the Court that for making urgent temporary promotions past five years" record of all eligible persons is required to be looked into and that while according such promotion under rule-31 record of five years had in fact been taken into consideration and that urgent temporary promotion had been given to petitioners, Ghanshyam Lal and Bherun Lal after approval by the Chairman, Board of Revenue.

14. In so far as petitioner Dayanand Sharma is concerned, a look at the order

Annexure-2 dated, 12.3.91 shows that he had been given promotion on the recommendation of the Departmental Promotion Committee constituted under Rule-29A (4) of 1956 Rules. The opening portion of the order dated, 12.3.91 says;

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15. It is clear from a bare look at the language employed in the order of promotion of the petitioner Daya Nand that he has been given regular promotion, though on officiating, basis, against the vacancies of 1990-91 on the recommendations of D.P.C. Mere fact that a temporary vacancy was available, does not in any manner affect the nature of the promotion of the petitioner Daya Nand Sharma. Promotion accorded to him is a regular promotion. Once Daya Nand had been given regular promotion on the recommendation of the Departmental Promotion Committee it was simply not open to the Board of Revenue and the State Government to have placed his name for consideration before the DPC which met on 3.11.93. Logically, it has to be held that the Departmental Promotion Committee had no jurisdiction to make recommendation qua Daya Nand Sharma for treating him unsuitable, consequently, the Board of Revenue had no jurisdiction to pass order for his reversion. For this reason alone order dated, 21.12.93 passed by the Board of Revenue is liable to be quashed.

16. Another reason for quashing the order of reversion of the petitioner is that the decision taken by the DPC declaring the petitioner unsuitable for promotion is clearly contrary to the provisions of the rules and is arbitrary. The sole basis for treating the petitioner as unsuitable for promotion is the order of penalty passed by the Collector, Bhilwara on 30.9.93. This penalty has been imposed on the petitioner on the basis of notice dated, 27.7.93 issued by the Collector under Rule 17 of the 1958 Rules. When notice itself was issued on 27.7.93 there is no escape from the conclusion that as on 1.4.93 no inquiry had been initiated against the petitioner and none was pending against him. In terms of Rule-28A (11 A) read with rule-9, Rule 29A (1) the Departmental Promotion Committee was entitled to take into consideration the record of the petitioner which was available as on 1.4.93. As on that day, no adverse material was available against the petitioner. By taking into consideration the record which became available after 1.4.93, the Departmental Promotion Committee and the Board of Revenue have acted contrary to the provisions of the rules.

17. In *N.K. Bohra v. State of Rajasthan* S.B. Civil Writ Petition No. 2920/90 decided on 7.5.93, this Court has held that if the Departmental Promotion Committee takes into consideration an inquiry which is initiated against an employee after 1st of April of the year of vacancy it will be deemed that the Departmental Promotion Committee has taken into consideration the irrelevant factors and the recommendations made by it and acted upon by the competent authority will be deemed to be contrary to the equality clause enshrined in Article 16 of the Constitution of India. It is thus, held that the DPC has committed serious illegality by taking into consideration order of punishment passed by the Collector, Bhilwara against petitioner, Dayanand Sharma on 30.9.93.

18. In so far as two other petitions are concerned, main submission of Shri Rastogi is that the petitioner Ghanshyam Lal had been given promotion by order dated, 1.4.91 on the recommendation of the DPC and the only adverse factor which has come into existence after 1.4.91 is in the form of a minor penalty of stoppage of one grade increment without cumulative effect. Petitioner Bheru Lal has not suffered any penalty after he was given urgent temporary promotion and the earlier penalty of stoppage of one grade increment without cumulative effect as well as censure could not have legitimately been taken into consideration by the DPC for treating the petitioners as unsuitable. Shri Bhandari's plea is that theory of wash off does not apply where consideration made for promotion on urgent temporary basis is by one authority and regular promotion is made by another authority. Further plea of Shri Bhandari is that punishments awarded to the petitioners were rightly taken into consideration by the Departmental Promotion Committee.

19. The admitted case of the parties is that promotion to the post of Tehsildar from the cadre of Naib Tehsildar is required to be made on the basis of seniority-cum-merit and not on the basis of merit. Even for making urgent temporary/ ad hoc promotion criteria of seniority-cum-merit is being applied. For making urgent temporary/ad hoc promotion five years past record is taken into consideration, whereas, 7 years record is looked into for the purpose of making regular promotion. When criteria for regular promotion as well as urgent temporary/ ad hoc promotion is the same it is reasonable to hold that a person who is adjudged suitable for urgent temporary/ ad hoc promotion cannot subsequently be declared unsuitable on the basis of the very same record, merely because regular promotion is required to be made on the recommendation of a selection committee/Departmental Promotion Committee. It has to be noted that urgent/temporary/ad hoc promotion on the post of Tehsildar is made with the approval and by order of the Chairman of the Board of Revenue. Similarly, regular promotion is also required to be made with the approval and by order of the Chairman Board of Revenue. The recommendation made by the Departmental Promotion Committee is not final. The appointing authority, namely, the Chairman, Board of Revenue has the discretion to accept or not to accept the recommendations made by the Departmental Promotion Committee. The State Government is required to make final selection. When the appointing authority is

the same in case of urgent/temporary/ ad hoc promotion as also in case of regular promotion, it is not possible to accept the plea that even after giving urgent temporary / ad hoc promotion which is presumed to be made after due application of mind to the service record of the employee who is promoted, the same record can be made basis for declaring that employee unsuitable for regular promotion.

20. Wash off theory was propounded by the Supreme Court in *The Regional Manager and Another Vs. Pawan Kumar Dubey*, In that case, the respondent had been reverted from the post of Senior Station Incharge which he was holding of officiating basis. This reversion was brought about on the basis of certain adverse entries in the confidential rolls. High Court quashed the order of reversion and while affirming the decision of the High Court the Supreme Court observed:

There were some old adverse entries also against the respondents but they must be deemed to have been washed off by orders of his promotion on ad hoc or officiating basis by an order of 7th March 1972 which had been approved by the Dy. Transport Commissioner of Udaipur on 18th March 1972 as required by the Rules.

21. This decision of the Supreme Court has been applied in *Ram Kumar Singh v. State of Rajasthan* 1986 (2) J S 196. That was a case where an Assistant Engineer of Public Works Department had been confirmed on that post and was subsequently given ad hoc promotion as Executive Engineer. He had some adverse remarks in his confidential reports for the year 1966-67. He was confirmed as Assistant Engineer notwithstanding the adverse entries and was given ad hoc promotion. The Court held that with his ad hoc promotion the adverse remarks stood washed off and the Departmental Promotion Committee was not justified in taking into consideration those adverse remarks for the purpose of making recommendation for promotion to the post of Executive Engineer and its decision to treat him unsuitable was arbitrary. The Court observed

But even if it be assumed that the said promotion was on ad hoc basis till regular selection was made by the Committee in accordance with the Rules, the observations of the Supreme Court in *Regional Manager v. Pawan Kumar Dubey*'s case (supra) would be applicable, in as much as, in that case the promotion of the respondent had been made on an ad hoc or officiating basis and it was held that the adverse entries should be deemed to have been washed off by the aforesaid order of the promotion. Similarly it can be said that the adverse entry in the Confidential Rolls of the petitioner for the year 1966-67 should be deemed to have been washed of, as a result of the order dated- 23rd March, 1973 promoting the petitioner to the post of Executive Engineer (Civil).

22. In *Chand Mal Mittal v. State of Rajasthan* 1991 WLR 574, this Court made reference to the decision in *Regional Manager and Anr. v. Pawan Kumar Dubey* (supra) and *Ram Kumar Singh v. State of Rajasthan* and others (supra) the Court

held:

On ad hoc promotion previous adverse record of a civil servant stands washed off and cannot be taken into consideration for the purpose of regular promotion based on seniority-cum-merit.

23. That too was a case in which the petitioner Chand Mal had been given ad hoc promotion in 1969 despite adverse record. Subsequently, he was superseded at the time of regular promotion because, the DPC had taken into consideration adverse record anterior to 7th October, 1969. The Court declared that recommendation made by the Selection Committee suffered from a serious error of law.

24. In *Mahesh Singh and Anr. v. Rajasthan High Court* 1993 (1) RLR 396, wash off theory has once again applied, where the petitioner had been given promotion as Civil Judge-cum-Additional Chief Judicial Magistrate despite adverse entries. On the basis of the above referred decisions it must be held that the Departmental Promotion Committee, the State Government and the Board of Revenue have committed a serious illegality by taking into consideration the adverse factors which were available in the record of the petitioner Bhenru Lal Jeengar prior to his promotion as Tehsildar by order dated- 26.8.92, even though such promotion was an ad hoc promotion. By taking into consideration such adverse material, the respondents have arbitrarily declared him unsuitable and in this manner his right of equality before law in the matter of employment as guaranteed by Article 16(1) has been infringed.

25. Even otherwise, I find sufficient justification in the submission of Shri Rastogi that the Departmental Promotion Committee has not properly applied itself to the record of the employees while making its recommendations for promotion to the post of Tehsildar. Shri Rastogi is correct in arguing that the punishment awarded to the petitioners could not be made the sole basis of treating the petitioners as unsuitable. In this context I would once again reiterate that when promotion is made on the basis of seniority-cum-merit, the Departmental Promotion Committee and the appointing authority are required to consider whether the employee holding a post in lower cadre possesses requisite merit which is necessary- for efficiency of administration. No comparative assessment of merit is required to be made. Promotions on the basis of merit and suitability stand on different footing from promotion on the basis of seniority-cum-merit. Seniority cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior, though less meritorious, shall have priority. In other words, for the purpose of making a promotion on the basis of seniority-cum-merit what has to be seen is whether the person who ranks senior possesses the minimum necessary merit requisite for efficiency of administration, and there is no question of assessing the comparative merits between two persons. The considerations which weigh for making promotions on the basis of merit and suitability and the considerations which weigh for making promotions on the basis of seniority-cum-merit are thus not the same. In so far as promotion

on the basis of seniority-cum-merit is concerned, it is more akin to allowing a person to cross the efficiency bar or confirming a person holding a post on an officiating basis because unless a person possesses the merit requisite for efficiency of administration he cannot be permitted to cross the efficiency bar and he can also not be confirmed on the post held by him on officiating basis. This would mean that person who possesses the requisite merit and efficiency for crossing the efficiency bar or for the purpose of confirmation, should also be treated to have the minimum necessary merit requisite for efficiency of administration for promotion to the higher post on the basis of seniority-cum-merit.

26. In *Het Ram Dudi v. State of Rajasthan and Anr.* 1992 (3) WLC 726, this Court made reference to various decisions including those in *N. Srinath, M.A. Somashekar v. State of Mysore and Ors.* 1972 SLR 449, *Shadi Lal v. The Dy. Commissioner, Gurgaon and Ors.* 1974 (1) SLR 217, *Hari Datt Kainthla v. State of Himachal Pradesh* 1974 (1) SLR 208 (Ker), *State of Kerala v. N.M. Thomas* 1976 (1) SLR 805 Raj, *Ram Kumar Singh v. State of Rajasthan* (supra) and observed:

On the basis of these judgments the principle which can be deduced is that the condition of service of employment should be so formulated by the employer so as to maintain the balance between the assertion of career of individual employee and the efficiency of public service. This is necessary to avoid frustration amongst the employees which otherwise leads to demoralisation of the service and is ultimately counter productive. While at the lower levels of the service, criteria for promotion should be seniority-cum-merit or seniority-cum-fitness or seniority-cum-suitability, at the higher levels merit and merit alone should be the yardstick. The criteria of seniority-cum-fitness or seniority-cum-merit has to be so applied that if a senior person possesses that element of merit which makes him efficient for discharge of duties, his seniority must over-weigh better merit of a junior person. Element of comparative assessment of merit is absent when promotion is required to be made on the basis of seniority-cum-merit. At the same time by adopting the criteria of merit or merit-cum- seniority for higher promotion, better and best can be chosen to serve the larger public interest. Even those who are in the lower cadre will then strive for achieving excellence so as to fall within the zone of merit and become eligible for out of turn promotion.

27. Punishment awarded to an employee on the basis of an act of proved delinquency is no doubt an adverse factor. However such punishment may or may not cause reflection on the efficiency bar or merit of an employee. It is also clear that punishment awarded to an employee may have no impact whatsoever on the public service. The punishment itself may relate to a delinquency committed in the remote past having no direct nexus or relation with his performance for the period under consideration. An otherwise good officer may have been punished for minor delinquency. Therefore, merely because a penalty

has been imposed on a Government servant, he cannot be declared unsuitable without regard to the nature of delinquency, the period during which the delinquency has been committed, the nature of punishment and its impact on the service. I had occasion to deal with this question at length in *Het Ram Dudi's* case (supra). Therein the Court observed:

The next question which needs determination is as to whether punishment imposed on an employee can be the sole basis for declaring him or treating him unsuitable or unfit for promotion. While deciding this question one has to bear in mind that so far as the service rules are concerned they do not specify the material which can be taken into consideration for the purpose of judging the suitability/fitness/merit. However, administrative instructions issued by the government do provide that the service record of a specified period is to be looked into by the departmental promotion committee or the government or any other competent appointing authority for the purpose: Service record consists of annual confidential reports/annual performance appraisal reports, awards/commendation certificates, entries relating to punishments or pending departmental enquiries etc. All these factors have, therefore, necessarily to be considered at the time of promotion of an employee. Logically, the punishment imposed as a result of departmental inquiry cannot constitute the sole basis for declaring/treating an employee unfit/unsuitable for promotion.

It cannot also be ignored that punishment is imposed on an employee for a particular lapse or act of delinquency. Such act of delinquency may or may not have any impact on or relevance to the efficiency of the employee for the period under consideration. The punishment itself may relate to a delinquency committed in the remote past having no direct nexus or relation with his performance for the period under consideration. An employee may have performed well or may have been rated as outstanding during the relevant period for which his record is to be looked into and at the same time may have earned a punishment for an act or omission of remote past or may have received a very minor punishment. There may be case of punishment imposed in relation to an act or omission of distant past and in the meantime, the employee may have received promotion because the competent authority could not decide as to whether it should hold a departmental inquiry at all or not. There may be cases where departmental inquiry has been prolonged for years not on account of fault on the part of the employee but on account of reasons for which he is least responsible. All these factors will have to be objectively considered while taking into consideration punishment imposed on an employee at the time of consideration of his promotion. Efficiency and misconduct are two distinct concepts in service jurisprudence and this distinction will have always to be kept in mind while judging the suitability/fitness/merit of an employee to shoulder the responsibility of a higher post.

The Court further observed:

The competent authority is bound to objectively consider the other service record

along with the punishment. The punishment imposed on the employee is required to be examined with reference to year of punishment, the nature of charge allegation, the severity of punishment. If on the basis of punishment or any other adverse material, the employee is to be superseded or denied promotion the competent authority must record reasons in support of its decision. Recording of reasons is a must for fairness in the decision of the competent authority. Since such matters fall exclusively in the realm of administrative decisions, reasons need not be communicated to employee. Nevertheless even in such matters record must show that the competent authority has applied its mind and then taken the decision. If a challenge is made to the decision of the Government before a Court of law, it becomes the duty of the concerned authority to place the record before the Court in order to satisfy the Court that the decision is not arbitrary and is founded on good reasons.

28. What has been done in these cases is that the Departmental Promotion Committee has completely overlooked the fact that the petitioners have been found suitable to shoulder the responsibilities of the post of Tehsildar and the delinquencies for which they have been penalised related to their working as Naib Tehsildar (in the case of Bhenru Lal Jeengar). Inquires have been held against Bhenru Lal Jeengar and Ghanshyam Sharma under Rule-17. The order of punishment passed in cases of petitioners Ghanshyam Lal Sharma and Bherun Lal Jeengar show that they have not been found guilty of any grave mis-conduct. Apparently, the Departmental Promotion Committee as well as the appointing authority has applied a straight jacket formula of treating all those persons as unsuitable who had been awarded minor punishments. To me, the approach adopted by the respondents while making consideration for promotion cannot but be treated as arbitrary and unreasonable. The Departmental Promotion Committee cannot be charged with the allegation of malice or want of good faith, but it is certainly a case in which neither the Departmental Promotion Committee nor the appointing authority have applied themselves to the record of the petitioners for the purpose of judging requirement of the efficiency of service. Reversion of the petitioners has been brought about because, they have been declared unsuitable and since I have found that the action taken by the respondents suffers from arbitrariness, reversion of the petitioners has to be quashed.

29. In the result, the writ petitions are allowed. Orders of reversion passed by the Board of Revenue on 21.12.93 are declared illegal and are hereby quashed. It is declared that the petitioner Daya Nand Sharma stands regularly promoted as Tehsildar against the quota of 1990-91 and therefore, his case could not have been re-considered for promotion by the D.P.C. which met on 3.11.93. Respondents are directed to assign seniority to the petitioner in accordance with his year of regular promotion and he should be confirmed as Tehsildar subject to his fulfilling his other conditions enumerated in Rule-34A or 36 of 1956 Rules. Cases of other two petitioners should be re- considered for the purpose of regular promotion as Tehsildar in the light of the observation made in the earlier

part of this order. If on such reconsideration they are found suitable the petitioners should be given regular promotion with reference to the year in which their juniors have been promoted. Petitioners shall get consequential benefits.