

(1993) 03 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 23130 of 1992

Dr. Jose Paul

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1993) ILR (Kar) 2910 : (1993) 4 KarLJ 709

Hon'ble Judges : Shivaprakash, J

Bench : Single Bench

Advocate : M.B. Prabhakar, for the Appellant; Bapu Heddurshetty, Addl. Stdg. Counsel for Central Govt. for R-1, M.H. Datar, for R-3 and R-4 and D.L.N. Rao, for R-5, for the Respondent

Judgement

Shivaprakash, J.—The petitioner who is presently holding the post of Deputy Chairman, New Mangalore Port Trust, a statutory body constituted under the provisions of the Major Port Trust Act, 1963, seeks the following reliefs in this Writ Petition presented under Article 226 of the Constitution of India:

"(a) Declare Sub-clause (iv) of Clause (A) of the executive Order No. A-12022/21/86-PE-1 dated 22.12.1987 -Annexure-D - as illegal and violative of Articles 14 & 16 of the Constitution of India.

(b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents not to give due effect to the selection held on 4.5.1992 for the posts of Chairmen to the New Mangalore Port Trust and Tuticorin Port Trust; .

(c) Issue a writ of mandamus, or any other appropriate writ, order or direction, directing the respondents to hold fresh selection to the posts of Chairmen to New Mangalore Port Trust and Tuticorin Port Trust in accordance with law."

2. The petitioner has given in the Petition a resume of his career in several Port Trusts, starting as Assistant Traffic Manager, Cochin Port Trust on 1.1.1968. After

working in several capacities in Cochin Port Trust, New Mangalore Port Trust and in Tuticorin Port Trust, he was appointed as Deputy Chairman, New Mangalore Port Trust on 15.4.1989.

3. The petitioner having come to know that the post of Chairman in New Mangalore Port Trust would fall vacant with effect from 1.9.1992 addressed a letter dated 10.2.1992 "through proper channel" to the Secretary to the Government of India, Ministry of Surface Transport, New Delhi offering himself as a candidate for the post of Chairman, New Mangalore Port Trust. I may as well reproduce, despite its prolixity, the whole of the said letter dated 10.2.1992, copy of which is marked as Annexure-C, since it contains full particulars of the petitioner regarding his qualification, work experience and professional capacity based on self appraisal.

"From

Dr. Jose Paul, Deputy Chairman, New Mangalore Port Trust, Panampur 575010.

To

The Secretary to the Govt. of India, Ministry of Surface Transport, Transport Bhavan, No. 1, Parliament Street, New Delhi-110 001.

(Through Proper Channel).

Sir,

Sub:- Appointment of Port Officers as Chairmen, Port Trusts -Application submitted.

Ref:- Letter No. A-12022/21/86/P E-I dated 22nd December 1987 from the Joint Secretary to the Govt. of India, Ministry of Surface, Transport, intimating Port Officers regarding policy for appointment of Port Officers as Chairman/Dy. Chairman. In response to the letter referred to above and in accordance with the modified guidelines issued by the Ministry for considering Port Officers for appointment to the posts of Chairmen in Indian Major Ports, I offer myself as a candidate for the post of Chairmen, New Mangalore Port Trust. I understand that the incumbent to the post of Chairman, New Mangalore Port Trust is due to complete his tenure by the 1st week of September 1992. According to the categorisation of the posts of Chairmen as contained in the Government's letter referred to above, the post of Chairman, New Mangalore Port. Trust falls under Category-III and the post of Deputy Chairman in New Mangalore Port Trust also falls under Category-III.

By the 31st December 1991 I have completed 24 years of Port service which is spread over three Major Ports of Cochin, Tuticorin and New Mangalore. It is understood that in the selection for the post of Deputy Chairman that was held in the Ministry in April 1988, I was highly placed in the panel of selected candidates and accordingly, I was appointed Deputy Chairman, NMPT on 15.4.1989. By 14.4.1991 I have completed the prescribed 2 years period of probation as

Deputy Chairman and the Ministry of Surface Transport has also issued a letter informing me of my successful completion of the period of probation vide its letter No. A-31013/4/91/PE-I dated 24.10.1991 (copy enclosed). By 14.4.1992 i.e., before the occurrence of the vacancy in the post of Chairman, NMPT I will have completed 3 years of service as Deputy Chairman of NMPT. A brief service history is given below for ready reference :

Date of appointment

Post held.

Period of service

1.1.1968

Asst. Traffic Manager Cochin Port Trust.

2 years

1.1.1970

Dy. Traffic Manager Cochin Port Trust

5 years 2 months.

1.3.1975

Traffic Manager New Mangalore Port Trust

4 years 4 months.

11.7.1979

Traffic Manager, Tuticorin Port Trust

3 years 2 months.

20.9.1982

Addl. Traffic Manager Cochin Port Trust

6 years 7 months.

15.4.1989

Deputy Chairman New Mangalore Port Trust

Continuing.

In the reference cited above, the Central Government has issued guidelines and has prescribed qualifications that are required to be possessed by Officers who wish themselves to be considered for the posts of Chairmen in Major Port Trusts. These are :

(a) General managerial ability;

- (b) Experience and talent in men-management in a highly unionised environment;
- (c) Experience and ability in financial management;
- (d) Ability to formulate and implement development plans and also to prepare broad perspective plan for development of a Port;
- (e) Ability for co-ordination with various agencies such as State Government, the law and order agencies, different agencies of Central Govt, such as Customs, Railways, Labour Ministry etc;
- (f) Experience and ability in personnel management and understanding of establishment matters;

In my capacity as Additional Traffic Manager, Traffic Manager and Deputy Chairman over a period of about 17 years I have had ample opportunities to gain rich and varied managerial experience and acquire the necessary managerial skill and ability to manage a Major Port successfully. Since my field of specialization is cargo handling the labour management I have gained adequate experience and talent in man-management techniques in a highly unionised port environment at three Indian Major Ports viz., Cochin, Tuticorin and New Mangalore. By effective interaction with the Finance Departments at the above mentioned major Ports and also in my capacity as Deputy Chairman, I have been able to gain sufficient experience and ability in financial management of a Port. I have also been able to direct, formulate and implement port development plans and in my capacity as a Member of the Working Group of the Planning Commission for the Ports Sector I have been associated with the national planning process for development of all Indian Major Ports under the 8th Plan. Since I have worked in senior management positions at three Indian Major Ports over a long period I have had ample occasions to co-ordinate with the respective State Governments, district authorities, Customs, Railways and the labour Ministry in sorting out Port problems for effective functioning. Being the head of the Training Cell in the New Mangalore Port and attending to personnel and establishment matters I have been able to acquire better understanding and appreciation of port establishment matters as well.

For the successful completion of my doctoral research work in Port Management I had visited 30 important Sea Ports, prominent maritime institutions dealing with Port matters and interviewed 29 important personalities in the field of Port and Shipping in about 15 countries. I believe that the international exposure I have so acquired and the wealth of information and details I have collected by way of personal observations, discussions and research study appear to have added a new dimension to my professional knowledge in port operations, enhanced by understanding of Port administration and enriched by experience of the complexities of port management.

I am the first Indian Port Officer to receive the prestigious International Award,

namely the AKIYAMA AWARD of the International Association of Ports & Harbours, Tokyo, Japan in an international essay competition on Ports, the first Indian Port Officer to have taken a Ph.D., in Port Management from the University of Wales, Cardiff, U.K. with considerable credit and the first Indian Port Officer to have been admitted to the Fellowship of the British Institute of Management and the Chartered Institute of Transport, London meriting international recognition and acceptance. I have also a number of publications to my credit both in Indian and international journals on Port & Shipping. I have also served as an Adviser to the U.P.S.C. in the selection of senior level officers in the shipping and transport sectors. The details of my attainments are given in the Curriculum Vitae enclosed.

My long and varied Port service career spanning over a period of 24 years in three major Ports of India and the fact of my having served three Indian Major Ports at the level of HOD, Addl. HOD over a period of about 14 years and the special and unique achievements I have acquired in the field of Port studies, the international recognition I have secured in the field of Port Management and the fact that I have been working as Deputy Chairman in the New Mangalore Port Trust for the last about three years maintaining effective interaction with the cross-section of the Port users, Trade Unions, Staff Associations and the District and State Administration in general should provide a strong and stable ground for my selection to the above mentioned post.

In the circumstances, I request you to be good enough to consider my candidature to the post of Chairman, New Mangalore Port Trust along with a panel of Central Government Officers to be supplied by the Department of Personnel and Training as provided for under A(iii) of the guidelines issued by the Ministry of Surface Transport, Government of India.

yours faithfully, Sd/- Panampur (Dr. Jose Paul) 10.2.1992. Deputy Chairman."

4. Under the provision's of Section 3(1)(a) and (b) of Major Port Trusts Act, 1963, the first respondent is vested with the power to make appointments to the post of Chairman and Deputy Chairman in Major Port Trusts. The guidelines/policy issued by the first respondent in this regard is contained in Annexure-D which is in the form of a letter. Relevant portion of the guidelines is extracted below:

"(A) Appointment to the post of Chairman:-

(i) For this purpose the posts of Chairman at various Port Trusts may be categorised as:

(a) Category I:- Bombay, Calcutta, Nhava Sheva

(b) Category II:- Madras, Cochin, Visakhapatnam,

(c) Category III: Kandia, Mormugao."Paradip, New Mangalore and Turicorin.

(ii) In order to qualify for being considered for the post of Chairmen in Major Port

Trusts, it is desirable that the person should possess the following:-

- (a) General managerial ability;
- (b) Experience and talent in men-management in a highly unionised environment;
- (c) Experience and ability in financial management;
- (d) Ability to formulate and implement development plans and also to prepare broad perspective plan for development of a Port;
- (e) Ability for coordination with various agencies such as State Government; the law and order agencies, different agencies of Central Govt., such as Customs, Railways, Labour Ministry etc;
- (f) Experience and ability in personnel management and understanding of establishment matters.

(iii) When the vacancy in the post of Chairman occurs, simultaneously with the obtaining of a panel of Central Govt. officers from the Establishment Officer, Department of Personnel and Training, action may be taken to consider eligible Port Officers serving as Deputy Chairman in Major Port Trusts.

For this purpose, all Deputy Chairmen (Port Officers), irrespective of their pay scales, may be considered eligible for consideration provided that they have put in a minimum 2 years of service as Deputy Chairman and they can have a minimum tenure of two years after being appointed as Chairman.

(iv) The suitability of Port Officers working as Deputy Chairman for a post of Chairman will be evaluated by a Committee constituted by the Department of Surface Transport for the purpose. The Selection Committee will consist of Secretary (SFT), Additional Secretary (Ports), Chairman, IPA,. one Port Chairman to be selected in rotation and one more member to be nominated from one of the professional management institutes or P E S B members. The Committee may also interview the Deputy Chairman if considered necessary. They will arrange the panel for eligibility of Deputy Chairman according to various categories of Chairman post.

(B) xx xx xx"

5. The grievance of the petitioner is that despite his superior qualification, work experience and suitability, he has not been found suitable to the post of Chairman by the Selection Committee constituted in terms of the above guidelines, either for New Mangalore Port Trust or for Tuticorin Port Trust because of the Confidential Report (CR for short) on the petitioner for the year 1991 -92 written by respondent-5 who was the Chairman of the New Mangalore Port Trust at the relevant time. The petitioner has stated in the Petition that on 27.4.1992 the fifth respondent has written the CR for the year 1991-92 "with mala fide intention, wilfully rating his performance as average." However, ten days later

i.e., on 7.5.1992 the fifth respondent has sent a fresh CR rating the petitioner as outstanding.

6. It may be noted that the Selection Committee constituted for the purpose of selecting the Chairmen to the Tuticorin Port Trust and New Mangalore Port Trust met on 4.5.1992. The petitioner has asserted that the CR dated 27.4.1992 is written with the sole object of ensuring that he will not be found suitable to the post of Chairman of the Port Trust. According to the petitioner, the selection to the post of Chairman was made by the Selection Committee only on the basis of the CRs and therefore the CRs of the candidates alone formed the basis for making the selection to the post of Chairman.

7. The learned Counsel Sri H.B. Datar for respondent-3, Sri S. Venkateswaran for respondents 4, 5 and 6 and Sri Bapu Heddurshetty, Additional Central Government Standing Counsel for first respondent, at the outset contended that the Petition itself was not maintainable since no appointment had been made at the time of presentation of the Petition pursuant to the recommendation made by the Selection Committee. Appointment of respondent-4 to the Tuticorin Port Trust has since been made. Besides from the copy of the letter D.O.No. A-12022/15/91-PE.I dated 22.6.1992 addressed to Sri Mahaprasad, Estt, Officer, Personnel and Training, North Block, New Delhi, it is obvious that the recommendation of the Committee constituted for the purpose of determining suitability was a key factor in making the appointment. Therefore, the objection regarding maintainability of the Petition has no substance.

8. It was also contended that the conduct of the petitioner in obtaining prior information regarding the recommendation made by the Selection Committee and the rating given to his rivals respondents 3 and 4 in their CRs disentitle him from approaching this Court under Article 226 of the Constitution of India. In my view the averment of the petitioner in the Petition on the aforesaid matters is not of such a nature to warrant dismissal of the Petition at the threshold itself. In *Magraj Patodia Vs. R.K. Birla and Others*, the Supreme Court has ruled that the fact that a document was procured by improper or even "illegal means" will not be a bar to its admissibility if it is relevant and its genuineness proved.

9. The petitioner has also challenged the legality and validity of the Guidelines issued by the first respondent for the purpose of making selection to the post of Chairman.

10. I will first consider the question of the validity of the Guidelines contained in Annexure-D. The Guideline provides that in order to qualify for being considered for the post of Chairman, the candidates concerned should possess certain abilities/work experiences indicated therein. The Guideline also indicates the procedure to be followed for filling up the post of Chairman whenever vacancy arises. It also prescribes for Deputy Chairmen (Port Officers) of Port Trusts, the conditions of eligibility for being considered to the post of Chairman. The Guideline in addition provides for the constitution of a Committee by the

Department of Surface Transport for the purpose of evaluating the suitability of Port Officers working as Deputy Chairman. The Selection Committee, in terms of the Guidelines, will consist of Secretary (Surface Transport), Additional Secretary (Ports), Chairman (Indian Port Authority), one Port Chairman to be selected to rotation and one more member to be nominated from one of the professional management institutes or Public Enterprises Selection Board members. The Guidelines provides that the Committee may also interview the Deputy Chairman if considered necessary.

11. Sri C.S.Vaidyanathan, learned Counsel appearing for the petitioner submitted that the suitability of port officers working as Deputy Chairmen to the posts of Chairmen will have to be evaluated by the Committee constituted by the Department of Surface Transport in terms of Guidelines (A) (iv). The learned Counsel urged that the said Guideline does not provide the relevant criteria for evaluating the merit of the candidates and their suitability to the post of Chairman. It is, therefore contended that when the very basis for evaluation of suitability is not provided the selection made by the Committee, without any relevant criteria defined by the Guideline, would be totally arbitrary since it would be possible that the selection process might have been influenced by extraneous considerations. The learned Counsel pointed out that in so far as the selection of the Deputy Chairman is concerned, the Guideline provides that the selection shall be made on the basis of evaluation of confidential report and interview. The learned Counsel submitted that in the instant case the recommendation made by the Selection Committee recommending respondents 3 and 4, excluding the petitioner, is based entirely on the service records and no interview whatsoever has been held to assess the relative merit of the candidates. He further submitted that apart from the CRs, to test the managerial ability and personality traits, the candidates ought to have been interviewed to evaluate their relative merit. He, therefore, contended that the recommendation made by the Selection Committee at its Meeting held on 4.5.1992 is arbitrary and the same cannot be acted upon by the Appointment Committee of the Union Cabinet.

12. From the composition of the Committee, it is evident that the members thereof are closely connected with the working of the Port Trusts and in all probability they might have interacted with the petitioners and respondents 3 and 4 in the context or the other in the course of their work.

13. In Shri Parvez Qadir Vs. Union of India (UOI), the Supreme Court while considering a similar question arising under the provisions of Indian Forest Service (Initial Recruitment) Regulations (1966) has observed thus:

"It is true that the adjudgment of suitability of such officers eligible for selection has to be made according to some norms. In order to achieve this end, various methods can be adopted. There can be a method of selection by competitive examination another by examination-cum-viva-voce, yet a third by viva voce alone, or the fourth by the examination of official record or with a viva voce and

the fifth by purely on the scrutiny of the official record. It is not for this Court to lay down which of the methods has to be adopted for adjudging suitability as long as the norms which have been adopted are correlated and relevant to the adjudgment of the suitability of the officers to be recruited to the Indian Forest Service. It cannot be said that some other method should have been adopted and the method adopted by the rules or regulations for selection is improper. The method of selection by competitive examination in so far as the initial recruitment is concerned has not been adopted, because by contrast Sub-rule (2) of Rule 4, as can be noticed, has adopted this method only for the subsequent recruitment to the Service after the initial recruitment as provided in Sub-rule (1) of Rule 4 has been made. For the initial recruitment the eligibility of a person to be considered for appointment to the service has already been laid down in regulation 4 of the Initial Recruitment Regulations and those officers of the State Forest Service who satisfy the conditions of eligibility can be considered for appointment to the Indian Forest Service and the authorities which have to adjudge them suitable are the Special Selection Board and the Union Public Service Commission. It is the duty of the Special Selection Board to prepare a list from amongst the State Forest Officers and such a list can only be prepared in order of seniority if the respective records of each of such officers is considered and the comparative merit assessed. The past performance of an officer being one of the criteria for making selection, the only way to adjudge their suitability is by perusal of confidential records. It is true that confidential records do not sometimes give a true picture due to the vagaries of the recording officer. The human fallibility and want of objectivity in the superior officer are factors which cannot be eliminated altogether. For that matter one can ask what method is perfect? For this reason, certain safeguards have been provided in order to make them as objective as possible. If there is an adverse entry against any officer that officer is given an opportunity to explain. After the explanation is given, the superior officer as well as the Government ultimately decide whether that remark by the recording officer was justified or not, and if it is not justified the Government can always order its deletion. Sometimes vagary may enter into the service confidentials, and it cannot be postulated that all superior officers who have been empowered to finalise such entries will suffer from any of those traits because the actions of the officer concerned may not have any immediate impact upon him and consequently his sense of objectivity will not be dimmed or strained. In our view, often enough, the entries in confidential records are themselves an insignia of the capacity and capability of the maker as a superior officer as well as a commentary on the quality of the officer against whom that confidential remark is being noted. But those who are charged with the duty to oversee that these entries are fair, just and objective quite often to intervene and rectify and entry on representation being made against it at the proper time. In these circumstances, we do not think that the method of selection based on past performance as disclosed by the confidential records is not the proper method for adjudging suitability of the officer concerned. See in this connection the decision of this Court in *R.L. Butah Vs. Union of India (UOI) and Others*, where the rules

concerning confidential were considered."

14. The above Ruling of the Supreme Court answers the criticism of the learned Counsel for the petitioner regarding the validity of the Guidelines. It is not possible to devise the instruments precise enough to ensure absolute objectivity in any selection process as long as the human mind has a role to play.

15. The Confidential Report of the petitioner for the year 1989- 90 written by respondent-5 disclosed that the petitioner "is an excellent officer, sincere, hard working and highly knowledgeable." According to respondent-5, "he has contributed immensely to the growth and development of port sector by publishing a number of papers on various subjects." The report of respondent-5 i.e., the Reporting Officer, speaks highly about the petitioner. This has been accepted by the Reviewing Officer who is the Joint Secretary of Ports. In fact, the Reviewing Officer has put on record that the petitioner's "intellectual ability are of a high order and that he was one of the few port officers who have both theoretical and practical knowledge of the port sector." The remark of the next higher officer i.e., Secretary, Ministry of Surface Transport reads as hereunder:

"I generally agree with the assessment. His performance can be rated as very good."

16. The acceptance of the Confidential Report of the petitioner, made by the Reporting Officer and endorsed by the Reviewing Officer as stated above, by the Secretary, finalises the CR of the petitioner for the year 1989-90.

17. The C.R of the petitioner for the year 1990-91 again written by respondent-5 and reviewed by the Joint Secretary also speak well of the petitioner. It is only for the year 1991-92, respondent-5 in his CR dated 27.4.1992 has, under the caption "other observation", recorded that the overall performance of the petitioner was average. According to the petitioner it is this "average" rating given by respondent-5 in the Confidential Report for the year 1991-92 which has gone against him at the selection for the post of Chairman.

18. The fact that respondent-5 has written fresh Confidential Report on 7.5.1992 is not in question. Respondent-5 in his Confidential Report dated 7.5.1992 for the year 1991-92 of the petitioner has reported as hereunder:

"An excellent officer who has contributed immensely to the growth and development of the port. Highly meritorious, extremely sincere and hard working, he has taken keen interest in the operational activity of the port. He has made significant contribution to stable and peaceful labour situation prevailing in the port for last two and half years. An erudite scholar. He has published a number of papers covering various aspects of port operations and an outstanding officer who deserves encouragement."

19. Respondent-5 who has chosen to write two CRs of the petitioner for the year 1991-92 - one dated 27.4.1992 and another dated 7.5.1992 - each in opposition to the other, that too in a span of ten days, has damaged the very integrity and

essence of the CR and exposed himself to the accusation of acting in a whimsical manner detrimental to the interest of the petitioner.

20. The relevant paragraphs in the statement of objections filed on behalf of respondent-1 is justification of the process of selection are reproduced below: (Paragraphs 4, 7 9 & 10).

"4. The respondent admits that the guidelines for consideration for appointment of Port Officers as Deputy Chairman do mention that the suitability of Port Officers will be evaluated by a Committee constituted by MOST on the basis of an interview and evaluation of Confidential Reports [Para 1 A(iv) of the guidelines]. However, for consideration to the post of Chairman, Port Officers working as Deputy Chairman only are to be considered. However, as per guidelines for selection from Deputy Chairman to the post of Chairman, the discretion to interview or not is left with the Committee [Para 1A(iv) of the guidelines]. This is because candidates for the post of Deputy Chairman are from different streams having different professional qualifications and experience. Therefore, their suitability for a managerial post and their ability to handle both policy and planning requires to be evaluated on a uniform basis. Hence, the evaluation is based on an interview and the Confidential Reports. Unlike this, while considering the candidates who are Deputy Chairman for appointment as Chairman, a uniform denomination already exists. Consequently the guidelines for selection specified that the eligible candidates should possess the following:

- (a) General Managerial ability;
- (b) Experience and talent in men-management in a highly unionised environment;
- (c) Experience and ability in financial management;
- (d) Ability to formulate and implement development plans and also to prepare broad perspective plan for development of
a Port;
- (e) Ability for co-ordination with various agencies such as State Government, the law and order agencies, different agencies of Central Government such as Customs, Railways, Labour Ministry etc;
- (f) Experience and ability in personnel management and understanding of establishment matters;

The suitability's for empanel merit is to be valued with relation to the above factors. Therefore, the decision to have an interview or not has been left to the discretion of the committee. The guidelines also state that the Committee will arrange a panel of eligible Deputy Chairman according to various categories of Chairman's posts - Category - I is Bombay, Calcutta and Jawaharlal Nehru Port Trusts. Category - II is Madras, Visakhapatnam and Cochin and Category - III is Kandla, Murmugao, Paradip, New Mangalore Port & Tuticorin. According to the

guidelines, the Deputy Chairman who have completed 2 years of service as Deputy Chairman, can be considered for being empanelled."

"7. As regards the points raised in para 4 of the Writ Petition, this respondent submits that the Govt. has considered all the eligible Deputy Chairman according to the guidelines for appointment as Chairman. A copy of guidelines is enclosed as Annexures R1 & R1-A. These guidelines were considered by the Selection Committee and it is as per these guidelines only that the suitability of Port Officers working as Deputy Chairman for a post of Chairman was evaluated by the Committee constituted by the MOST for the purpose. The relevant guidelines A(iv) states that the Committee may also interview the Deputy Chairman, if considered necessary. It will, therefore, be seen that it is the discretion of the Committee to decide whether to hold the interview or not and it is not mandatory. In the instant case, only three Deputy Chairman, viz., Shri M.J. Kurian, Capt. A.N.M. Kishore and Dr. Jose Paul, were in the zone of consideration. The respondent No. 1, Joint Secretary and the two Chairman of Port Trusts who were in the committee, are familiar with the work of three officers evaluated in relation to the factors stated in (a) to (f) of para 2 of Clause (A) of the guidelines and hereinabove mentioned. There was no outsider whose eligibility was to be considered. The Committee therefore, at its first meeting, decided that it will not be necessary to interview any of the candidates. The members of the committee did not evaluate the Confidential Reports only but the entire service, performance and other relevant factors as per guidelines aforesaid. It was on the basis of the personal knowledge and assessment of the members of the committee with reference to the above mentioned factors in the guidelines that the decision was taken to recommend candidates for appointment to the posts of Chairman. The selection therefore was not made only on the basis of the confidential reports. Confidential report was only one of the several factors. The Committee found two Deputy Chairmen viz; (1) Sri M.J.Kurian and (2) Capt. A.N.M. Kishore suitable to be considered for appointment to the post of Chairman, Tuticorin Port Trust and Chairman, New Mangalore Port Trust and the Ministry submitted proposal with the approval of Minister in-charge to Appointments Committee of the Cabinet. Under the circumstances it is totally incorrect for the petitioner to allege that the suitability for empanelment has valued (SIC) based only on Annual Confidential Reports. Hence, this is denied."

"9. As regards the points raised in paras 8 & 9 of the Writ Petition, this respondent submits that the reporting officers has written 2 reports on the petitioner for the same period. From the circumstances of the case, it is observed that the petitioner having some how come to know that he has not been included in the panel for the post of Chairman, pleaded with the respondent No. 5 to re-write his confidential report. The respondent No. 5 obliged the petitioner by doing so. Obviously this was an incorrect step. The respondent No. 5 has now withdrawn this second report and has specified that the first confidential report is fair assessment of petitioner's performance for the year 1991-92 as per his letters produced as Annexure R2 & R2-A. Moreover, it is a grave misconduct on

the part of the petitioner to have influenced the writing of the Confidential Report by the Reporting Officer, in the above manner. The petitioner's representation in this regard also makes strange reading. The petitioner states that the confidential reports written by respondent No. 5 for 1991-92 and despatched to Ministry of Surface Transport on 27.4.1992 did not reflect the true and correct performance appraisal. The petitioner is seeking to sit in judgment over the Reporting Officer's assessment of him. In addition, the petitioner has somehow breached the confidentiality of the Confidential Reports. The petitioner is apparently satisfied with the second report. It is beyond doubt that the petitioner has canvassed for a confidential report meeting his specifications, and as seen from Annexure-II. With an intention of enhancing his prospects in the selection process which the reporting officer did oblige as per his pleadings. The petitioner has failed to explain how he has come to know the contents of the confidential reports."

"10. As regards points raised in paras 10 and 11 of the Writ Petition, this respondent denies the allegation made by the petitioner. There is no malafide intention to destroy the career prospects of the Port Officers. The Committee is charged with the responsibility of selecting the most professionally competent person from within the Port Sector and the respondents Nos. 3 and 4 have been selected on the basis of merit after considering their performance as Deputy Chairmen."

21. The sum and substance of the statement of the first respondent is that there is no infirmity in the proceedings of the Selection Committee and the determination of the suitability made by the Selection Committee at its meeting held on 4.5.1992.

22. Respondent-5 who wrote the two Confidential Reports dated 27.4.1992 and 7.5.1992 has filed an affidavit explaining the circumstances under which he wrote the aforesaid two Confidential Reports of the petitioner. He has stated in his affidavit that during his term as Chairman of New Mangalore Port Trust he has written Confidential Reports of the petitioner for the years 1989-90, 90-91 and 91-92. In the affidavit he has stated that he received instructions on telephone by the Joint Secretary (Ports) on 16.4.1992 to submit the annual CR of the petitioner for the reporting year from 1.4.1991 to 31.3.1992, Accordingly, he sent a notice to the petitioner on 16.4.1992 followed by reminder dated 17.4.1992 requiring him to submit his resume of self assessment to enable him to submit the report. He has stated that the Joint Secretary (Ports) reminded him by telex dated 21.4.1992 to forward the report before 30.4.1992 since the matter was "most urgent".

23. What happened subsequently is narrated by Respondent-5 in the affidavit. The relevant paragraphs are reproduced below:

"After much persuasion I received the resume of self assessment from Dr. Jose Paul only on 26.04.1992 and I submitted the Annual Confidential Report for the

period 1991 -92 to the Ministry on 27- 04-1992 noting his overall performance as "Average". It is totally incorrect to say that the overall assessment did not match with the assessment on individual heads. I submit this is the correct, objective and dispassionate assessment of the said Officer for 1991-92. I also state that this is not an adverse Annual Confidential Report under the rules requiring communication to the officer reported upon. I further state that the said officer had sufficient time at his disposal to prepare and submit the resume of self assessment. I further state that it is totally false and mischievous to suggest that the report was written with mala fide intention with the idea of destroying the career prospects and reputation of the said officer. My detailed view on this is stated in my note to Dr. Jose Paul dated 30-4-1992 written in response to his representation dated 18-4-1992 on the subject. The copy of the same was shown as Annexure I.

Dr. Jose Paul somehow having come to know of my assessment in the Annual Confidential Report and the fact that he was not included in the panel for selection to the Post of Chairman, Tuticorin and New Mangalore Port Trusts fervently pleaded for helping him in view of his pending application for empanelment. I was swayed by emotion and wrote a second Annual Confidential Report for the reporting year 1991-92 on 07-05-1992, even though rules do not permit writing of a second Annual Confidential Report for the same period. While forwarding the Annual Confidential Report dated 07-05-1992 I also stated that when the first report dated 27-04-1992 was written certain facts were not available with me. This is not true and was stated as required by Dr. Jose Paul. On an enquiry from Joint Secretary (Ports) vide his letter D.O.No. A-12023-15-91-PE.I dated 02-06-1992 a copy to show as Annexure II, in this regard I have explained the circumstances under which a second Annual Confidential Report was written. I sincerely regretted my mistake and deeply apologised for it. I vide my letter D.O.No. DCM-CR-1-92 dated 15-06-1992 copy of the same shown as Annexure III, withdrew the second Annual Confidential Report and requested the Ministry not to take cognizance of it. This letter was personally handed over by me to the Ministry during one of my visits there. The matter of withdrawal of the second report was reiterated by me vide my letter D.O.No. DCM/CR/1/92 dated 03-08-1992 to Joint Secretary (ports) which was despatched through regular official channel. The copy of the same to show as Annexure IV.

I did write a letter to the Joint Secretary (Ports) vide my letter D.O.No. PS/1/92 dated 26-6-1992 forwarding a representation made by Dr. Jose Paul in the matter of appointment of Chairman of Tuticorin and New Mangalore ports and also recommended his case for favourable consideration. A similar letter was also sent to the Ministry by letter No. PS/1/92 dated 01-07-1992 forwarding the application of Dr. Jose Paul to the post of Chairman-cum-Managing Director, Dredging Corporation of India. These letters have nothing to do with my assessment of the said officer as for as his Annual Confidential Report dated 27.04.1992 for the year 1991-92 is concerned. These were issued at his instance

and were only recommendatory in nature as compared to the Annual Confidential Reports wherein the assessments are objective and based on actual performance. In fact my liberal appreciations of Dr. Jose Paul and also my sincere recommendations shall certainly demonstrate that I had the best intention in my heart so far as his career prospects were concerned.

The allegations made by the petitioner regarding CBI enquiry, inspection etc., and his participation and interaction with those officers had let me to misunderstand the petitioner is totally baseless. In the representation submitted on 18.04.1992 petitioner has stated that he thinks that I suspected that CBI team had come for investigation at his instance. This allegation is baseless. In my reply dated 20.04.1992 I have clearly stated that I will not allow any such things to colour my assessment and I do not have any intention of spoiling his Confidential Report."

24. For the purpose of appreciating the rival contentions it is necessary to refer to the correspondence chronologically bearing on the confidential report on the petitioner for the year 1991 - 92.

25. Annexure-O dated 16-4-1992 is a copy of the note sent by respondent-5 to the petitioner. The same is reproduced below:

"J.S.(Ports) has informed me over the telephone today that the CRs of Dy.Chairman is to be sent immediately. Dy.Chairman is therefore requested to submit his self-assessment form for the year 1991-92 today i.e., 16-4-1992 to enable me to send the same to the J,S.(P) by 17-4-92."

Annexure-P is a copy of another note dated 17-4-1992. The same is reproduced below:

"As the CRs of Dy.Chairman, for the year 1991 -92 is required to be sent immediately to JS(P) as per the telephonic message, Dy.Chairman is requested to send the self assessment form, today as requested vide my Note dated 16-4-92."

26. On 18-4-1992 the petitioner has sent his self-assessment as requested by respondent-5. The same is dated 18-4-1992, copy of which is marked as Annexure-O. In the self assessment report submitted by him, the petitioner has referred to his career in Port Trust and also his work experience. Besides, he has expressed his apprehension about certain matters regarding respondent-5. The relevant portions are reproduced below:

"Based on certain allegations, the CBI team from Bangalore visited the Port Offices on 15th/16th/17th April 1992 and asked for certain files to be presented to them for detailed scrutiny. Being the Chief Vigilance Officer, I am the officer designated to interact with the OBI and I should think the Chairman suspects whether the CBI team has come for investigation at my instance or not.

During the last three years of my service as Deputy Chairman I had only very

minimal interaction with the CBI, Bangalore. In fact, I have never visited the office of the CBI, Bangalore although as Chief Vigilance Officer I should have visited their office at least occasionally for discussions. I met the S.P., CBI, Bangalore only once - that is when this team visited NMPT in February 1992 when the Chairman was away from HQs. I strictly confined myself to my limits in the course of the discussions and the fact of my having had discussions with the CBI and the subjects discussed were promptly reported to Chairman when the Chairman returned to HQs. This fact could be verified with the S.P., CBI Bangalore. When the Dy.S.P., CBI Bangalore telephoned to me on Monday 13-4-1992 at about 5-40 p.m. in my office I promptly kept the Vigilance Officer informed of their arrival and requested him to keep all concerned informed of their arrival as I found Chairman had already left his office by that time.

I have every reason to believe that the unusual hurry and haste with which the Chairman has asked for my self-assessment report on the plea that the J.S.(P) has asked for my report, is not for any other purpose than to spoil my report, to cause calculated damage to my career prospects, to malign my reputation and to prevent me from becoming the Chairman of either this Port or some other Port. It is almost unheard of that a number two functionary in a large public trust is being asked to make his self-assessment form covering his one year performance in about 6/7 hours time followed by another note to the residence of the officer by special messenger on 17-4-1992 i.e., on a "Good Friday" - holiday. It may be noted that the finer details of the port financial performance and operational performance are only being analysed by the respective departments of the Port and it would take a couple of months more before an accurate figure emerges out on general port performance. I have to prepare my resume of work done based on such performance figures in order to quantify the gains and to project my contribution to the Port in correct perspective. I further suspect that this pre-meditated move to get my self-assessment form in a great hurry is designed to produce the following impact also apart from damaging my career prospects:

1. to create a fear psychosis in me so that I will not be able to discharge my rightful duties and to express my views without fear or favour.
2. to help create a bad impression about me in the minds of the senior officials of the Ministry of Surface Transport e.g. J.S.(P), Secretary (SFT) that I am instrumental in getting my boss hooked up by the CBI.
3. to make me ineffective and indifferent in my interaction with the CBI so that they may also suspect my intentions and may cause problems to me.

The unusual hurry and haste with which my self-assessment form has been asked for, for immediate submission has aroused the above mentioned apprehensions in my mind. I strongly suspect that the motive behind this move cannot be anything other than maligning my reputation and damaging my career prospects at this very crucial stage. With a view to safeguarding my interests and protecting my future I intend bringing the contents of your Note dated

16-4-1992 and 17-4-1992 and my replies to the Note dated 18-4-1992 to the notice of the Ministry of Surface Transport/Central Vigilance Commission and the CBI."

27. The apprehension of the petitioner came true. The CR for the year 1991-92 dated 27-4-1992 written by respondent-5 has thus lost its credibility more so because of another CR dated 7-5-1992 and the subsequent conduct of respondent-5.

28. The learned Additional Central Government Standing Counsel made available to the Court at the time of hearing copies of the minutes of the proceedings of the Committee dated 4-5-1992 and other correspondence bearing on the questions at issue including the Annual Confidential Reports of the petitioner, respondents 3 and 4 for the years 1989 to 1992.

29. The Secretary, Ministry of Surface Transport in his letter dated 2-6-1992 has called for an explanation from respondent-5 for writing two reports on the petitioner for the period 1-4-1991 to 31-3-1992. The reply of respondent-5 dated 3-8-1992 is reproduced below:

"Kindly refer to your telephonic conversation regarding my reply to your D.O. letter No. A-12023/15/91/PE-I dated 2-6-92. I have already submitted my reply vide my D.O. letter of even No. dated 15-6-1992. I re-iterate that there is no provision for writing the Confidential Reports second time within a few days. As informed my earlier D.O. letter dated 15-6-1992, I have withdrawn the second CRs and requested the Ministry not to take cognizance of this. I have already explained circumstances under which the 2nd report was sent."

30. The letter dated 15-6-1992 to which respondent-5 has referred in his reply reads as hereunder:

"D.O.No. DCM/CR/1/92. Date : 15-6-1992 Dear Shri Joshi,

Kindly refer to your D.O. letter No. A-12023/15/91-PE.I dated 2-6-92 regarding ACR of Cr. Jose Paul, Dy. Chairman. I admit that there is no provision to write the C.R. to Dr. Jose Paul, Dy. Chairman for the period from 1-4-91 to 31-3-92 for the second time within a few days time. Dr. Jose Paul, in fact fervently pleaded for helping him as he had submitted a representation for appointment to the post of Chairman of this Port. I am sorry that I was swayed by emotion and wrote the C.R. for the second time though the rules do not permit such re-writing of the C.R. I reiterate that the C.R. written by me earlier is the correct, objective and dispassionate assessment of the concerned officer. I withdraw the second C.R. and request the Ministry not to take cognizance of this.

I sincerely regret the mistake and deeply apologise to you for this."

31. The letter dated 15-6-1992 and the reply dated 3-8-1992 make strange reading in the context of the "confidential" letter dated 7-5-1992 of respondent-5 addressed to the Joint Secretary (Ports) Ministry of Surface Transport. The letter

dated 7-5-1992 reads as hereunder:

"Confidential.

P.O. No. DCM/CR/1/92 Dt: 7-5-92. Dear Shri Joshi,

Please refer to your telex message No. A/12023/15/91/PE-I dated 21 -4-92 calling for the Confidential Report of Dr. Jose Paul, Dy. Chairman of this Port Trust for the period from 1 -4-91 to 31-3-92. I had accordingly forwarded the ACRs of Dr. Jose Paul, Dy. Chairman for the above mentioned period vide my D.O. letter No. DCM/CR/1/92 dated 27-4-92. Dr. Jose Paul, Dy. Chairman had submitted his self-assessment form duly completed and the same was made available to me on the 27th April, 92(FN). The very same day afternoon I was leaving for Calcutta and since the Ministry had desired that the report should reach New Delhi by 30th, I had prepared the ACRs pertaining to Dr. Jose Paul on the 27th April itself and sent it by courier service so as to reach the Ministry before the due date.

Certain facts, circumstances and details of information which were not available with me at the time of preparation of the report have now come to my notice which I consider, are more relevant and have a direct bearing on the preparation of his report. In view of the fact that I have decided to re-write his report, I would request you to be good enough to review his report and any decision that might have been taken on the basis of the earlier report may also be reviewed."

32. I have seen the original of the letter dated 15-6-1992, under which respondent-5 purports to withdraw the second CR dated 7-5-1992, addressed to the Joint Secretary. It is on an ordinary sheet of paper. It is not in the official letter head of respondent-5. Besides, it appears to be a carbon copy.

33. Under Memo dated 22-10-1992, respondent-5 has filed an affidavit along with copies of the letters, explaining the circumstances under which he wrote the CRs of the petitioner. With reference to his letter dated 15-6-1992, under which, he purports to withdraw the second CR dated 7-5-1992, he says that he handed over the said letter personally to the Ministry during one of his visits, The flippant conduct of the fifth respondent in the matter of writing the CRs on the petitioner for the year 1991-92, to say the least does not rebound to his credit. The observation of the Supreme Court in Parvez Qadir Case, cited above, that "..... often enough, the entries in confidential records are themselves an insignia of the capacity and capability of the maker as a superior officer....." is applicable to respondent-5 in full measure.

34. The minutes of the proceedings of the Committee for selection of Deputy Chairmen of Ports for empanelment for filling up the post of Chairman of Ports, held on 4-5-1992 is reproduced below:

"Proceedings of the Meeting of the Committee for selection of Deputy Chairmen of Ports for Empanelment for filling up the post of Chairman of Ports, held on 4-5-1992 in Secy (SFT)"s Chamber:-

The Committee constituted by the Govt. vide Order No. A-12022/15/91-PE-I dt. 13-4-1992 for drawing up a panel for promotion to the post of Chairman from amongst those Deputy Chairmen of the Ports, who have been promoted from the Port service, met today.

2. According to the guidelines for selection to the post of Chairman, the eligible candidates should have the following qualifications:

- (a) General Managerial ability;
- (b) Experience & talent in men-management in a highly unionised environment;
- (c) Experience and ability in financial management;
- (d) Ability to formulate and implement development plans and also to prepare broad perspective plan for development of a Port;
- (e) Ability for co-ordination with various agencies such as State Govt., the law & order agencies, different agencies of Central Govt., such as Customs, Railways, Labour Ministries etc;
- (f) Experience and ability in personnel Management and understanding of establishment matters.

It has also been indicated in the guidelines that when a vacancy in the post of Chairman occurs, simultaneously with the obtaining of a panel of Central Govt. Officers from the Establishment Officer, Deptt., of Personnel & Training, action may be taken to consider eligible Port Officers serving as Dy. Chairmen in Major Port Trusts. For this purpose all Dy. Chairmen (Port Officers), irrespective of their pay-scales, may be considered eligible for consideration provided that they have put in a minimum of 2 years of service as Deputy Chairman as they can have minimum tenure of two years after being appointed as Chairman.

Accordingly, the Committee found that three Officers, namely, Dr. Jose Paul, Deputy Chairman, NMPT, Capt. A.N.M. Kishore, Deputy Chairman, COPT and Sh. M.G. Kurian, Deputy Chairman, TPT, were eligible for empanelment as Chairmen, The Committee after going through the Annual Confidential Reports of the three officers and after considering all the factors, has found the following officers suitable for empanelment for being considered as Chairmen of the Ports.

- (1) Capt. A.N.M. Kishore;
- (2) Sh.M.J. Kurian."

35. In the instant case, the candidates concerned have not been interviewed by the Selection Committee. "The Committee after going through the Annual Confidential Reports of the three officers and after considering all the factors" has found respondents 3 and 4 suitable for "empanelment" for being considered as Chairmen of the Ports. Therefore, the recommendation of the Committee is based mainly on the CRs of the candidates and perhaps on their past record of service which is also not borne out from the minutes of the proceedings. In the

circumstances, there cannot be any doubt, that the CRs of the candidates, though might not be the sole basis have played a pivotal role in the determination of suitability by the Committee.

36. It is not possible to ascertain from the minutes of the proceedings what were the other factors, apart from the Annual Confidential Reports," which were taken into consideration by the committee for determining the suitability. There is nothing in the minutes to show what other records pertaining to the service of petitioner and respondents 3 and 4 were placed before the Committee for evaluating the suitability of the candidates.

37. Though the guideline provides that the Committee may also interview the Deputy Chairman, if considered necessary, the records of the proceedings does not disclose whether the Committee applied its mind and decided to dispense with the interview.

38. In B.S. Minhas Vs. Indian Statistical Institute and Others, the Supreme Court has emphasised that: "it is always desirable that in public bodies the minutes of the proceedings regarding selection should be properly maintained in order to obviate any suspicion or doubt and such minutes along with the relevant documents should be placed before the final authority entrusted with the task of selection for appointment". Such lacuna cannot be filled up by filing affidavits in Court that such and such a thing was done when the records do not disclose the same.

39. The learned Counsel for the petitioner further submitted that the CRs of respondents 3 and 4 for the years 1989-90 and 1990-91 and 1991-92 were not complete in that CRs of the reporting officers have not been reviewed or accepted by the superior officers in terms of relevant rules. These are all matters for the Committee to take into consideration while adjudging the suitability of the candidates.

40. In the light of the above discussion, I hold that the case of the petitioner regarding his suitability to the post of Chairman of Port Trust has not received fair and proper consideration by the Committee constituted for the said purpose and consequently there has been an infraction of the right to equality and equal opportunity violative of Articles 14 & 16(1) of the Constitution of India.

41. This Court on 5-8-1992 while directing notice to respondents regarding Rule passed an interim order which reads as hereunder:

"Any appointment made pursuant to the selections made on 4-5-1992 shall be subject to the result of the writ petition. The same shall be indicated in the appointment orders."

42. However, subsequently on 13-1-1992 an interim Direction was issued restraining the first-respondent from issuing any appointment order to the post of Chairman, New Mangalore Port Trust, without obtaining further direction from this Court. Though in the first instance the said restraint order was to be in force

only for a period of three weeks, the same was continued and it is still in force as on today. Consequently, no appointment has been made to the post of Chairman, New Mangalore Port Trust.

43. As already noticed, respondent-4 has since been appointed during the pendency of this petition to the Tuticorin Port Trust. Tuticorin Port Trust is beyond the jurisdiction of this Court. The appointment of respondent-4 as Chairman of the said Port Trust cannot be challenged in this Court. Moreover, the prayer in the Petition is only for a direction not to give effect to the "selection held on 4-5-1992 for the posts of Chairmen to the New Mangalore Port Trust and Tuticorin Port Trust." Since appointment to Tuticorin Port Trust has already been made, the question of not giving effect to the selection does not arise in so far as Tuticorin Port Trust is concerned.

44. In this view of the matter, the relief to be granted to the petitioner could only be in respect of the post of Chairman for New Mangalore Port Trusts.

45. It is not for this Court to determine the relative merit of the candidates. The case of the petitioner and that of respondent-3 has to be considered afresh by the Committee concerned keeping in view all the relevant factors. While doing so, it would be proper for the Committee to discard the CRs dated 27-4-1992 and 7-5-1992 on the petitioner for the year 1991-92 which are tainted by respondent-5. It is for the Committee to consider whether the CRs of the candidates and their record of service are complete in all respects and could be acted upon. The Committee may also decide whether in the circumstances of the case interviewing the candidates is necessary or not.

46. In the result, I make the following order:

- (i) Rule issued and is made absolute;
- (ii) The proceedings dated 4-5-1992 of the Committee constituted under Para (A) (iv) of the Guideline is set aside in so far as respondent-3 is concerned;
- (iii) The first respondent is directed to take appropriate action afresh to ascertain the suitability of petitioner and respondent No. 3 to the post of Chairman, New Mangalore Port Trust in terms of the guidelines in No. A-12022/21/86-PE-I and in the light of this order.
- (iv) No costs.