
(2014) 01 MAN CK 0008
In the Manipur High Court
Case No : Writ Petition (C) No. 424 of 2012

Dr. Ph. Jilasana Sharma

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Citation : (2014) 01 MAN CK 0008

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : Kh. Tarunkumar Singh, for the Appellant; Nepolean, G.A., Mr. R.S. Reisang, Sr. G.A. and Mr. M. Devananda, for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. Kh. Tarunkumar, learned counsel appearing for the petitioner, Mr. Nepolean, learned G.A. for the State, Mr. R.S. Reisang, learned Sr. GA for the MPSC as well as Mr. M. Devananda, learned counsel for the private respondents. At the outset, the learned counsel for the petitioner has submitted that he is not pressing his claim against the respondent No. 5 as he has already retired in the meantime.

2. The challenge pertains to the promotion made to the posts of Joint Director of the Veterinary & Animal Husbandry Services, Manipur, in the year 2012 on the basis of the recommendation of the DPC held on 29.6.2012 in terms of the Manipur Veterinary & Animal Husbandry Services Rules, 1994. According to the petitioner there were 10 vacant posts of Joint Director during the period of 1994-2009, out of which, 2 arose during the period 1994-1995 and other 2 during the year 1999-2000. These four posts of Junior Director were filled up by private respondent Nos. 5, 6 & 7 and the petitioner on the basis of the recommendation of the said DPC held on 29.6.2012 with which the present writ petition is concerned. The petitioner was juniormost amongst the said four promotees in terms of the final seniority list in the feeder grade of Dy. Director/ equivalent posts prepared under the aforesaid Service Rules and the petitioner

was placed at the bottom of the merit/select list for promotion to the posts of Joint Director. The said DPC considered the ACRs of the eligible candidates within the zone of consideration for 5(five) assessment years, namely, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99. According to the petitioner there is no dispute as regards the number of vacancies in the grade of Joint Director to be filled up as well as regarding the inter se seniority in the feeder grade or relating to eligibility of the candidates. Thus, it is not in dispute that the petitioner is the junior-most amongst the present 4(four) officers in the feeder grade of Deputy Director, who were recommended for promotion to the posts of Joint Director. However, according to the petitioner, the petitioner had better ACRs than any of the private respondents as he had been graded as "Outstanding" in three relevant years and as such in the normal course ought to have been placed at the top of the select list by the DPC by virtue of his better grading in the ACR. According to him, he was graded as "Outstanding" in his ACRs for the years 1996-97, 1997-98 and 1998-99, after the Reporting Officers had assessed the petitioner as "Outstanding" which were accepted by the Reviewing Officers as well as by the Accepting Officers for the said three years. In other words, the petitioner had been consistently graded as "Outstanding" for 3 (three) consecutive years by the authorities concerned.

3. It has been also submitted by the petitioner that in respect of Respondent Nos. 5, 6 & 7, some of the ACRs for the relevant period were found to be missing and not available when the DPC was held. According to the petitioner, the fact that some of the ACRs of the respondent Nos. 5, 6 & 7 were not available was not denied by them nor by the official respondents, rather it is supported by the official documents.

Learned counsel for the petitioner has submitted that in the letter dated 19.2.2009 (Annexure-A20) written by the Director, Veterinary & Animal Husbandry to the Commissioner, Veterinary & Animal Husbandry, Govt. of Manipur relating to the ACRs of the officers concerned, it has been mentioned that in respect of respondent No. 5, ACRs for the aforesaid period i.e. 1994-95, 96-97, 97-98 and 98-99 were not available, and in respect of respondent No. 6, ACRs for the period of 1994-95, 96-97, 97-98 and 98-99 were not available. Similarly, in respect of respondent No. 7, ACRs for the period from 1996-2001 were not available as reflected in the chart annexed to the said letter. The petitioner also states that the respondent Nos. 5 and 6 had also submitted representations to the authorities concerned on 2.1.2009 and 3.1.2009 respectively that some of their ACRs were not available and requested the authorities to make the special assessment for the period the ACRs were not available. Thus, according to the petitioner, the respondents had themselves admitted that ACRs in respect of some period were not available, which fully corroborates the official letter dated 19.2.2009 of the Director of Veterinary & Animal Husbandry Services (Annexure-A/20) regarding the missing ACRs.

4. Learned counsel for the petitioner has also submitted that the State

Government in an affidavit in opposition filed in a related case, i.e. WP(C) No. 24 of 2009 had stated that the request made by the respondent nos.5 and 6 for making special assessment of the ACRs which were not available for the relevant period will be considered as per rules. According to the petitioner, this averment made by the State respondents in the affidavit in opposition supports the contention of the petitioner that ACRs of the said respondents in respect of some relevant years were indeed missing.

5. Learned counsel for the petitioner has submitted that when the DPC was held on 29.6.2012, "Special Assessments" made in respect of respondent No. 5 for the period of 94-95, 97-98 as well as 1998-99 were considered by the DPC as borne by records, which according to the petitioner is not permissible and contrary to the existing rules.

It has been stated that in respect of respondent No. 6, even though it had been stated earlier that ACRs were not available for the aforesaid period except 1997-98 there is no reflection of such missing ACRs in the proceeding of the DPC as if there were no missing ACRs and it is not known as to on what basis assessment was made by the DPC as there is no reference to any special assessment for the said period in respect of respondent No. 6. According to the petitioner, the DPC proceeding would indicate as if all the ACRs of the Respondent No. 6 for the relevant period were available. Thus, according to the petitioner even though it had been stated earlier by the official respondents that some ACRs of the respondent No. 6 were missing, yet there is no mention of any special assessment which the Departmental Promotion Committee had considered. The only inference which can be drawn according to the petitioner is that the ACRs of the Respondent No. 6 were manipulated.

Similarly, in respect of respondent No. 7 the official chart annexed to the letter dated 19.2.2009 had indicated that ACRs were not available for the period 1996-97, 1997-98 as well as 1998-99. However from the chart prepared by the Departmental Promotion Committee in the DPC proceeding, except for the period 1997-98 which mentions of Special Assessments, there is no reference as to how the assessments were made in respect of the remaining period of 1996-97 and 1998-99. Therefore, learned counsel for the petitioner has submitted that the ACRs which were considered by the Departmental Promotion Committee in the said DPC held on 29.6.2012 are all manipulated.

6. The petitioner has claimed that apart from these irregularities, the DPC committed other irregularities. The petitioner submitted that the Office Memorandum (OM) dated 29.4.1999 (Annexure-A/16) governs the proceedings for promotions including to the post of Joint Director and there is no provision in the said O.M for making special assessment of ACR. On the contrary, it has been provided in the said O.M. that whenever any ACR is not written for any reason during the relevant period, the DPC should consider the ACRs of the years proceeding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the

number of CRs required to be considered and if this is also not possible, all the available CRs should be taken into account as provided under Para 5.2.1(c) of the said O.M. According to the petitioner, in the present case, it is evident from the records that the authorities had made special assessment in respect of respondent Nos. 5 & 7 rather than resort to the aforesaid procedure as provided under the Rules.

Thus, according to the petitioner, the DPC proceeding suffers from various infirmities. Firstly, the ACRs of the petitioner in which the petitioner had been graded as "Outstanding" for 3 consecutive years have been illegally downgraded by the DPC to "Very Good" only, thus denying the benefit of a better ACR at the time of preparation of the select list. Secondly, it has been contended that the procedure adopted by the DPC is contrary to the Office Memorandum dated 29.4.1999 which governs the procedure to be adopted at the time of promotion in the State of Manipur, as mentioned above. Thirdly, the so called ACRs of respondent Nos. 5, 6 and 7 considered by the DPC held on 29.4.1999 are suspect and in fact manipulated.

7. Learned counsel for the petitioner, relying on the decision of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, contended that there cannot be an exercise of power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. According to the petitioner, since there was no provision for making any special assessment of ACRs as has been done in the present case, the said exercise is illegal and void.

8. Similarly, relying on the case of *S.B. Bhattacharjee Vs. S.D. Majumdar and Others*, wherein the Supreme Court had held that when the State notifies the procedure for adjudging the merit and suitability, the DPC is bound to follow it in letter and spirit, learned counsel for the petitioner has submitted that since the procedure provided under the O.M. dated 29.4.1999 had not been followed, the DPC proceeding is illegal. Again relying on the decision of the Supreme Court in *Guman Singh and Others Vs. State of Rajasthan and Others*, it has been submitted that the DPC could not have ignored the provisions of the O.M. dated 29.04.1999 issued by the Government for guidance of the Departmental Promotion Committee and assess the merit of an officer by independent evaluation.

Further, relying on the case of *Mrs. Asha Sharma Vs. Chandigarh Administration and Others*, , learned counsel for the petitioner has submitted that whenever the decision making process and the decision taken are based on irrelevant facts, by ignoring relevant considerations, such an action can normally be termed as "arbitrary". Further, where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. It has been contended that in the present case no reason had been recorded by the DPC for down grading the ACR of the petitioner and as such the same would be hit by the vice of arbitrariness.

Learned counsel for the petitioner has also pressed into service the decision of the Supreme Court in *Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others*, wherein it has been held that an action is said to be arbitrary and capricious, where a person in authority does any action based in individual discretion by ignoring prescribed rules. Further, if a person has discretion to make a decision, the discretion can only be exercised fairly and reasonably and if not, the same cannot be said to be a valid exercise of discretion in the eye of law, relying on the decision in *Centre for public Interest Litigation v. Union of India & Ors: (2012) 3 SCC 117*. The decision in *Union of India (UOI) Vs. Kuldeep Singh*, has also been invoked for the same contention.

9. Opposing the contentions of the petitioner, Mr. Nepolean, appearing on behalf of the State respondents has contended that in the writ petition, the petitioner has not raised any plea regarding the missing ACRs but pleaded the same only in the reply affidavit filed subsequently and relying on that decision of the Supreme Court rendered in *Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another*, has submitted that such a plea not raised in the writ petition ought not be considered by this Court.

Referring to the letter dated 3.9.2008 (Annexure-A/17) to the reply affidavit filed by the petitioner on the basis of which the petitioner had claimed that the ACRs of the respondents were not submitted in respect of certain periods, indicating that the ACRs for these years are not available, Mr. Nepolean, learned G.A. has submitted that the said letter was written in 2008 whereas, the DPC was held in the year 2012 by which time the ACRs became available. Learned counsel for the State submitted that there was a series of litigations involving officers in various grades in the Veterinary & Animal Husbandry Services Department including the present officers, in connection with which the service records were frequently called for and referred to by various authorities, because of which all the service records/ACRs were not readily available with the department at the relevant time. Therefore, it would not be correct to say that the ACRs of officers including the private respondents were missing when the DPC was held in the year 2012.

In the affidavit in opposition filed by the respondent Nos. 1 and 2 to the reply affidavit of the writ petitioner, it was stated that several DPCs were held earlier for constitution of the Manipur Veterinary & Animal Husbandry Services (hereinafter referred to as the "Services"). It was stated that after the 5th Review DPC was held on 24.5.2008 for constitution of the Services, a process was taken up by the State Government for filling up the posts of the Services in Grade-II, III and IV on the basis of the 5th Review DPC. In the process, the ACRs of all the eligible officers were requisitioned by the State Government. However, while processing for filling up the posts of the Services in Grade-II, III & IV, many writ petitions were filed before the High Court by some of the officers questioning the validity and legality of the 5th Review DPC held on 24.5.2008 because of which the process for filling up the posts in the Service in various grades could not be finalized. Thereafter, the State Government filed a Misc

Application being MC (WP(C)) No. 149 of 2009 in one of the writ petitions, being Writ Petition (C) No. 1 of 2009 praying for allowing the State Government to review the 5th Review DPC held on 24.5.2008 for initial constitution of the Services. The Hon"ble Court by an order dated 21.08.2009 disposed of the aforesaid Misc application by allowing the State Respondents to review the proceedings of the 5th Review DPC. Accordingly, the 6th review DPC was held on 18.02.2012 for initial constitution of the Services.

On the basis of the recommendation of the 6th Review DPC so held, the State Government sent requisition to the Manipur Public Service Commission for holding DPC for promotion to the higher posts of the Services in Grade-II, III vide letter dated 25.2.2012, pursuant to which the MPSC vide its letter dated 5.3.2012 requested the State Government to submit the ACRs of the eligible officers for the relevant periods. It has been submitted that however, while sending the ACRs of all the eligible officers to the MPSC, as some of the ACRs were found missing, the State Government decided to make Special Assessment. Accordingly, Special Assessments were made by the competent authority as per the Rules/government instruction.

10. Coming to the allegation for the petitioner that Special Assessments had been made in respect of the private respondents for some years, even though there is no provision for making special assessment under the Rules, learned counsel for the respondent has submitted that since the petitioner has given up the challenge pertaining to the respondent No. 5 in whose case, 3 special assessments were made, it may not be necessary to consider this issue. However, in respect of respondent No. 7, for whom a special assessment was made for the year 1997-98 it may be noted that for the aforesaid year 1997-98, the respondent No. 7 was assessed as "Very Good" in the Special Assessment by the Department authorities but in the previous year of 1996-97 he was graded as "Outstanding" in his ACR, so also in the subsequent year 1998-99. Para 5.2.1(c) of the Office Memorandum dated 29.4.1999 provides that where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question. It was therefore, contended that the Special Assessment made for the particular year 1997-98, in which the petitioner was assessed as "Very Good" considering that he was graded "Outstanding" in the previous year of 1996-97, cannot be said to be unreasonable or irrational.

11. Coming to the contention of the writ petitioner that the DPC which was held in 2012 was contrary to the Office Memorandum dated 29.04.1999, Mr. Nepolean, has submitted that it has been provided in para 5.1.2 of the said OM that the DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. Further, it has been provided in para 5.2.1(e) thereof, that DPC should not be guided merely by overall grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of entries in the CRs as it had

been noticed that sometimes the overall grading in an ACR may be inconsistent with the grading under various parameters or attributes.

12. Mr. R.S. Reisang, learned Sr. G.A. appearing for the MPSC has also contended that the DPC meeting was held on 29.6.2012 in association with the MPSC in a fair manner by following the instructions contained in the O.M. dated 29.4.1999 and has specifically referred to para Nos. 5.1.2 and 5.2.1(e) which are reproduced hereinbelow for better appreciation.

Guidelines for DPCs

5.1.2. At present, DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them.

Confidential Reports:

5.2.1(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters of attributes.

It was contended that the DPC after considering all the relevant parameters made the suitable and appropriate assessment which may not necessarily be the same as assessed by the Reporting, Reviewing and Accepting Authority as recorded in the ACRs. It has been also contended that unless challenged on the ground of malafide or violation of statutory rules, the Court would not normally examine the assessment made by the Selection Committee.

13. Mr. R.S. Reisang, learned counsel for the MPSC as well as Mr. Nepolean, learned State counsel have relied on the decision of the Supreme Court in *M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others*, and submitted that normally recommendations of Selection Committee cannot be challenged except on the ground of malafides or serious violation of the Statutory Rules and the Court cannot sit as an Appellate Authority to examine recommendations of the Selection Committee like Court of appeal. In the said case, the Supreme Court also considered its earlier decision in *National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others*, in which it has been held that the function of Selection Committee is neither judicial nor adjudicatory and is purely administrative and where a selection has been made by assessment of the relevant merits of candidates, in absence of any provision in the rules for recording reasons, the Selection Committee has no legal obligation to record reasons in support of its discretion for selecting one candidate in merit to another. It was also further held that even the principles of natural justice do not require an administrative authority or Selection Committee or the examiner to record reasons for the selection or non selection of a person in absence of statutory requirement. Similar principle was followed in the case of

U.P.S.C. Vs. K. Rajaiah and Others, .

Relying on the decision of the Supreme Court in *Mrs. Anil Katiyar Vs. Union of India and others*, , it has been submitted that grading given by the DPC different from that given in the ACR cannot be subjected to judicial review. Thus, "Outstanding" recorded in the ACR which has been graded as "Very Good" by the DPC cannot be interfered with having regard to the confidential procedure followed by the DPC. Further, by referring to the decision of the Supreme Court in *Smt. Nutan Arvind Vs. Union of India and another*, , it has been submitted that when a high level committee like the present one held in association with the MPSC had considered the respective merits of the candidates and assessed the grading, the Court cannot sit over the assessment made by the DPC as if it is an appellate authority. When such assessment had been made, the Court would also not go into question as to whether any officer was competent to review or record the confidential report.

14. Mr. Devananda Singh, learned counsel appearing for the private respondent Nos. 4 to 6 also relied on the decision of the Supreme Court rendered in *M.V. Thimmaiah's case* (supra). He also further relied on the decision in *Union of India (UOI) and Another Vs. S.K. Goel and Others*, in which it has been held that DPC enjoys full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate.

Learned counsel for the private respondents has also stated that the DPC which was held on 29.06.2012 had recommended 5 other officers for appointment to the post of Joint Director. However, none of them had been impleaded. Since the petitioner has sought for quashing the entire proceedings of the DPC, the vested rights of the said persons who had been recommended would be adversely affected if it is interfered with and as such the present writ petition would not be maintainable due to non impleading of the recommended candidates and for which learned counsel has relied on the decision of the Supreme Court in *B. Ramanjini and Others Vs. State of Andhra Pradesh and Others*, .

15. Having heard the rival contentions of the parties, this Court would proceed to examine these. Coming to the contention of the petitioner that the ACRs of the petitioner was down graded by the DPC without assigning any reason, thus has caused serious prejudice to the petitioner by depriving the benefits of superior ACR, it cannot be accepted as tenable in view of the decisions of the Hon"ble Supreme Court in *M.V. Thimmaiah's case* (supra), *S.K. Goel's case* (supra), *K. Rajaiah's case* (supra) and *NIMHANS's case* (supra) in which it has been held and reiterated by the Hon"ble Supreme Court that though the Selection Committee normally abides by the assessment made by the reporting and reviewing authority, the Selection Committee is not powerless to make its own assessment. It makes its own overall relative assessment of the confidential reports of all the officers and after comparative assessment, the best candidate is selected. The classification made by the State authorities is not binding on the Committee and the Committee for good reasons can evolve its own classification

which may be at variance with the gradation given in the ACRs. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded. Further, normally, the Court does not sit as an appellate authority of a selection by a DPC unless except on the ground of malafide or serious infraction of statutory rules. In the present case, no such allegation of malafide has been made against any authority. Therefore, this Court could be loath to interfere with the recommendation made by the expert body involving the Manipur Public Service Commission in making the recommendation. Further, absence of any reason for making assessment by the DPC different from the grading and assessment of the ACRs of officers cannot be a ground for interference by this Court as held by the Hon'ble Supreme Court in the above referred cases. This Court also noted that other than respondent No. 5, against whom petitioner has given up his challenge, all other remaining respondents No. 6 and 7 had the gradings of "Outstanding" in respect of some years which also was not agreed by the DPC and they were also assessed as "Very Good" in place of "Outstanding" in the ACR as in the case of petitioner. In other words, it was not only the case of the petitioner that the DPC had made assessment as "Very Good" in spite of assessment of "Outstanding" recorded in the ACR, which will be evident from the chart below, as furnished by the State respondents.

ACRs of the Officers on record for Appointment by promotion to the post of Joint Director (MVS Grade-II)

Therefore, from the above it is evidently clear that the DPC did not accept any of the assessment of "Outstanding" given in the ACRs of any of the officers and graded all of them as "Very Good" in place of "Outstanding" recorded in the ACRs. It is not the case of the petitioner that the DPC had ignored the "Outstanding" gradation in respect of the petitioner only. It was not a case of selective ignoring of the grading in the ACR of the petitioner only. The DPC also did not accept the "Outstanding" gradation given to the other respondents, which clearly indicates that the DPC had duly applied its mind uniformly on the service records of the candidates and made the comparative assessment.

The aforesaid O.M. dated 29.4.1999 also mentions in para 5.2.1, that the DPC enjoys full discretion to devise their own methods and procedure for objective assessment of the suitability of the candidates. Further, it has been also mentioned in para 5.2.1(e) that DPC should not be guided merely by the over-all grading that may be recorded in the confidential report but should make its own assessment on the basis of the entries in the ACRs as it has been noticed that some times over all grading in the ACRs may be inconsistent with the gradings under various parameters or attributes. Therefore, if the DPC had made the assessment of "Very Good" in spite of grading of "Outstanding" in the ACRs on consideration of various parameters or attributes, in absence of any allegations of malafide, the same cannot be interfered with by this Court.

It may be also mentioned that there is no provision for recording of reasons for arriving at a particular conclusion by the Selection Committee in the aforesaid

O.M. dated 29.4.1999 and as such in the absence of any such provision for recording reasons for the assessment made by the DPC, the grievance raised by the petitioner that the DPC had given a different and lower grading without assigning any reason cannot be accepted as had been held by the Supreme Court in National Institute of Mental Health and Neuro Sciences (*supra*). It may be also noted that it may not be correct to hold that merely because the DPC had made the assessment of "Very Good" contrary to the assessment of "Outstanding" given in the ACR, it amounts to down gradation. The assessment by the DPC was made as an independent body and not as a reviewing authority of ACRs of the officers concerned. As mentioned above, the DPC had the authority and discretion to make its own assessment independent of recording in the ACR and if the DPC on consideration of the parameters came to the conclusion that any particular officer deserved to be assessed and graded as "Very Good" instead of "Outstanding" recorded in the ACR, it cannot be said to be a case of down gradation. It is a case of difference in assessment which the Selection Committee was entitled to do.

Coming to the other contention of the petitioner that some of the ACRs were manipulated and that special assessments were made contrary to rules, it may be noted that special assessments were made in respect of respondents No. 5 and 7 only. Since the petitioner has waived his objections, qua respondent No. 5, regarding the authority to make special assessment, the petitioner would be estopped from raising the same issue vis-à-vis the respondent No. 7.

It has been also observed that as per records produced by the State counsel, the respondent No. 7 was graded as "Very Good" in the special assessment for the year 1997-98. However, he was graded as "Outstanding" for the preceding year 1996-97 as well as the succeeding year 1998-99 in his normal ACRs. In other words, the special assessment made in respect of respondent No. 7 for one year was as "Very Good" only compared to "Outstanding" given by the authorities in the previous and succeeding years. It has also been noted that the DPC made assessment of "Very Good" in respect of the said year 1997-98. Therefore, if the authorities had made a special assessment in respect of respondent No. 7 as "Very Good" for the year 1997-98, if compared to the assessment of "Outstanding" made for the previous and succeeding year, it cannot be said to be unreasonable, arbitrary considering the fact that in para 5.2.1 of the O.M. it has been stated that if CR has not been recorded for any reason during the relevant period, the DPC should consider CR of years preceding the period in question. In the present case, respondent No. 7 was graded as "Outstanding" in the previous year 1996-97 by the authorities. Thus if the DPC made assessment of the respondent No. 7 as "Very Good" for the year 1997-98, it cannot be said to be wholly unreasonable considering his gradation in 1996-97 as "Outstanding" so as to warrant any interference from this Court. The assessment of "Very Good" made by the DPC for the year 1997-98 considering his overall service records cannot be said to be inconsistent with the provisions of para 5.2.1 of the O.M. which provides that in the event CRs of the year preceding the period in question

and also the CRs of the lower grade are not available, all the available CRs should be taken into account. It may be also noted that the DPC while making assessment of respondent No. 7 has given the grading of "Very Good" in respect of the aforesaid three years, 1998-99, 1997-98, 1996-97 and graded him only "Good" for the remaining two years 1994-95.

Further, the submission made by the learned counsel for the State respondents that the petitioner has not taken any grievance regarding the special assessment made for respondent No. 7 for the year 1997-98 and has not been challenged the same in the writ petition has force and cannot be ignored. Accordingly, in the absence of challenge to the said special assessment made, the petitioner could not find fault with the consideration and assessment by the DPC on the basis of the said special assessment. It has been also noted that the petitioner has not been able to demonstrate as to how he has been prejudiced by the special assessment made for one year in respect of the respondent No. 7. Therefore, this Court is also of the view that unless any prejudice is caused to the petitioner, merely because some irregularities had been committed may not be sufficient to interfere with the alleged irregular act.

This Court is of the view that there has not been material violation of the provisions of the OM dated 29.04.1999 and the contention of the petitioner that the DPC was conducted in violation of provisions of the said O.M. does not hold much water so as to warrant any interference from the end of this Court.

Accordingly, for the reasons discussed above, this Court is of the view that no case has been made out by the petitioner for interfering with the proceedings of the DPC held on 29.6.2012 for promotion to the post of Joint Director, Vety. & Animal Husbandry, Manipur and resultantly, the petition stands dismissed.