
(2007) 12 GAU CK 0045
In the Gauhati High Court
Case No : Writ Petition (C) No. 621 of 2005

Geeta Das (Dr.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2008) GLT 403 Supp

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Advocate : N. Kotiswar Singh and G. Puspa, for the Appellant; Ch. Komal Singh, for the Respondent

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—Writ Petitioner who is holding the post of Chief Medical Officer (OG) filed this writ petition for issuing a writ in the nature of mandamus or any other appropriate writ for reviewing the proceedings of the DPC/Selection Committee held on 03.03.2004, on recommendation of which 41 (forty one) Chief Medical Officer (OG) who were juniors to the Petitioner (Respondent No. 3 to 43) were appointed/promoted as Chief Medical Officers (Non Functional Selection Grade) and also for reviewing DPC held on 24.03.2005, on the recommendation of which 7(seven) juniors Chief Medical Officers (OG) (Respondent No. 44 to 50) were promoted or/appointed as Chief Medical Officers (Nonfunctional Selection Grade) and also for treating her service record (ACRS) as fulfilling the bench mark for the purposes of promotion and appointment to the Chief Medical Officers (Non Functional Selection Grade).

2. Heard Mr. N. Kotiswar Singh, learned Counsel appearing for the Petitioner and also Mr. Ch. Kamal Singh, learned Assistant Solicitor General appearing for the Respondents.

3. By filtering the unnecessary details, fact in nutshell sufficient for deciding the

present writ petition is that the Central Reserve Police Force (for short CRPF) has the medical wing manned by the Medical Officers having the hierarchy of officers : (1) Director (Medical)(2) Chief Medical Officer (Non Functional Selection Grade)(3) Chief Medical Officer (Ordinary Grade). CMO (Selection Grade) was replaced with the grade of CMO (Non Functional Selection Grade) with the adoption and implementation of the Dynamic Assured Career Progression (DACP) Scheme which was initially implemented for the doctors in Central Health Services to the doctors in the Central Police Forces as can be seen from the official letter dated 05.09.2003 from the Ministry of Home Affairs, Government of India to all the Heads of the various Central Police Forces including the CRPF.

4. The Dynamic Assured Career Progression (DACP) Scheme as approved for the doctors in the Central Health Services vide Department of Health letter No. 21/14/ 97 PC(H)/CHC.V. dated 05.04.2002 has been extended to the Medical Officers of Central Police forces on the same terms and conditions as approved for the Central Health Services. The Medical Officers in the General Duty Medical Officer (GDMO) sub-cadre will be promoted to the Senior Medical Officers on completion of four (4) years of regular service. Senior Medical Officer with five (5) years of regular service will be promoted to the post of Chief Medical Officer (OG) and after completion of four (4) years in the CMO (OG) grade will be eligible for promotion to the post of Chief Medical Officer (Non Functional Selection Grade). As such on completion of thirteen (13) years of regular service in the GDMO sub cadre of CHS, Officer of GDMO sub cadre will be eligible for promotion to the Chief Medical Officer (Non Functional Selection Grade).

5. Promotion to the CMO (Non-Functional Selection Grade) under the above scheme will be made without linkages to vacancies and the scheme shall take effect prospectively from the issue of the orders and the other terms and conditions for effecting promotions will be governed by the provisions of the CHS Rules, 1996 as amended from time to time and the Department of Personnel & Training's instructions in that regard. For ready reference the said letter of the Ministry of Health and Family Welfare dated 05.04.2002 is quoted hereunder:

No. 21/14/97-PC(H)/CHS-V

Government of India

Ministry of Health & Family Welfare

(Department of Health)

To

All Participating Units of the Central Health Service.

Sub : recommendation of 5th Central Pay Commission regarding Dynamic Assured Career Progression (DACP) Scheme for officers of the Central Health Service implementation thereof.

Sir/Madam,

I am directed to say that the 5th Central Pay Commission in para 52.15 of its report has recommended a Dynamic Assured Career Progression (DACP) Scheme for officers of the Central Health Services (CHS). The matter has been under consideration of Government of India for some time. After careful consideration the Government of India have accepted the recommendation and decided that hereafter in CHS promotion to various grades will be as under.

2(i) In the General Duty Medical Officer (GDMO) sub cadre, Medical Officer (Rs. 8000-13500) will be promoted to Senior Medical Officer (Rs. 10,000-15,200) on completion of 4(four) years of regular service. Senior Medical Officer with 5(five) years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer (Non-Functional Selection Grade)(Rs. 14300-18300). Thus on completion of 13 years of regular service in the GDMO sub cadre of CHS, Officer of GDMO sub cadre will be promoted to Chief Medical Officer (Non Functional Selection Grade)(Rs. 14300-18300).

(ii) The Specialists Officer of the Non Teaching and Public Health sub cadres will be promoted from Specialist Grade-(II) Junior Scale (Rs. 10000-15200) to Specialist Grade II (Senior Scale)(Rs. 12000-16500) on completion of 2(two) years of regular service Specialist Grade II (Senior Scale) Officer with 4(four) years" regular service as Specialist Grade II (Senior Scale) will be promoted to Specialist Grade I (Rs. 14300-18300). In the Teaching sub cadre Assistant Professor (Rs. 10000-15200) will be promoted to Associate Professor (Rs. 1200-16500) on completion of 2(two) years of regular service in the grade of Assistant Professor. Associate Professor with 4(four) years of regular service will be promoted to the grade of Professor (Rs. 14300-18300). In other words officers of Teaching, Non Teaching and Public Health sub cadres will be promoted to Specialist Grade 1/ Professor (Rs. 14300-18300) on completion of 6(six) years of service, Specialist Grade II (Super Specialities) Associate Professor (Super Specialities) in the pay scale of Rs. 12000-16500 will be promoted to Specialist Grade-I/Professor (Rs. 14300-18300) on completion of 4(four) years of regular service in the grade.

3. The above-mentioned promotions will be made without linkage to vacancies. Other conditions for effecting promotions will be governed by the provisions of the CHS Rules, 1996 as amended from time to time and Department of Personnel & Training's instructions in this regard.

4. The scheme of Dynamic Assured Career Progression shall take effect prospectively from the date of issue of orders.

5. This issue with the concurrence of Ministry of Finance (Department of Expenditure) vide their UO No. 69/5/2001-IC dated 26.03.2002.

6. The amendments to the Central Health Service Rules, 1996, whenever necessary, consequent upon the above decisions, shall be made in due course.

Yours faithfully, Sd/- G.K. Chanana Deputy Secretary to the Govt of India.

6. Subsequent to the adoption and implementation of the DACP, the relevant instructions relating to the appointment/promotion to CMO (NFSG) issued by the Department of Personnel and Training, Government of India are also followed by the CRPF while making appointment/promotion to CMO and NFSG. The conditions/guidelines to be followed by the Selection Committee for appointment of the CMO (OG) to CMO (NFSG) are mentioned in the office memorandum being No. 28038/1/88-Estt.(D) dated 9th October, 1989 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training dated which reads as follows:

No. 28038/1/88-Estt.(D) Government of India Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.

Dated the 9th October, 1989

OFFICE MEMORANDUM

Sub : Selection Grade in Group "A" Service-Guidelines to be followed by the Selection Committee Instructions on. A reference is invited to this Department's OM No. 22038/1/88-Estt (D) dated 06.07.88 on the above subject. The instruction contained therein have been carefully reviewed. It has now been decided, in supersession of the existing instruction, that for appointment to the Selection Grade in Group "A" Service which is non functional, the following procedure and criteria shall be followed:

(i) An internal committee will be constituted to review the cases of officers for "NFSG" and to make suitable recommendation.

(ii) The Committee shall consider the last five ACRs of the Officers.

(iii) Ordinarily the Committee shall accept the final grading given by the Reporting/Reviewing/Accepting authority in each ACR unless these are good reasons to depart from that grading.

(iv) The Committee should satisfy itself that the overall performance was good and that he has at least two "very good" grading in the last five ACRs. Such an officer would be considered suitable for NFSG.

(v) There should be no adverse entry in any ACR. If there are any adverse entries, it should be clearly brought out in the minutes as to why the officer has been proposed for NFSG in spite of the adverse entry.

(vi) The minutes should also include a certificate that there is no other factor or aspect affecting an officer which will disqualify him for grant of NFSG

(vii) The Screening Committee may, in exceptional cases recommend candidates for appointment to NFSG who do not strictly satisfy the above criteria provided they are considered deserving of grant of NFSG. In such cases the Screening Committee should clearly record the reasons for such recommendations.

2. These revised instructions will have only prospective effect. In all these cases

where the cases where selection process is over, the panel already recommended by the Internal Screening Committee may be processed for approval on the basis of existing criteria.

3. Ministries/Departments are requested to bring this instruction to the notice of all concerned for guidance and also their compliance.

Sd/-illegible (M.V. Keshavan) Director.

7. The Petitioner after completing MBBS Course joined CRPF as GDO at the Group Centre, CRPF, Rampur. Petitioner also underwent and completed Post Graduate Diploma DGO in Gynaecology and Obstetrics from the armed forces Medical College, Pune during 1990 and accordingly sanctioned PG allowance w.e.f. 27.06.1990 by the Directorate General, CRPF for the Petitioner.

8. The different courses of Diploma underwent by the Petitioner and also the professional experiences gained by the Petitioner are:

(i) Prior to joining service in the CRPF, the Petitioner had gained professional experience in Obstetrics & Gynaecology for two years with the Indian Army at Allahabad and at a private hospital at Cuttack from 1981 to 1983 (Certificate at Annexure-A/5).

(ii) After joining the CRPF, the Petitioner underwent and completed Post Graduation Diploma DGO in Gynaecology and Obstetrics from the Armed Force Medical College, Pune during 1990 and was accordingly sanctioned PG allowance w.e.f. 27.06.1990 by the Directorate General, CRPF.

(iii) The Petitioner also underwent the course of Diplomate of National Board Course in Obstetrics & Gynecology and received intense training in the field of Obs. & Gynae at Guwahati Medical College, Guwahati during 1998-99 while in service. (Certificate at Annexure-A/6).

(iv) The performance of the Petitioner while undergoing the aforesaid course in the Guwahati Medical College was also highly appreciated by the Principal of the College who also personally issued a commendation certificate on 16.04.1999. (Certificate at Annexure-A/7)

(v) The Petitioner had also presented paper in the National Conference of Federation of Obstetrics and Gynaecology in Hyderabad held in the year 1999, which was highly appreciated by all and in recognition of which the society, which is the highest academic body in the speciality of Obstetrics and Gynaecology in the country, conferred the Certificate of Merit. (Certificate at Annexure-A/8).

(vi) Because of the sincerity and keen interest shown by the Petitioner in the speciality work, the Petitioner was nominated for one month training in laparoscopic surgery, which the Petitioner completed successfully at Government Maternity Hospital, Hyderabad under Osmania General Hospital and Medical College. (Certificate at Annexure-A/9).

(vii) The Petitioner also participated in numerous workshops/conferences.

(a) While posted at Guwahati, the Petitioner participated in the workshop on National Advanced Life support organized by the National Neonatology forum, Assam Unit at Guwahati on 17.01.2000. (Certificate at Annexure-A/10).

(b) The Petitioner also participated as a delegate in the Thyroid and Diabetes update '01 held at Guwahati Medical College on 17th March, 2001. (Certificate at Annexure-A/ 11).

(c) The Petitioner also participated in the Live. Demonstration programme on Cardio Gastro Neuro & Uro held in Yashoda Super Speciality Hospitals, Hyderabad. (Certificate at Annexure-A/12).

(viii) The Petitioner also participated in various conferences and programmes conducted by the CRPF and also successfully underwent many training course conducted by the CRPF from time to time. Beside this, the Petitioner has regularly presented cases and delivered talks on academic subjects in the seminars and workshops held in Base Hospitals. (Certificate at Annexure-A/13).

(ix) In recognition of the sincerity and devotion to service shown by the Petitioner, the superior authorities had been also pleased to express their appreciation. The Petitioner producing one such letter of appreciation written by the superior officer Dr. K.K. Saini the then IGP (Medical) CRPF on the eve of his retirement on 31.12.2004. (Certificate at Annexure-A/14).

9. The Petitioner was promoted as Senior Medical Officer in the year 1987 after satisfactory completion of 4 (four) years regular service in the GDO Grade II (Medical Officer). Thereafter, after completion of the Post Graduate Diploma Course in Obs and Gyne in the year 1990 as stated above, considering the satisfactory service rendered by the Petitioner, the Petitioner was further promoted to the post of Chief Medical Officer (OG) in the year 1993 after completion of 6 (six) years regular service as senior Medical Officer. Therefore, the Petitioner became eligible for appointment/promotion to CMO (NFSG) on the adoption and implementation of the said DACP. Further after having rendered more than 22 years of service in the CRPF, with unblemished service career, Petitioner was expecting to be promoted to the higher grade of CMO (NFSG) after adoption of the DACP Scheme in the year 2000.

10. The Selection Committee/DPC for appointment for promotion to CMO (NSG) was held on 03.03.2004 and on the recommendation of the Committee, 41 CMO (OG) junior to the Petitioner and others were promoted to CMO (NFSG) vide DIG PERS Signal No. P VII-1/04 CRC MOS dated 08.05.2004. The said 41, CMOs (OG) junior to the Petitioner are Respondent Nos. 3 to 43 to the present writ petition. Subsequently, on the recommendation of another DPC/Selection Committee held in the month of March, 2005 i.e. 24.03.2005, 7 (seven) CMOs (OG) junior to the Petitioner were promoted to CMO (NFSG) vide DIG PERS Signal No. P VII-1/04 CRC MOS dated 03.05.2005 and the said 7 (seven) juniors CMOs (OG) are

Respondent Nos. 44 to 50.

11. Admittedly, the Director General, CRPF issued standing order from time to time regarding preparation and maintenance of annual confidential report of officers. The standing order No.56/2001 dated 18.10.2001 stated that the system of confidential reports on the performance of government servants is a means to an end and not an end in itself. Ultimate goal is to optimize the achievement of government policies and the programmes. This is possible only if the confidential reports lead to the optimization of the performance of the concerned government servants. The main focus of the Reporting Officers should, therefore, be departmental rather than judgmental. A Confidential report should be a true indicator of the achievement of the government servant, it should not be a mere tool to control or discipline him. It is the duty of the superior officer to give the subordinate a clear understanding of the tasks to be performed and to provide requisite resources for his performance. It is stated that ACRs recorded by various officers often did not bring out a clear picture of the strength and the weaknesses of the officers report upon, and very often, are based on subjective impressions. Maintenance of memorandum of service is therefore, made operative for all officers. There is a need for all Reporting/ Supervisory officers to maintain a memorandum of service in respect of all officers working under them. Further, under the said standing order the only adverse remark recorded in the ACRs, if any are to be communicated to the government servant. The grading in the ACRs, even if "average" (which may not make him eligible to achieve the prescribed benchmark for promotion) need not be communicated. However, in the past, the officials who were graded "average" were advised suitably (without disclosing grading) to improve their performance. The intention behind this was that the government servant should be advised to improve his performance in the interest of his career. As there is a suitable and the adequate mechanism to bring deficiencies in work and conduct to the notice of an individual, there does not appear to be necessity to continue with the practice of issuing an advisory letter only on "average" grading in the ACR. An "average" grading can be a hurdle to promotion and as it would not be fair on the part of the Reporting Officer to keep him in the dark on a matter which can affect his career progression, it has to be ensured that personnel whose work is of average quality, or lower, should have been suitably advised. Therefore, there should not be any case of "average" or lower grading without the individual having been suitably advised in writing well in advance.

12. From the above standing order regarding preparation and the maintenance of confidential report of officers it appears that in the past officers who could not make himself eligible to achieve the prescribed benchmark for promotion was advised suitably without disclosing grading. For ready reference, para 2.3, 2.5 and 2.6 of the said standing order are quoted hereunder:

2.3 According to instructions on ACRs, only adverse remarks recorded in the ACR, if any, are to be communicated to the government servant. The grading in

the ACR, even if "average" (which may not make him eligible to achieve the prescribed bench mark for promotion) need not be communicated. However, in the past, officials who were graded as "average" in their ACR, were advised suitably (without disclosing grading) to improve their performance. The intention behind this was that the Govt. Servant should be advised to improve his performance in the interest of his career.

2.5 Where official showed improvement, or showed no improvement, in work and conduct in subsequent quarters, this is required to be reflected in the Memorandum of Service, the official is required to be suitably advised in writing. While initiating the ACR, the reporting officer is required to consult the Memorandum of Service, and only then record his impressions about the officials work and conduct. It is felt that if these instructions are followed in letter and spirit, the necessity of conveying deficiencies on account of average grading, after recording of ACR, would not arise. Inspecting officers who are Reviewing/ Accepting Authorities, while visiting units/institutions should also go through the Memorandum of Service and wherever necessary give suitable instructions/ guidance, to officer found wanting in any particular area.

2.6 As there is a suitable and adequate mechanism to bring deficiencies in work and conduct to the notice of an individual, there does not appear to be necessity to continue with the practice of issuing an advisory letter on "average" grading in the ACR. However, an "average" grading can be a hurdle to promotion. and as it would not be fair on the part of reporting officer to keep him in the dark on a matter which can affect his career progression. it has to be ensured that personnel whose work is of average quality, or lower, should have been suitably advised. Therefore, there should be no case of "average" or lower grading without the individual having been suitably advised in writing well in advance.

13. The office of the Director General of CRPF issued a circular dated 24.02.2005 expressing dissatisfaction over the manner in which ACR being written. The relevant portion of the said circular i.e. Para 4.5 is quoted hereunder:

4.5 During discussion DG himself pointed out that there are several anomalies with regard to writing of ACRs of Gr. A Officers. DG also quoted an example of a lady doctor who was given "Good" grading continuously for so many years but as per DPC rules she was unable to make grade for the promotion. ACR of officers are being initiated by more than one officer and also reviewed/counter signed by two officers i.e. on the basis of Ops. and Adm. Jurisdiction respectively. Some time these ACRs create confusion, while conducting DPCs. Secondly, the "Good" grading of ACR. though not considered "adverse" but tend to debar on officer from promotion as per DPC rules under certain circumstances. In this context almost all officers were of the view that the grading of "Good" should be clarified either way i.e. (a) fit for promotion or (b) not fit for promotion. If grading of "good" cannot make grade for promotion, it should be treated as "adverse" and conveyed to the officers or otherwise. Officers getting "good" grading should be allowed to make grade for their promotions. DG desired that pers. Branch should

come up with a detailed proposal in this regard. Firstly, it should examine the issue of 2 ACRs. Secondly, grading given in ACRs should be very clear and specific which was available in previous ACR proforma mentioning (a) fit for accelerated promotion (b) fit for promotion (c) Not fit for promotion. If required, rules may be accordingly modified soliciting the intervention of MHA.

14. On perusal of the standing order aforesaid it is clear that a lady doctor who had good grading continuously for so many years but as per DPC Rule she was unable to make the grade for promotion, the lady doctor should be informed for her grading i.e. "good" which would be treated as adverse for promotion.

15. It is the specific case of the Petitioner that the Reporting and Reviewing Officer had purposefully neglected the achievements and the higher qualification of the Petitioner stated above while writing the ACRs of the Petitioner. The Petitioner had been unfairly assessed by the initiating and the reviewing officers who were not well versed in the specialized knowledge of Obs. and Gynae and also did not understand the intricacies of the subject of the Obs. and Gynae. Petitioner had never been informed of her grading "good" which has to be treated as adverse for promotion to CMO (NFSG) so as to enable her to improve her performance. Because of unfair assessment of her service records and performance Petitioner had been denied promotion to the post of CMO (NFSG) by the said DPC held on 03.03.2004 and 24.03.2005.

16. The Respondents also filed the affidavit-in-opposition stating that the academic qualification and the expertise have no relevance to promotion. The Respondents in their affidavit did not deny the case of the Petitioner that she was never informed of her grading i.e. "good" which had to be treated as adverse for the purpose of promotion to CMO (NFSG) so as to enable her to improve her performance and also that Petitioner was never advised suitably to improve her performance.

17. The Respondents in their affidavit-in-opposition stated that under O.M. No. 35034/7/97-Estt. (D) dated 08.02.2002, O.M. No. 1-45023/20/2004 PERS II dated 30.04.2005, for the purpose of promotion to the rank of CMO (NFSG) there should be benchmark of "very good" for at least 3(three) years and other two not below "good" out of last 5(five) ACRs. The Petitioner had failed to achieve the prescribed benchmark grading of "very good". As such she was categorized as unfit by the DPC conveyed on 03.03.2004 and 24.03.2005 the grading given in the said 2(two) DPCs are as under:

DPC held on 03.03.2004: Period Grading 01.04.97 to 31.03.03 Very Good 01.04.99 to 31.03.99 NIC (Study Leave) 01.04.99 to 31.03.2000 Good 01.04.2000 to 31.03.2001 Good 01.04.2001 to 31.03.2002 Good 01.04.2002 to 31.03.2003 Good DPC held on 24.03.2005 Period Grading 01.04.1999 to 31.03.2000 Good 01.04.2000 to 31.03.2001 Good 01.04.2001 to 31.03.2002 Good 01.04.2002 to 31.03.2003 Good 01.04.2003 to 31.03.2004 Good

18. It is fairly well settled law in the service jurisprudence that every officer has

the right to be considered for promotion under Article 16 to a higher post subject to eligibility provided he/she is within the zone of consideration. It is also equally well settled that consideration for promotion is an important point in service jurisprudence and the consideration should be with "fairness" under Article 16 of the Constitution of India. Under the service jurisprudence it goes without saying that adverse entry in the ACRs of the eligible officers in the zone of consideration without suitably informing them cannot be acted upon while considering for promotion. For this point citation of the authorities i.e. case laws rendered by the Apex Court will not be required inasmuch as it would amount to unnecessary burdening this Court.

19. From the case of the Petitioner as well as those of the Respondents spelt out from the paper book of the writ petition and the counter affidavit, it is clear that the academic qualities and the experiences gained by the Petitioner had not been taken into consideration while considering the writ Petitioner for promotion to CMO (NFSG) but the Respondents had promoted the juniors CMO (OG) i.e. Respondent No. 43 to 50 who are admittedly not superior to the Petitioner in academic qualities and the experiences. The Apex Court in *Badrinath Vs. Government of Tamil Nadu and Others*, held that under the service jurisprudence, consideration for promotion of an officer must be fair consideration and non-consideration of achievements made by the officers at the time of consideration for promotion would not be a fair consideration for promotion. The fact in that case was that while considering an IAS Officer for promotion to the Super Time Scale, his achievement in academic qualities and the good work in his credit were ignored; and the Apex Court held that such non-consideration by the Selection Committee is riot fair and it is liable to be set aside on the wednesburg principle.

Para 62 and 63 of SCC in *Badrinath* (supra) reads as follows:

62. There is yet another important aspect. The Appellant had produced various reports which showed his academic qualities and he repeatedly requested the Government to give weight to these reports. The State had benefited there from and even the Supreme Court appreciated these reports in *K. Chandru v. State of T.N.* But Respondents 1, 3 and 4 were extremely adamant and were not inclined to give any credit to the Appellant for these reports saving that was "voluntary work" done, and that these reports were produced outside his "official duties." The Appellant pointed out that if an officer produced important reports extremely useful to the State such work would be extra work and could not be ignored as "voluntary work". He claimed he had to be given credit for his good work and that the work could not be ignored as if it was done for his personal benefit. It is worthwhile referring to a summary of these reports and how they became useful to the State:

1967 While working as Deputy Secretary (Labour)

(i) The Draft Labour Policy framed by the Appellant was accepted by the State

Government without any change. This labour policy was appreciated by Late Shri C. Rajagopalchari in a letter which he wrote to the Minister of Labour Shri S. Madhavan.

(ii) As Collector of Madras he devoted attention to the students and their problems. Services appreciated by the Ministry of Education, Government of India, New Delhi in DO letter No. JS(A)/PA/69 dated 14.05.1969.

(iii) Headed the Chairmanship of a Standing Committee for organizing the Statewide publicity for Flag Day, 1968. The then Governor appreciated the services of the Appellant and wrote to him personally on 15.11.1969 about his commendable performance.

(iv) Wrote 3 reports (i) The Urban Development of Greater Madras (1970); (ii) Report on Tenancy and Land Reforms (1971) written while Director of Tenancy Records; (iii) Report on Tamil Nadu Archives (1974) written as Commissioner of Archives.

Various recommendations made in these three reports were accepted and implemented by the State Government. Regarding the slum report it was favourably noticed by this Hon'ble Court in a Constitution Bench of five Hon'ble Judges, where Chandrachud, C.J. spoke for the Bench (K. Chandru v. State of T.N.) Para 4 of the judgment in that case referred to the report (by name). The Appellant was then the Collector of Madras. Reference was again made to the report in para 9 of the judgment.

(v) Submitted a note to the Chief Minister requesting him to promote study of modern history of Tamil Nadu, and create a post of Commissioner of Archives and Historical Research. On 06.02.1973 a post of Commissioner Archives and Historical Research was created and the Appellant assumed charge of that post on 07.02.1973. This was the first posting of the Appellant after his promotion to the selection grade. During his tenure as Commissioner Archives and Historical Research the Appellant made the following notable, among other contributions:

(a) On 17.12.1973 the Tamil Nadu Council of Historical Research was created on the Appellant's suggestion (vide) GOMs No. 2090 Education Department.

(b) On the Appellant's recommendation the State Government agreed to liberalise the rules governing public access to records. The 50 year limit within which the government records in Tamil Nadu remained close to research was reduced to 30 years on the Appellant's suggestion vide GO (P) No. 904 Public (Political Department) dated 15.03.1974.

(c) The Appellant stopped (in January 1974) the utterly thoughtless and shocking destruction of some extremely valuable and historical documents. It was wholly on the Appellant's initiative that in Memorandum No. 61434/N1/74-1 (Revenue) dated 26.04.1974 the Government ordered that no pre-1974 records be destroyed.

(d) In January, 1975 the Indian Historical Records Commission, at its 43rd Session at Lucknow, passed a resolution regarding preservation of the important historical document. This resolution was passed upon Appellant's report to the Government. The then Education Minister, Prof. Nurul Hasan, wrote to all the Chief Ministers urging them to ensure that until a suitable policy is formulated no pre-1974 records should be destroyed.

(e) It was on the Appellant's suggestion that MS No. 3703, Revenue Department dated 28.10.1974 was issued mentioning the note dated 07.08.1974 prepared by the Appellant as the basis on which District Gazetteers should hereinafter be written in Tamil.

(f) On 08.05.1974, submitted a special report to the State Government containing several concrete suggestions to reorganize the Tamil Nadu Archives. Dt. Malcom S. Adiseshiah, former Deputy Director General of UNESCO and later Vice Chancellor of Madras University, highly appreciated the Archives report of the Appellant.

63. These valuable contributions by the Appellant were ignored. It is rather unfortunate that Respondents 1.3 and 4 refused to give credit to the Appellant for these reports and on the other hand, went to the extent of digging out something of 1957. from the days the Appellant was in the IAS Training School, long before he entered on his career.

20. The Respondents, while admitting in their affidavit-in-opposition that the Petitioner was never advised to improve her performance after recording her grading as "good" which had to be treated as adverse, did not state in their affidavit-in-opposition that the reasons had been recorded in her personnel file for treating her un-fit for promotion. The Apex Court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, held that it would be desirable to communicate an entry in the ACR which would qualitatively damaging his/her career to the concerned employee.

21. For the reasons given above, this Court is of the considered view, the writ Petitioner was not fairly considered for promotion to the post of CMO (NFSG) by the said two DPCs. However, normally, it is not the province of this Court to issue a writ of mandamus to promote the Petitioner to the post of CMO (NFSG). In this point it may be referred to Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, This is a general principle. The Apex Court in Badrinath (supra) held that there is an exception to this general principle. In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, the Apex Court held that wide language in Article 226 enable the Court to "reach justice" whenever found necessary and to mould the reliefs to meet peculiar and the complicated requirements of this country.

22. Para 88, 89 and 90 of the SCC in Badrinath (supra) reads as follows:

88. We may, however, point out that it is not as if there are no exceptions to this

general principle. The occasions where the Court issued a writ of certiorari and quashed an order and had also issued a mandamus at the same time to the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In *Comptroller & Auditor General of India v. K.S. Jagannathan* such a power on the part of this Court was accepted by a three-judge Bench. Madon J. referred to the observations of Subha Rao, J (as he then was) in *Dwarka Nath v. ITO* wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to "reach justice wherever found necessary" and "to mould the reliefs to meet peculiar and complicated requirements of this country." Justice Madan also referred to *Rochester Corpn. V.R.R. v. Revising Barrister for the Borough of Hanley*. *Padfield v. Minister of Agriculture Fisheries and Food* and to a passage from Halsbury's *Laws of England*, 4th Edn. Vol I p. 59. Finally Madon, J. observed (SCC Petitioner, 692-93, para 20)

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

(emphasis supplied)

We emphasise the words underlined in the above passage to the effect that the Court may in some rare situations itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. The same view was expressed by another three-Judge Bench in *B.C. Chaturvedi v. Union of India* even regarding disciplinary cases. Verma J. (as he then was) observed (at SCC p. 762, para 18) as follows:

The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate

authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(emphasis supplied)

The underlined words reiterate the powers of this Court in rare and exceptional cases.

89. De Smith also states in his Administrative Law (5th Edn. Para 6.089) that normally, the proper form of mandamus will be one to hear and determine according to law, though by holding inadmissible the considerations on which the original decision was based, the Court may indirectly indicate the particular manner in which the discretion has to be exercised (R.V. Manchester Justices; R.V. Flintshire Country Council Licensing (Stage Plays) Committee; Padifield V. Minister of Agriculture Fisheries and Food and R.V. City of London Licensing Justices ex p Stewart.)

90. In the light of the above precedents, we have considered whether this is a fit case where this Court should issue a mandamus or remit the matter back to the State Government. After giving our anxious consideration to the fact of the case, we are of the view that having regard to our findings on Points 1 to 5 and to the continuous unfair treatment meted out to the Appellant by the State of Tamil Nadu even as accepted by the Central Government in its comments-this is a pre eminently fit case requiring the issue of a mandamus. We are, therefore, constrained to exercise all the powers of this Court for rendering justice and to cut short further proceedings. The consideration of the Appellant's case for the said promotion has been hanging fire and going up and down for the last twenty-five years. Disgusted with the delays, the Appellant has also taken voluntary retirement. In the light of our decision on points 1 to 5, we declare the censure in the fourth case as void and without jurisdiction and in the alternative also, as liable to be quashed under Wednesbury principles. The adverse remarks of bygone years prior to 1972 have lost all their sting. The positive factors in the Appellant's favour both recorded (at the compulsion of the Central Government) and others to which we have referred to earlier as meriting consideration are, in our opinion, sufficient to entitle him for promotion to the super-time scale. The Appellant's case is, in our view, no less inferior to the cases of the other officers who were conferred the similar benefit of super-time scale by the State of Tamil Nadu, details of which have been profusely given in the writ petition. For the aforesaid reasons, we quash the punishment of censure, the assessment made by the Joint Screening Committee, the orders passed by the State and Central Government refusing to grant him super-time scale and in rejecting the appeal of the Appellant and we further direct as follows:

In the special and peculiar circumstances of the case, we direct the Respondents

to grant the Appellant the benefit of the super-time scale from the date on which the Appellant's junior Shri P. Kandaswamv was granted super-time scale. The Respondents are accordingly directed to pass an order in this behalf within eight weeks of the receipt of this order and to give him all consequential benefits, attendant thereto. The said benefits shall also be reflected in his pension and other retiral benefits. They shall be worked out and paid to him within the time aforementioned.

23. Para 1(vii) of the said office memorandum dated 09.10.1989 for promotion to CMO (NFSG) stated clearly that the Screening Committee may, in exceptional case recommend candidates for promotion to NFSG who did not strictly satisfy the criteria. In such cases the Screening Committee should clearly record the reason for such recommendation. In the special and the peculiar circumstances of this case, the Respondents are directed to give promotion to the Petitioner to CMO (NFSG) with effect from the date of her 41 juniors i.e. Respondent No. 3 to 43 who were promoted to CMO (NFSG) within 3(three) months from the date of receipt of this order.

24. The writ petition is allowed accordingly.