

(1971) 07 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No.1815 of 1970

Guman Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-07-1971

Acts Referred:

Rajasthan Administrative Service Rules, 1954 — Rule 27, 27(1), 28(2), 28(3), 28(4)

Citation : (1971) 2 SCC 452 : (1971) SCR 900 Supp : (1971) 4 WLN 43

Hon'ble Judges : S. M. Sikri, C.J.; P. Jaganmohan Reddy, J.; I. D. Dua, J.; G. K. Mitter, J.; C. A. Vaidyalingam, J

Bench : Full Bench

Advocate : R.K. Garg, S.C. Agrawala, D.P. Singh and R.K. Jain, for the Appellant; Jagadish Swarup, Solicitor-General and K. Baldev, for the Respondent

Final Decision : Allowed

Judgement

Vaidyalingam, J.—In both the writ petitions under Article 32 and the civil appeal, by special leave, common questions that arise for consideration relate to the validity of Rule 28B and 32 of the Rajasthan Administrative Service Rules, 1954 (hereinafter to be referred as the Rules) and the Circular No. F. 1. (6) Appts. D/50 dated August 27, 1966 issued by the Chief Secretary to the Government of Rajasthan as well as the Order of the Government of Rajasthan No. F. 2(24) Appts. (A-IV)/66 dated January 4, 1967. In the two writ petitions the Order No. F. 2(24) Appts. (A-IV)/66 dated January 22, 1970 and in Writ Petition No. 139 of 1970 a further Order of the State Government No. F. 27(24)A (A-4)/66 dated February 21, 1970 are also challenged. The nature of the various Orders as well as the Rules and the Circular that are challenged will be referred to later at the appropriate stage.

2. Civil Appeal No. 1815 of 1970 arises out of the Division Bench Judgment of the Rajasthan High Court dated January 20, 1970 in D.B. Special Appeal No. 57 of 1968. The facts leading up to the Civil Appeal may be stated: The appellant is an Arts Graduate having taken his degree in 1947. He took his Law Degree in the

year 1961 having been placed in the First Division. He joined the service of the former Jaipur State as Inspector, Customs and Excise, in 1948. On the formation of the United State of Rajasthan, he was appointed in the service of the State of Rajasthan as Inspector, Customs and Excise. In 1950 the Rajasthan Administrative Service was constituted for the State of Rajasthan and the Rules governing the conditions of service of the members therein were framed in 1954 by the Rajpramukh under the proviso to Article 309 of the Constitution. Under the Rules the Administrative Service Cadre has three cadres of pay, namely, Ordinary Time Scale, Senior Scale and Selection Grade. The appointment to the service cadre was by direct recruitment as well as by promotion from other subordinate services in the State of Rajasthan. The appointment to the Senior Scale and Selection Grade was by promotion from amongst the members of the service. According to the appellant Rules 27 and 32 of the Rules, as they stood originally provided for promotion to be made only on the basis of seniority-cum-merit and that Sub-rule (2) of Rule 27 laid down various criteria to be taken into account in the matter of selection of candidates for promotion. It was his further case that Rule 28, as it originally stood, laid down the procedure for recruitment by promotion to the service on the basis of seniority-cum-merit. The appellant was appointed in the year 1957 as member of the Rajasthan Administrative Service as a result of the open competitive examination held by the State Public Service Commission under the provisions of the Rajasthan Administrative Service (Emergency) Rules, 1956. The appellant claimed that his seniority was higher than that of respondents 2 to 5 as is evident from the seniority list published on July 1, 1964. At this stage it may be mentioned that though under the Order dated January 4, 1967 of the State Government fifteen officers in the junior scale were promoted and appointed on an officiating basis to the senior scale of the service, the appellant has made only four of them respondents 2 to 5 as parties in these proceedings on the ground that though they were juniors to him, promotion has been given to them superseding his claims. The other officers so promoted, even according to the appellant were senior to him in service. We may also mention that respondent No. 5 is since dead, but for convenience he will be referred to by the rank occupied by him as respondent.

3. In 1965 the State decided to introduce the system of making promotions to the service on the basis of merit alone in addition to the existing system of making promotions on the basis of seniority-cum-merit. With this end in view there were various amendments made to the Rules by which certain additions were made and certain other provisions deleted. On December 14, 1965, Rule 28B was incorporated providing for appointment by promotion to posts in the service on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50 and the number of eligible candidates to be considered for promotion is to be 10 times the total number of vacancies to be filled up on the basis of merit as well as seniority-cum-merit. On the same date when Rule 28B was incorporated Sub-rule (2) of Rule 27 was deleted. On January 7, 1966 Sub-rules (2) to (6) of Rule 28 were also deleted. On December 14, 1965 a Circular

was issued by the Chief Secretary to the Government of Rajasthan. According to the appellant the said Circular was a secret one issued without any authority directing the Selection and Promotion Committees and the Appointing authorities to follow the instructions given therein when making selection, promotion or appointment in the service. The said circular prescribed "merit formula for making selection of persons to be appointed on the basis of merit alone and the seniority-cum-merit formula for making selection of persons to be appointed on the basis of seniority-cum-merit." The basis for both the types of promotions was the marking system indicated in the circular. We do not think it necessary to go more elaborately into the details of this circular or the authority under which it was issued because it is seen that this circular was superseded by the circular dated August 27, 1966, which is under severe attack in all these proceedings. The contents of the latter Circular as well as the authority under which it is purported to have been issued will be dealt with by us in due course in the latter part of the judgment. On August 26, 1966 Rule 28B was further amended by providing that the proportion of promotion to be made by selection on the basis of merit and seniority-cum-merit is to be 1:2 instead of 50:50. On the same day a proviso was also added to Sub-rule (2) of Rule 28B providing that only officers who have been in service for not less than six years in the lower grade of the cadre will be eligible for being considered for the first promotion in the cadre. On August 27, 1966 the impugned circular was issued by the Chief Secretary to the State Government. It is the case of the appellant that this circular was issued without any authority and it was again a secret circular giving directions in the matter of selection, promotion and appointment to the service to the Committees or the Authorities incharge of the same. The circular again dealt with the merit formula and the seniority-cum-merit formula on the basis of marking system indicated therein. On September 8, 1966 the State decided to extend the principles of making selections on the basis of merit alone to appointments to senior posts also. For this purpose the original Rule 32 was substituted by a new rule providing for appointments to senior scale and selection grade posts on the basis of merit and seniority-cum-merit in the ratio of 1:2 on the recommendation of the Committee constituted under the said rule.

4. It is the case of the appellant that prior to the notification dated September 8, 1966 though many posts in the senior scale of service had fallen vacant even during the years 1963-64 and 1964-65, those posts were not filled up by making promotion on the basis of the principle of seniority-cum-merit which was in force at the relevant time. By the Order dated January, 1966, the State Government created 26 new posts in the Senior Scale of Service and 14 posts in the Selection Grade with effect from the date of the order. As a result of this creation of new posts, about 44 vacancies became available for being filled up by promotion to the Senior Scale of Service in 1965-66. Nevertheless the vacancies were not filled up by the State. After the new Rule 32 was incorporated on September 8, 1966 the Government took steps to fill up the 44 vacancies in the Senior Scale of Service and for this purpose a Departmental Promotion Committee was

constituted and the Committee met in the end of September, 1966 for considering the claims of the officers for purposes of promotion. On the basis of the recommendations made by the said Committee, the Government by the Order dated December 7, 1966 promoted 29 officers to the Senior Scale on the basis of seniority-cum-merit. Again by the order dated January 4, 1967, which is another order under attack in these proceedings, 15 officers including the respondents Nos. 2 to 5 were promoted to the Senior Scale of Service on the basis of merit alone.

5. According to the appellant by the Orders dated December 7, 1966 and January 4, 1967 promotions had been made quite contrary to Rule 28B and 32 of the Rules. It is the grievance of the appellant that under the Order dated January 4, 1967 a large number of officers who had qualified for promotion on the basis of merit under the merit formula were superseded by the officers junior to them. Though Rules 28B and 32 provided for selection on the basis of merit gave no indication or guidance as to what are the factors to be taken into account in assessing the merit of an officer. The promotions had also been made by the Committee adopting the principle of awarding marks as directed by the Circular dated August 27, 1966 which had been issued without any authority of law. The appellant filed S.B. Writ Petition No. 79 of 1967 in the High Court challenging the vires of Rule 28B and 32 as violative of Articles 14 and 16. The appellant also challenged the validity and legality of the Circular dated August 27, 1966 as well as the order dated January 4, 1967 giving promotions to the respondents Nos. 2 to 5 to the senior Posts. In the writ petition the appellant had alleged that the various amendments made to the rules from time to time and the delay in making promotions to Senior Posts were all with a view to show favouritism to the third respondent who was the son-in-law of the Chief Minister of Rajasthan and to the other respondents who are all near relations of persons who were the favourites of the Chief Minister of the State. According to the appellant, the Circular dated August 27, 1966 was issued without any authority and in any event the Government by execution instructions had no power to fetter the powers of the Selection Committees which were functioning under the statutory rules. Even the principles laid down in the Circular regarding the award of marks for assessing the merit were arbitrary and vague. Rules 28B and 32 were challenged as violative of Articles 14 and 16 inasmuch as the basis of merit had not been defined anywhere in the rules and no principles or guidelines had been laid down in the rules for assessing the merit of an officer. The provisions laying down the criteria for judging the merit of an officer contained in Sub-rule (2) of Rule 27 as well as the procedure for assessing the said merit contained in Clauses 2 to 6 of Rule 28 having disappeared by the deletion of those provisions, according to the appellant, arbitrary powers had been conferred by the rules on the Committees to select any person they liked on the ground of merit. Apart from the attack leveled against Rule 28B and 32 that there were no principles laid down for judging the merits of an officer, the appellant also attacked as discriminatory and violative of Articles 14 and 16, the provisions of Rule 28B

providing that the number of eligible candidates to be considered was to be 10 times the total number of vacancies to be filled up and that six years service was essential for an officer to be eligible for being considered for first promotion.

6. The Order dated January 4, 1967 was attacked on the ground that the promotions had been made on the basis of illegal rules as well as the directions contained in the invalid Circular dated August 27, 1966. In particular the appellant contended that though his service record for the year 1965-66 was quite good, nevertheless certain adverse remarks contained in the confidential rolls which were not communicated to him, had been taken into account by the Departmental Promotion Committee, which met in the last week of September, 1966 and hence there has been no proper consideration of his claims for being promoted to the Senior post. On all these grounds the appellant attacked Rules 28B and 32, the Circular dated August 27, 1966 and the Order dated January 4, 1967. He also alleged mala fide against the State.

7. The respondents Nos. 2 to 5 do not appear to have filed any counter-affidavit. But the State contended that Rule 28B and 32 were not invalid and did not violate the provisions either of Article 14 or Article 16. The requirement in the rules regarding promotion to be based on merit was justified as such selection was necessary to achieve efficiency in service. The State controverted the allegations of mala fides made by the appellant. Though it was admitted that the third respondent was the son-in-law of the Chief Minister of the State, it was denied that any favouritism was shown by the State either to that respondent or to the other respondents in the matter giving promotions to them. On the other hand, the Departmental Promotion Committee considered the claims of the appellant and other officers and on assessment of the various claims of the officers promotions were given to the officers mentioned in the Order dated January 4, 1967 by the State Government on the basis of the recommendation of the Departmental Promotion Committee which has also recommended respondents 2 to 5. The State further contended that though promotions had not been made to the Senior Scale in the year 1963-64 and 1964-65, it was not with a view to favour any particular officer. Apart from the fact that the State Government had the power either to fill up the posts or keep them vacant, in this particular case the vacancies were not filled up as an amendment of the rules was in contemplation of the State Government. It was urged that the rules contained various principles for assessment of merit of an officer.

8. Regarding the Circular dated August 27, 1966, the State contended that the marking system laid down in the Circular for assessment of merit of an officer was calculated to ensure objectivity of approach on the part of the Selection Committee. As there were as many as 35 sets of service rules governing various services, the Circular was issued to bring about uniformity in the procedure for assessment of merit and for making selections on the basis of seniority-cum-merit. The State claimed that it has ample powers to issue such a Circular. Regarding the validity of the Circular the State contended that the Circular dated

August 27, 1966 was issued by the Chief Secretary in his administrative capacity being the Head of the Service in the State. It is within his competence to give guidance for the proper working of any governmental machinery. The circular is not intended to be a piece of legislation nor is it an order of the Government.

9. Regarding the confidential reports of the appellant the plea of the State Government was that the confidential reports of all the officers including that of the appellant were before the Departmental Promotion Committee when it met for making selection in September, 1966 and that there was nothing illegal in the said Committee considering the adverse remarks, if any, made in those reports. The State finally prayed for dismissal of the writ petition.

10. The learned Single Judge who dealt with the writ petition held that Rule 28B and 32 were not violative of either Articles 14 or 16. The principle of merit embodied in the rules was valid and the Committee charged with the duty under the rules of considering the claims of various officers for promotion was quite competent to take all the relevant factors when assessing the merits of an officer regarding his suitability for promotion. The learned Judge further held that the principle of merit of an officer being considered for promotion embodied in the rules, was really based on the recommendation of the Administrative Reforms Committee. However, the learned Judge held that the provision in Sub-rule (2) of Rule 28B restricting the number of eligible candidates to be considered for promotion to ten times the total number of vacancies, was violative of Article 16 inasmuch as the claims of various other eligible officers for being considered for promotion was barred. The learned Judge further held that this portion of Sub-rule (2) of Rule 28B is not easily severable from the remaining portion of Sub-rule (2) of Rule 28B and in consequence be held that the whole of Sub-rule (2) of Rule 28B was bad. After considering the relevant portions of the Circular dated August 27, 1966, the learned Judge held that the administrative instructions contained therein had to be adopted and followed by these Committees. The directions contained therein did not leave any choice to the Committees to ignore the same. The administrative directions contained in the said Circular, according to the learned Judge, provided a rigid formula for being adopted in the matter of selection for promotion and the directions contained therein restricted the powers and functions of the Committees functioning under the statutory rules. According to the learned Judge, even on merits, cannot be considered to be reasonable. In this view the circular was held to be bad as being repugnant to the rules. Regarding the promotions made under order dated January 4, 1967, the learned Judge held that the directions contained in the Circular must have been taken into account by the Selection Committee and hence the promotions were not valid. On this reasoning, the learned Judge, by his judgment and order dated November 7, 1968 held that Sub-rule (1) of Rule 28B and Rule 32 were valid and that Sub-rule (2) of Rule 28B was violative of Article 16 and hence that Sub-rule was bad. The circular dated August 27, 1966 was struck down and the promotions of respondents made under the order dated January 4, 1967 were also struck down.

11. Aggrieved by the judgment and order of the learned Single Judge, the first respondent, the State, filed D.B. Special Appeal No. 57 of 1968 and the respondents Nos. 2 and 3 filed D.B. Special Appeal No. 55 of 1968. The appellant herein filed cross-objections, in the appeal filed by the State challenging the decision of the learned Single Judge upholding the validity of Sub-rule (1) or Rule 28B and Rule 32. The Division Bench by its order and judgment dated January 20, 1970 allowed the two appeals Nos. 55 and 57 of 1968 and dismissed the cross-objections filed by the appellant. The Division Bench held that the view of learned Single Judge that Rule 28B(2) was bad was erroneous. On the other hand, the Division Bench held that restricting the eligibility of officers who have put in at least six years of service was quite reasonable and the further provision in Rule 28B(2) regarding the field of selection being confined to senior most officers in the Junior Scale not exceeding 10 times the total number of vacancies was also reasonable. Differing from the learned Single Judge, the Division Bench held that no part of Rule 28B(2) was invalid. The Division Bench agreed with the views of the learned Single Judge regarding the validity of Sub-rule (1) of Rule 28B and Rule 32. Regarding the Circular dated August 27, 1966, the learned Judges held that the marking system indicated therein was really based upon the previous Circular dated August 31, 1960 under which merit was to be evaluated by allotting marks on the previous record of an officer. The said Circular of 1960 had been in operation in respect of the said services except the Rajasthan Judicial Service or the Rajasthan Higher Judicial Service, which were under the control of the High Court. It is the view of the Division Bench that the Circular of 1966 was very elastic and gave wide discretion to the Committees to assess the merit of an officer. The Circular has done nothing except to lay down broad guidelines for the exercise of discretion by the Promotion Committee. The system of marking indicated in the Circular was quite good as it brought about uniformity in the procedure for assessment of merit. On this reasoning the learned Judges held that the Circular of 1966 was valid and it was in no way repugnant to the rules.

12. Regarding the authority for the Circular, the learned Judges noted that there has been some confusion in the stand taken by the State from time to time even when they made applications for amending their counter-affidavit for making it clear that the Circular has been issued not by the Chief Secretary in his individual capacity but by the State Government. Ultimately, the Division Bench held that they had examined the cabinet file produced before them along with the note sheets and that the Court was satisfied that the Circular of 1966, has been issued with the approval of the State Government. The learned Judges rejected the plea of mala fides raised by the appellant herein. Regarding the allegation made by the appellant that the adverse remarks which had not been communicated to him had been taken into account by the Promotion Committee in September, 1966, the learned Judges held that as the Departmental Promotion Committee had not been impleaded as a party, the question whether the adverse remarks made against the appellant had been taken into account by the said

Committee cannot be gone into in these proceedings. Regarding the promotions made under the Order dated January 14, 1967, the Division Bench upheld the same as it had already held that Rules 28B and 32 as well as the Circular of 1966 were all valid. Civil Appeal No. 1815 of 1970 is against the decision of the Division Bench, reiterating the objections regarding the validity of the rules, the Circular, as well as the promotions made.

13. Writ Petition No. 76 of 1970 is filed by Motilal Kakkar. Apart from challenging Rule 28B and 32 and the Circular of 1966 and the promotions made under the order dated January 4, 1967, the writ petitioner challenges also the order dated January 22, 1970 confirming the promotions of respondents 2 to 16 in the Senior Scale. The facts leading up to the writ petition are as follows:

14. The petitioner after obtaining his M.A. Degree in History and the Law Degree from the Lucknow University joined service in the erstwhile State of Jodhpur on August 1, 1943 as a Special Officer (Settlement). He entered the Jodhpur State Civil Service on March 13, 1946 as a result of the competitive examination held by the Public Service Commission of that State. At the time of the formation of the Rajasthan Union, the petitioner was working as Assistant Director, Civil Supplies, Jodhpur. Ultimately the petitioner was appointed to the Rajasthan Administrative Service with effect from January 6, 1950. He has been serving in various capacities and he was also sent of higher training to the United States of America by the Government of India during the period March 23, 1958 to September 27, 1958. The petitioner thereafter was sent on deputation to the Municipal Corporation of Delhi as an Assistant Commissioner during the period June 17, 1963 to April 21, 1964. Later on he was on deputation as Principal, Tribal Orientation and Study center during the period May 22, 1964 to March 31, 1967. He became the District Manager of Food Corporation of India and was holding that post since July 1, 1968. After giving the history sheet of respondents Nos. 2 to 16, the petitioner claims that he was the senior most amongst them and that his seniority has been so stated in the relevant seniority list. After referring to the rules as originally framed and the amendments made from time to time, the petitioner attacks the validity of Rule 28B and 32 and the Circular dated August 27, 1966 on the same grounds as those mentioned in Civil Appeal No. 1815 of 1970. According to the petitioner respondent Nos. 2 to 16 were all his juniors and on the basis of the illegal rules and the directions given in the Circular, officiating promotions have been given to those respondents to the Senior Scale under the Order dated January 4, 1967.

15. The petitioner further states that after the judgment of the Division Bench of the Rajasthan High Court, which is under attack in the Civil Appeal, the State Government passed an order on January 22, 1970 confirming the promotions of respondents Nos. 2 to 16 in the Senior Scale. According to the petitioner as the officiating promotions given to those respondents under the Order dated January 4, 1967 were invalid, the order of confirmation is also equally bad. Therefore, he seeks to get that order also quashed.

16. The state Government has filed a very elaborate counter-affidavit. The stand taken by the State in respect of Rule 28B and 32 as well as the Circular of 1966 and the Order dated January 4, 1967 is the same as in the Civil Appeal. The State has further contended that as the rules are valid and the circular is also valid, the officiating promotions given under the Order dated January 4, 1967 are also valid. In consequence the State points out that the order of confirmation dated January 22, 1970 is also valid. The State disputes the allegation of mala fides and has also pointed out that the Departmental Promotion Committee considered the claims of all the respondents including that of the petitioner for promotion. Promotions were made by the Government on the basis of the recommendation of the said Committee. The State finally prays for the dismissal of the writ petition.

17. Coming to Writ Petition No. 139 of 1970, the petitioner challenges the validity of the Rules 28B and 32, the Circular dated August 27, 1966 and the Orders dated January 4, 1967 and January 22, 1970. The officers covered by those orders are respondents Nos. 3 to 17. The petitioner further challenges the order dated February 21, 1970 passed by the State Government promoting and confirming in the Senior Scale the respondents Nos. 18 to 33. The facts leading up to this writ petition may be stated:

18. The petitioner after obtaining the B.Sc. (Hons.) Agricultural Degree in the First Division from the Delhi University and the LL.B. Degree from the Agra University joined service in the Delhi Administration on February 6, 1954 as Extension Officer, Agriculture. On January 12, 1959 he was promoted as Block Development Officer in the Delhi Administration, in which capacity he continued till September 30, 1960. The petitioner joined the Rajasthan Administrative Service on October 1, 1960 after having passed the competitive examination held by the State Public Service Commission. After the probationary period of one year, he was confirmed in the service with effect from October 1, 1961. His rank has been given as Nos. 332 in the Seniority List of the Rajasthan Administrative Officers issued in 1964. The petitioner gives the rank of some of the respondents. After referring to the rules as well as the amendments made from time to time and the Circular of 1966, the petitioner levels the same attack as against them similar to those in the civil appeal. The petitioner then refers to the officiating promotions to the Senior Scale given to the respondents Nos. 3 to 17 by the Order dated January 4, 1967 as well as to the Order dated January 22, 1970, confirming their promotions. According to the petitioner these orders are illegal and invalid for the same reasons urged in the civil appeal. The petitioner further says that several officers were selected on probationary basis and given promotions, but only respondents Nos. 18 to 33 were confirmed by the order dated February 21, 1970. These orders, according to the petitioner, are illegal and the petitioner's claim for promotion has not been properly considered.

19. The stand taken by the State Government in this writ petition is also similar to the stand taken in Writ Petition No. 76 of 1970, which, we have already

pointed out, again is similar to the stand taken in the civil appeal. According to the State Government the claim of the petitioner is not sustainable as he was ineligible for consideration for promotion under the rules. The State further contends that the petitioner has not put in the minimum period of six years of service which is a condition precedent for consideration for promotion to the Senior Scale under Rule 32 read with Rule 28(2) of the Rules. The State further contends that the respondents Nos. 18 to 33 were selected by the Promotion Committee for likely vacancies and their selections were in accordance with the Rules. Their promotions were delayed because of the orders of stay granted by the Rajasthan High Court in certain writ petitions filed before it. As soon as stay was vacated, the State Government decided to promote those officers, who had been duly selected. Therefore, according to the State Government the orders dated January 22, and 21st February, 1970 are legal and valid.

20. From the statement of facts mentioned above, it will be seen that the main questions that arises for consideration relate to the validity of Rule 28B and 32 and the Circular dated August 27, 1966. The decision regarding the orders dated January 4, 1967, January 22, 1970 and February 21, 1970 will largely depend upon the opinion expressed on the validity of the Rules and the Circular.

21. We will first take up for consideration the attack leveled against Rule 28B and 32 as being violative of Articles 14 and 16. We have already referred to the fact that this attack is made on these rules on the ground that there is no criteria laid down in the rules for assessing the merit of the officers concerned when their claims are being considered for promotion to the Senior Scale. The further ground on which this attack is made is that the Rules give arbitrary powers to the Promotion Committees in the matter of assessing the merits of an officer.

22. According to the State, on the other hand, the Rules are valid and the promotions on the basis of merit are also valid.

23. It is now necessary to refer to the relevant rules as they originally stood as well as to the amendments made thereto from time to time. In 1954 the rules were framed by the Rajpramukh under the proviso to Article 309 of the Constitution to regulate conditions of service of the officers in the Rajasthan Administrative Service. We have already referred to the fact that the Rajasthan Administrative Service was formed in the year 1950. There were three Grades in the Service:

- (i) Ordinary Time Scale Rs. 285-800 (herein after to be referred as the Junior Scale);
- (ii) Senior Scale Rs. 500-1150;
- (iii) Selection Grade Rs. 900-1500.

24. In the Civil Appeal and the two writ petitions we are concerned with the promotions from junior scale to the senior scale. Rule 7 relates to the sources of recruitment to the Service. They are, (a) by competitive examination; (b) by

promotion of administrative subordinate service; (c) by selection from amongst the prescribed categories of Extension Officers and (d) by special selection from amongst the persons other than the administrative subordinate service in connection with the affairs of the State.

25. Part IV of the Rules deals with the procedure for direct recruitment. The procedure for recruitment by promotion is dealt with in Part V, Rule 27, as originally framed dealing with the criterion for selection was as follows:

Rules 27. Criterion for selection: (1) For purposes of recruitment by promotion/selection/special selection, selection shall be made on the basis of 'seniority-cum merit' from among all the administrative subordinates/Extension officers and others who are eligible for promotion, selection and special selection respectively under the provisions of the Rules

(2) In selecting the candidates for promotion, regard shall be had to their;

(a) personality and character;

(b) tact and energy (including ability to undertake extensive tours);

(c) intelligence and ability to express themselves in English and Hindi clearly;

(d) court and other work;

(e) integrity; and

(f) previous record of service.

The procedure for promotion was laid down in Rule 28 as it originally stood. Under Sub-rule (1) when a decision is taken that a certain number of vacancies in the service are to be filled up by promotion, the Appointment Department has to inform the Board and the latter has to call upon all Collectors to submit their recommendations by a prescribed date. It was further provided that the Appointment Department should also call upon the Heads of the Department concerned to submit their recommendations through their respective Administrative Secretaries by a prescribed date. Sub-rules (2) to (6) dealt with the various details regarding the submission of the list by the District Collector, the various particulars to be mentioned by the Collector, to the Board, scrutinising the list furnished by the Collector and preparing a list in the order of seniority of candidates considered suitable for promotion. Those sub-rules also dealt with the Head of the Department preparing a list of candidates eligible for promotion in the order of seniority and recording this remarks in respect of those officers. Sub-rule (7) provided for the Committee consisting of the officers mentioned therein considering the cases of all the candidates recommended by the Board and the Administrative Secretaries and interviewing them, if necessary. It also provided for the Committee selecting the requisite number of candidates equal to the number of vacancies likely to occur in the Service and to be filled up by promotion and to the list being prepared in the order of seniority. The Committee has also to make another supplementary list in the manner

mentioned therein in the said sub-rule. Under Sub-rule (8) both the lists prepared by the Committee are to be submitted to the Government, who after scrutinising the same have to forward them to the Public Service Commission along with the character rolls, personal files and other particulars relating to the officers mentioned therein. Under Sub-rule (9) the names of the candidates considered to be suitable by the Commission are to be reported to the Government for final selection. Under Sub-rule (10) it is provided that the final selection is to be made by the Government and a list of candidates considered suitable for promotion is to be arranged in the order of their seniority.

26. Rule 32 of the Rules as it originally stood made provision for appointment to the Senior scale in the Cadre and it was as follows:

"Rule 32, Appointments to Senior Posts: Appointments (including in an officiating/temporary capacity) to senior posts shall be made by the Government from amongst members of the Service on the basis of seniority-cum-merit on the recommendations of a Committee which shall consist of the following officers:-

(1) Chairman, Rajasthan Public service Chairman Commission or a Member nominated by him. (2) Chairman, Board of Revenue Member (3) Commissioner, Development Department Member (4) Special Secretary to the Government Member in the Appointments Department Secretary

27. The Committee shall consider the cases of the persons eligible for promotion by examining their confidential rolls and personal files interviewing such of them as they deem necessary and shall select a number of candidates equal to the number of vacancies likely to be filled by promotion.

28. Provided that Government may fill a vacancy in the senior grade temporarily by appointing thereto for a period not exceeding six months in an officiating capacity, any member of the Service who is eligible for such appointment under these Rules."

29. It will be seen by a reference to the rules extracted above that promotion was to be on the basis of seniority-cum-merit. Under Sub-rule (7) of Rule 28 and Rule 32 a committee has been constituted and it is on the basis of the recommendation made by the said Committee that the promotion is ultimately made by the Government.

30. In 1965 the State Government took a decision to introduce the system of recruitment to the service by promotion on the basis of merit alone. On December 14, 1965 a notification was issued amending the Rules. A new Rule 28B dealing with the promotion by selection on the basis of merit was incorporated, The said rule as originally framed was as follows:

28-B Promotion by selection on basis of merit

(1) Appointment by promotion to posts in the Service shall be made by selection strictly on the basis of merit and on the basis of seniority-cum-merit in

proportion of 50:50.

Provided that if the appointing authority is satisfied that suitable persons are not available for appointment by promotion strictly on the basis of merit in a particular year appointment by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these rules.

(2) Selection strictly on the basis of merit shall be made from amongst persons who are otherwise eligible for promotion under these rules; the number of eligible candidates to be considered for the purpose shall be ten times the total number of vacancies to be filled in on the basis of merit and seniority-cum-merit provided such number is available; where the number of eligible candidates exceeds ten times the number of vacancies, the requisite number of senior-most persons shall be considered for the purpose.

(3) Except as otherwise expressly provided in this rule the procedure prescribed for selection to the post on the basis of seniority-cum-merit shall, so far as may be followed in making selection strictly on the basis of merit.

(4) The Committee shall prepare a separate list of candidates selected by it on the basis of merit and shall arrange their names in order of preference.

(5) Where consultation with the Commission is necessary the list prepared by the Committee shall be forwarded to the Commission by the appointing authority along with the personal files and confidential rolls of all persons whose names have been considered by the Committee.

(6) The Commission shall consider the lists prepared by the Committee along with other documents received from the appointing authority and unless any change is considered necessary, shall approve the lists and if the Commission considers it necessary to make any change in the lists received from the appointing authority the Commission shall inform the appointing authority of the changes proposed and the appointing authority, after taking into account the commences, if, any, may approve the lists finally with such modifications, as may in his opinion, be just and proper.

(7) Appointment shall be made by the appointing authority taking persons out of the list finally approved under the proceeding sub-rule in the order in which they have been placed in the list.

(8) Among persons appointed in the same class, category or cadre of posts during the same year, persons appointed on the basis of seniority-cum-merit shall rank senior to those appointed by promotion on the basis of merit; the seniority inter se of persons appointed in the same class, category or grade of posts by promotion strictly on merit, shall, without regard to the order of preference, be determined as if such persons had been appointed by promotion on the seniority-cum-merit.

(9) The provisions of this rule shall have effect notwithstanding anything to the

contrary contained in any other provisions of these rules.

Explanation:-For the purpose of determining the number of vacancies to be filled on either basis under Sub-rule (1), the following cyclic order shall be followed from year to year.

The first by merit.

The next by seniority-cum-merit.

The next by merit.

The next by one by Seniority-cum-Merit

The cycle to be repeated.

31. By the same notification of December 14, 1965 Sub-rule (2) of Rule 27 was deleted. On January 7, 1966, a further amendment was made to the rules by deleting Sub-rules (2) to (6) of Rule 28. It will be seen that under the new Rule 28B, promotion to posts in the service is to be made by selection on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50. Sub-rule (2) provided for the manner of selection on the basis of merit. Under Sub-rule (3) procedure prescribed for selection to the posts on the basis of seniority-cum-merit has to be followed as far as possible in making selection strictly on the basis of merit. On August 26, 1966 by a notification certain amendments were made in Rule 28B. Under Sub-rule (1) of Rule 28B, the original proportion of selection on the basis of merit and on the basis of seniority-cum-merit was altered and the proportion was fixed as 1:2. A proviso was also added to Sub-rule (2) of Rule 28B, which is as follows:

Provided that for the first Promotion in the same cadre (from a lower grade to higher grade) against the merit only such of the persons shall unless a higher period is prescribed elsewhere in these rules be eligible who have put in not less than six years of service in the lower grade of the cadre.

32. On September 8, 1966, the old Rule 32 was substituted by a new rule dealing with the appointment to Senior Posts. The said new Rule 32 runs as follows:

32(1) Appointment to senior posts:

Appointment to Senior scale and selection grade posts shall be made by Government from amongst the members of the service on the basis of merit and seniority-cum-merit in the ratio of 1:2 on the recommendations of a Committee which shall consists of the following:-

(1) Chairman, Rajasthan Public Service Commission, or a Member nominated by him. Chairman. (2) Chairman, Board of Revenue Member. (3) Commissioner, Development Department. Member. (4) Special Secretary to Government in the Appointments Department. Member. Secretary.

(2) Except as provided in this rule, the procedure and the principles for selection by merit, shall, in so far as it may apply, be the same as provided in Rule 28B. For selection by seniority-cum-merit, the Committee shall consider the cases of all the persons eligible for promotion by examining their confidential Rolls and Personal files and interviewing such of them as may deem necessary and shall select a number of candidates equal to the number of vacancies likely to be filled by promotion by seniority-cum-merit:

Provided that Government may fill a vacancy in the Senior scale or selection grade posts temporarily by appointment thereto for a period not exceeding six months in an officiating capacity, any member of the service who is eligible for such appointment under the rules.

33. This new rule was also incorporated to give effect to the Government's decision taken in 1965 to introduce the system of recruitment to the service by promotion on the basis of merit, as a result of which Rule 28B was earlier incorporated. Rule 32 really deals with appointments to Senior Posts; and under the old rule the promotion was to be on the basis of seniority-cum-merit. That is altered under the new rule to promotion on the basis of merit and seniority-cum-merit and the proportion is also 1:2 as already laid down by the amendment made on August 26, 1966. Sub-rule (2) of new Rule 32, as will be seen, provides for the procedure and the principles for selection by merit being the same as provided in Rule 28B. Therefore, it will be seen that the position as it stood at the time when promotions of the various respondents in the appeal and in the writ petitions were made was:

(1) the promotions had to be made on the basis of merit and seniority-cum-merit in the ratio of 1:2 as provided by Rule 32 read with Rule 28B;

(2) under the proviso to Sub-rule 2 of Rule 28B the minimum period of eligibility for being considered for the first promotion is six years of service in the lower grade of the cadre;

(3) under Sub-rule 2 of Rule 28B the selection for promotion is restricted only to officers eligible for promotion under the rules coming within ten times the total number of vacancies to be filled up on the basis of merit and seniority-cum-merit;

(4) under Rule 32 appointments to Senior scale and Selection cadre posts are also on the basis of merit and seniority-cum-merit in the ratio of 1:2, and

(5) recommendations for appointments and promotions are to be made by the Committees concerned.

34. It is the grievance of the appellant and the writ petitioners that the combined effect of the addition of Rule 28B and the deletion of Sub-rule (2) of Rule 27 and Sub-rules (2) to (6) of Rule 2B is that although a provision has been made for recruitment to the service by promotion on the basis of "merit alone", no criteria for assessing the merit and suitability of the candidates have been provided in the rules as they stand. In fact their further contention is that Sub-rule (2) of

Rule 27 had laid down the various criteria for considering the suitability of a candidate and Sub-rules (2) to (6) of Rule 28 had dealt with the procedure for selection of such candidates. When once these sub-rules have been deleted there is no guidance whatsoever furnished by the rules, as they now stand, for assessing the merit. Further, the restriction placed under Rule 28B that only candidates coming within 10 times the number of vacancies that have to be filled up will be considered for selection and the further restriction therein that for the first promotion six years' service is essential, are violative of Articles 14 and 16. Rule 32, according to Mr. Garg, does not also lay down any guidance or principle for assessing the merit of candidates for promotion to Senior posts.

35. We are not inclined to accept these contentions of Mr. Garg. We have already referred to the fact that the learned Single Judge, in the writ petition leading up to the civil appeal, is of the view that Rule 28B and 32 do not offend either Article 14 or 16. But the learned Judge is of the view that as there is a restriction placed upon the number of officers whose claims could be considered, under Sub-rule (2) of Rule 28B. that part of the sub-rule was invalid as offending Article 16. As the said part cannot be separated, according to the learned Judge, from the other parts of the sub-rule, the whole of Sub-rule (2) of Rule 28B was struck down. The Division Bench, on the other hand, has disagreed with this view of the learned Single Judge and has upheld the validity of the entire Sub-rule (2) of Rule 28B. We are in agreement with the views expressed by the Division Bench that Rule 28B and 32 do not offend either Article 14 or 16.

36. Nor are we impressed with the contention of Mr. Garg that there is no principle laid down in the rules for assessing the merit of an officer especially after the deletion of Sub-rule (2) of Rule 27 and Sub-rules (2) to (6) of Rule 28. No doubt Sub-rule (2) of Rule 27 enumerated certain factors or matters to be taken into account in selecting candidates for promotion. Sub-rules (2) to (6) of Rule 28, no doubt also dealt with certain aspects of procedure to be adopted for promotion. The deletion of those sub-rules, in our opinion, does not make the Rules 28B and 32 in any manner invalid. We have already extracted the relevant rules and also pointed out that the selection or promotion is to be considered by the Committees referred to therein. It is no doubt argued by Mr. Garg that introduction of the idea of merit in the procedure of promotion brings in an element of personal evaluation and such personal evaluation opens the door to the abuse of nepotism and favouritism. Hence it is argued that there is a violation of the Constitutional guarantee under Articles 14 and 16.

37. We are unable to accept this contention. The State Government has taken a decision in 1965 that selection to the service and promotion have to be on the basis of merit and seniority-cum-merit. There can be no controversy that the main object in such matters is to serve public interest and not the personal interest of the members of the official croup concerned. As stated by Leonard D. White in his Introduction to the Study of Public Administration, 4th Edition p. 380: "The Public interest is best secured when reasonable opportunities for

promotion exist for all qualified employees, when really superior civil servants, are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment."

38. The above statement has been quoted with approval by this Court in *Sant Ram Sharma Vs. State of Rajasthan and Another*, . We may also point out that the Administrative Reforms Committee has also emphasised that merit should be given adequate weightage in the matter of promotion especially for senior appointments to ensure greater efficiency in government functioning and also to provide adequate incentive to government servants to give their best.

39. Rule 32 in essence adopts what is stated in Rule 28B. The latter rule provides for two methods of selection: one based on merit and the other based on seniority-cum-merit. In other words, the rule provides that the promotion based on merit in contradistinction to that based on seniority-cum-merit shall strictly be on the basis of merit. The Selection Committee and the Promotion Committee consist of very responsible and senior officers of the State and being persons of experience they can be trusted to evaluate the merits of a particular officer. No doubt the term 'merit' is not capable of an easy definition, but it can be safely said that merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his Character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters, or factors such as his punctuality in work, the quality and outturn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public and his rank in the service. We are only indicating some of the broad aspects that may be taken into account in assessing the merits of an officer. In this connection it may be stated that the various particulars in the annual confidential reports of an officer, if carefully and properly noted, will also give a very broad and general indication regarding the merit of an officer. Therefore, it cannot be stated that Rule 28B and 32 are in any manner vague or do not give any guide line for assessing the merit of an officer. No doubt Sub-rule (2) of Rule 27 dealt with certain factors which are to be taken into account for considering the claims for promotion, but when it comes to a question of merit, not only those factors but also certain additional factors and circumstances will have to be taken into account and such an evaluation of merit has been left under the rules to a Committee consisting of responsible, senior and experienced officers of the State.

40. We are also not impressed with the contention that Rule 28B(2) and its proviso confining the selection to senior-most officers not exceeding ten times the number of total vacancies to be filled up and the further restriction regarding the eligibility of officers who have put in at least six years of service for first promotion offend Article 16 of the Constitution. In this respect also we agree with the views expressed by the Division Bench of the Rajasthan High Court in

D.B. Special Appeal No. 57 of 1968, The restriction contained in the proviso to Sub-rule (2) of Rule 28B in our opinion, is quite reasonable. Before an officer in the Junior scale can be considered as fit for promotion to the Senior scale, it is necessary that he should have worked on a post in the Service at least for some period of time. As to what quantum of that period must be is not for this Court to lay down. The Government has fixed this period as six years. We are not in a position to say that it is an improper restriction. The provisions contained in Sub-rule (2) confining the selection to senior-most officers not exceeding 10 times the number of total vacancies is also, in our opinion, reasonable. Such a provision will encourage the members of the service to aspire for promotion for making themselves eligible by increasing their efficiency in the discharge of their duties. We are of the view that Rule 28B and 32 do not offend either Article 14 or 16 of the Constitution.

41. Now coming to the Circular dated August 27, 1966, we find it difficult to agree with the view of the Division Bench of the Rajasthan High Court. On the other hand, we are inclined to agree with the decision of the learned Single Judge in Writ Petition No. 79 of 67. The contention of Mr. Garg is that the Circular by executive instructions has abridged or curtailed drastically the exercise of discretion by the Departmental Promotion Committee constituted under the rules. In fact his plea is that the circular has superseded the statutory rules framed under the proviso to Article 309. On the other hand, it is the contention of the learned Solicitor-General, appearing for the State and of Mr. B. Sen, learned counsel appearing for some of the respondents, that the Circular has not in any manner interfered with the powers of the Committees constituted under the Rules. On the other hand, in order to bring about uniformity in the application of the principles for assessing the merit the marking system which has been in vague from 1960 has been adopted with slight modifications in the Circular of 1966. The instructions contained in the Circular only provide guidance to the Committees concerned and those instructions do not in any way contravene any of the rules.

42. Before we deal with this aspect, we can dispose of a subsidiary contention that has been raised by Mr. Garg. According to him the circular has been issued by the Chief Secretary as the Head of the Service and it is not an order of the Government. This has been accepted by the State Government. If so, it follows that the Circular is illegal and void. We have already referred to the stand taken by the State Government in this regard. They have specifically taken the stand that the circular has been issued by the Chief Secretary as the Head of the Service. Before the Division Bench in the High Court when this matter was again raised by the appellant, it is seen that an application for amending their counter-affidavit was made by the State to make the position clear that the Circular was issued with the approval of the Government. As pointed out by the Division Bench there is some confusion in this regard. But ultimately the Division Bench has stated that they themselves have gone through the Cabinet file and the notes and satisfied themselves that the Circular has been issued with the

approval of the Government. Therefore it follows that the Circular is an order of the Government and not of the Chief Secretary alone.

43. Then the question is whether the Government is competent to issue the said Circular and whether the Circular in any manner effects the discretion and powers of the Committee functioning under the statutory rules. The position is clear, as laid down by this Court in *Sant Ram Sharma Vs. State of Rajasthan and Another*, :

It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

44. Having due regard to the principles stated above, we will now examine the scope and contents of the Circular. The Circular contains administrative instructions and it does not profess to lay down anything else. The Government have issued those instructions "for the guidance of all selection/promotion committee and appointing authorities mentioned in the statutory service Rules. These administrative instructions and the statutory service Rules should together be taken as a complete code on the subject."

45. From the above extract it is clear that in the matter of selection or promotion the Committees concerned are enjoined not only to have regard to the statutory rules under which they function, but also to the administrative instructions given in the Circular. This makes it very clear that it is not open to the Committee concerned to ignore the instructions contained in the Circular or to act contrary to the directions contained therein. Therefore, it will be seen that if the Circular or any part of it gives instructions contrary to or opposed to any of the rules, the Circular or that part of the Circular to that extent will be invalid. In particular we may refer to paragraphs 3 and 5 of the Circular. Paragraph 3 deals with the merit formula and is as follows:

3(a) "Merit formula" means that out of 75 marks (marking system has been defined in paragraph 5), a person should get a minimum of 65 marks for consideration of his case for promotion among those who have secured 65 or more marks, the person who gets highest marks will be the first to be promoted, and the person who comes next in the range of marks will be the second to be promoted, and so on. The inter-se seniority of persons had been appointed in the same class, category or grade of posts by promotion strictly on merit shall without regard to the order of preference, be determined as if such persons had been appointed by promotion on the basis of seniority-cum-merit. This is illustrated by the following example:

Name of the No. of Seniority in the Officer Marks. next below grade. A 75 8 B 73 9 C 70 4 D 69 3 E 65 1

That if there are 5 vacant posts to be filled by promotion on the basis of 'merit'

formula the inter-se seniority of these 5 selected persons will be the same as in next below grade, but if only 3 posts are to be filled then those who have secured 75, 73 and 70 marks respectively will be selected and the remaining left out. The inter-se seniority amongst these selected shall be the same as the next below grade.

(b) The eligible candidates for promotion on the basis of 'merit' formula shall be 10 times the total number of vacancies to be filled by way of promotion provided such number is available and they should be holding the post in the next below cadre in substantive capacity. As for example, if there are twelve posts to be filled by way of promotion on the basis of both the formula (viz. four posts for merit and eight for seniority-cum-merit) the total number of eligible candidates for promotion on the basis of merit formula shall be 120. If available, if an officer could not secure 65 marks continuously for 5 years he will not be included in this list of eligible candidates.

(c) Notwithstanding anything contained in sub-para (b) above, for first promotion by merit, only such of the candidates shall be eligible who have put in six years service in the cadre on the date of selection.

46. Paragraph 4 of the Circular lays down what is "seniority-cum-merit" formula. The marking system which is applicable both to the selection based on 'merit' as well as to the "selection based on "seniority-cum-merit" is contained in paragraph 5. That paragraph reads as follows:

Para-5 The marking system will be as follows:

(a) Confidential Rolls for the 5 calendar years immediately 'preceding the date of selection will be examined. 5 marks will be ear-marked for each year's confidential Roll, and the marking will be:-Excellent report-5 marks; Very good report-4 marks; Good report-3 marks; Satisfactory report-2 1/2 marks; Unsatisfactory report-2 marks; Adverse report-1 1/2 marks; Adverse report with punishment 1 mark. If a person has been awarded either 'Merit Pay' or 'Cash award' by the Government, then the Committee may award him upto 5 more marks in addition to the marks already obtained by him. These additional marks will not be taken into consideration at the time of the next selection.

(b) The record of service, which means service book, personal file, and Confidential Rolls other than the Confidential Rolls of the 5 years immediately preceding the selection maintained after the formation of Rajasthan, will be allotted 50 marks, and the marking will be (a) average or satisfactory record-50 marks, and (b) deduction upto 2 marks for each punishment according to gravity may be made (no deduction will be made for mere warning, but where warning has been recorded in Confidential Roll, it should be considered as punishment and marks should be deducted). 'Recorded warning' means censure given by way of punishment under the C.C.A. Rules. If some marks have been deducted for any punishment out of 50 marks in any year of selection, then that deduction should not be repeated or counted in the next selection. Also if some marks have

been deducted from the Confidential Roll of a particular year, then that deduction should not be repeated or counted next time. That Confidential Roll should be considered satisfactory, and marks awarded accordingly, with a view to ensure implementation of this, it would be necessary for the promotion Committee to keep a record of such deductions and additional marks as the case may be.

(c) On the basis of above marking, only such persons who have secured a minimum of 6 1/2 marks out of the total of 75 marks will be considered for promotion on the basis of 'Seniority-cum-merit' formula. Thus, as has been mentioned earlier, even if a junior person secures more than 62 1/2 marks, the senior will not be superseded if he has secured 62 1/2 marks. Under the 'merit' formula those who have secured 65 marks or more will only be considered for promotion.

47. Paragraph 6 dealing with officers, who can be called for interview provides that a person who has secured less than 62 1/2 marks shall be called for interview. But persons who get less than 61 marks, should not be called for interview. It further provides that those persons whose confidential Rolls were missing or whose confidential Rolls could not be prepared in their absence for study or training outside India should also be called for interview.

48. Para 7 of the circular lays down that adverse remarks recorded in the Confidential Rolls should be communicated to the person concerned in time, so that he may get an opportunity to represent his case to the authority concerned. However, if by chance, adverse remarks have not been communicated to him, or if the adverse remarks have been communicated but his representation had not been decided by the appropriate authority, then in that event the person concerned should be called for interview by the selection or the promotion committee and before he is asked to appear for interview adverse remark should be communicated to him so that he could come prepared with what he has to say in the matter. It was left open to the selection or promotion committee to treat the adverse remarks as expunged and then award marks if it felt that the adverse remarks were not justified. It was clearly emphasised that normally efforts should be made to communicate the adverse remarks and to decide the representations before the selection committee meets.

49. In para 9 of the circular it was pointed out to all selection committees and appointing authorities that the assessment of confidential rolls and the awarding of remarks thereon should be rational, judiciously liberal and objective, the reason being that at times a confidential roll may have been written with a greater sense of responsibility and at other times it may not have been given due care. It was also observed by way of illustration that one officer might be liberal in the assessment of his subordinates while another may be a bit miserly or sometimes vindictive. It was, in order to have a balanced approach in the matter it might at time be worthwhile for the selection committee as also for the appointing authority to consider whether the reporting officers themselves enjoyed reputation for efficiency, impartiality and integrity.

50. Finally the circular pointed out that the instructions contained therein should be strictly kept in view while persons are being considered for promotion, the reason being that evaluation and assessment of confidential rolls make or mar the service prospects of government employees.

51. One gets a fairly good picture of the nature of the instructions contained in the circular issued by the Government. No doubt a properly evaluated marking system may be helpful for assessing the merit of persons who are already in service. But the instructions given in the circular are so rigid that they are opposed to the selection to be made strictly on merit as provided under Rule 28B and 32.

52. For instance the marking system provides 50 marks for the record prior to 5 years and for the five years preceding the selection the marking of 25 is to be on the basis of confidential rolls. From this it is clear that an officer who has rendered less than five years of service will not be eligible to get a single mark out of 50 which is provided for the record for the period preceding five years for the simple reason that he will have no such record. The officer who has put in less than five years of service has been straightaway denied 50 marks out of 75 marks and he has to establish his worth within the small range of 25 marks on the basis of his confidential rolls which will be available for a period of less than five years. This formula of marking is certainly opposed to Rule 28B and Rule 32, the object of which is to ensure that merit and merit alone is to form the basis for promotion, as against the quota fixed for merit, in contra-distinction to seniority-cum-merit.

53. Similarly, when one considers the question of first selection, the position is still more anomalous. An officer who has put in just six years of service will get 50 marks for his record of previous service which just exceeds five years by one year. Another officer will have to face the situation with a longer period of service. There can be no comparison of the claims of the two officers on merits. While the rules give a wide discretion to the Committee for judging merit, paragraphs 3 and 5 of the circular place undue restrictions and limitations on the exercise of discretion and thus fetter the powers of the Committee. That is opposed to Rule 28B and 32.

54. Similarly, in the matter of giving marks for excellent report, very good report, good report, satisfactory report, unsatisfactory report, adverse report and adverse report with punishment, the circular is arbitrary. It will be seen that 'an officer who has satisfactory report gets 2 1/2 marks, and another officer with an unsatisfactory report gets 2 marks. The officer with an adverse report gets 1 1/2 marks. We fail to see any rhyme or reason in this marking system.

55. Again, under the Rules the Committee concerned, has a discretion if it deems necessary to call for interview any person, whose claims are being considered by it. But this exercise of discretion is drastically curtailed by paragraph 6 of the circular laying down the circumstances under which a person, should or should

not be called for interview. The Committee under the said paragraph has only to mechanically apply the directions contained therein. This provision is again a serious inroad on the powers conferred on the Committees by the Rules.

56. We are not inclined to accept the view of the learned Judges of the Division Bench that the circular merely gives a broad guidance to the Committees concerned and that the instructions contained therein are elastic. Nor are we inclined to accept their reasoning that the Committees have still got discretion to ignore the directions contained in the circular and assess the merit of an officer by independent evaluation. No such indication is available, so far as we could see, in the circular. On the other hand, the indications are to the contrary. The circular enjoins the Committees to treat the administrative instructions and the statutory Service Rules together as a complete Code.

57. The object of the circular may be to bring about uniformity in the award of marks. But the directions contained therein do offend the rules. This is not a case of the government filling up the gaps or of giving executive instructions on matters not provided for by or not inconsistent with the rules. The learned Judges of the Division Bench of the High Court, have by and large, upheld the validity of the marking system as well as the other instructions contained in the circular of 1966 on the ground that the marking system as pointed out by the State has been in vogue from 1960, on the basis of a previous circular, dated August 31, 1960 issued by the State Government. Reliance placed upon this circular of 1960 by the High Court, in our opinion, is not justified. We have gone through the circular of 1960 which is No. F. 1(6) Appts. (D)/60 dated 31-8-1960. That circular was issued by the State to clarify the misapprehension that appears to have been caused in the application, for promotion of the principle of merit-cum-seniority or seniority-cum-merit. For the purpose of having uniformity, the State Government had laid down certain principles in the said circular to be borne in mind by the Promotion Committees. No doubt there is a marking system indicated therein. But there are two features which distinguish the circular of 1960 from that of the 1966 circular. In paragraph 3 of the former circular, it is specifically laid down that the principles mentioned therein are only in the nature of executive instructions to be kept in view by the Committees when making promotions. It is made clear that those Committees "should, however, exercise their own discretion while applying the above principles in view of the fact that occasionally the Confidential Rolls may not have been written with full sense of responsibility. Moreover, some of the rules permit interview before selection and in such cases the Selection Committee will have to assess suitability of the officer as a result of the interview also." Under the circular of 1966, we have already indicated, no such discretion is left to the Selection or Promotion Committees to adopt any method other than that indicated in the circular. In fact it is emphasised that the statutory service rules and the instructions contained in the circular are to be treated as a complete code by the Committees. Another point to be noted is that in 1960 the question of promotion on the basis of merit alone had no place. That principle was adopted only, as

pointed out by us earlier, in 1965 which led to the amendment of the rules. Therefore, the principles mentioned in the circular of 1960 cannot be relied on when considering the validity of the present circular, when promotion by merit alone has been recognised by the rules from 1965. We have already indicated that the instructions in the 1966 circular contravene the Rules. Therefore, we are of the opinion that the circular dated 27-8-1966 is bad and accordingly it is struck down. We make it clear that we express no opinion on the validity or otherwise of the circular of 31-8-1960. We have only referred to that circular to show that the High Court has committed an error in placing reliance on the same.

58. Now, coming to the promotions and confirmations made under the orders dated January 4, 1967, January 22, 1970 and February 21, 1970, we are not inclined to disturb those orders except to the extent indicated below in respect of the promotions of respondents Nos. 2 to 4 in Civil Appeal No. 1815 of 1970 under the first order dated January 4, 1967 and their confirmation, by the second order dated January 22, 1970.

59. Writ Petitions Nos. 76 and 139 of 1970 have been filed in this Court only after the judgment dated January 20, 1970 of the High Court in D.B. Special Appeal No. 57 of 1968. The petitioners must have been aware that the appellant was challenging only the promotions of four officers in his writ petition in the High Court. Nevertheless, they kept quiet and allowed the officiating promotions of all the officers to stand from 1967 and even kept quiet till the government confirmed the promotion of those officers on January 22, 1970. So far as the writ petitioners are concerned, the State must be considered to be justified in passing the order dated January 22, 1970, on which date the High Court's judgment was in its favour. We are entitled to take this circumstance into account for denying the larger reliefs claimed by the writ petitioners when they attack the orders dated January 4, 1970 and January 22, 1970.

60. We have referred earlier to the various orders that are being challenged in these writ petitions, apart from the attack on Rule 28B and 32. Under the order dated January 22, 1970, the officers who had been promoted to officiating posts in the senior scale in January 4, 1967 have been confirmed. We have held earlier that these orders cannot be reopened at the instance of these writ petitions. Another set of officers, who had been selected earlier, were appointed by promotion to the senior scale post by the order dated February 21, 1970. We are holding later that no relief can be granted to the concerned writ petitioner even regarding this order.

61. So far as respondents Nos. 2 to 4 in the Civil Appeal No. 1815 of 1970 are concerned, we are giving separate directions, regarding the reconsideration of their promotion and confirmation, along with the appellant in the appeal. The fact that the respondents Nos. 2 to 4 in the civil appeal have been confirmed on January 22, 1970 after the decision of the High Court in favour of the State and those officers is of no consequence, so far as the appellant is concerned, if their original officiating promotion on January 4, 1967 requires reconsideration by the

Government. Their confirmation will stand or fall depending on the final decision of this Court regarding the order dated January 4, 1967.

62. The appellant in the civil appeal is not challenging the officiating promotions or confirmation made of the officers other than respondents Nos. 2 to 4 in the appeal. Hence the promotions given and confirmations made of the other officers under orders dated January 4, 1967 and January 22, 1970 respectively should be allowed to stand. It is also seen that the order dated February 21, 1970 was passed by the State Government, after the order of stay was vacated by the High Court. The State Government, as pointed out earlier, was justified in passing the order dated January 22, 1970 except regarding respondents Nos. 2 to 4 in the appeal, on the basis of the Division Bench judgment of the High Court which had upheld the validity of the rules and the circular. The same reasoning will apply to the order of February 21, 1970 also. Therefore, the petitioner in writ petition No. 139 of 1970, who alone is challenging this order, will not be entitled to have that order reopened. Thus both the writ petitioners will be only entitled to have a declaration that the circular dated August 27, 1966 is invalid and that it is struck down. They are not entitled to any further reliefs in the writ petitions.

63. In the civil appeal Guman Singh, the appellant has raised a contention that promotions of respondents Nos. 2 to 4 were made on January 4, 1967 on the basis of illegal rules and invalid circular. He has further contended that the Promotion Committee which met in September, 1966 has taken into account the adverse remarks made against him which were not justified and which were not communicated to him. We have already expressed our views upholding the validity of the rules and the invalidity of the circular. In support of the contention that adverse remarks were taken into consideration by the Committee, he relied upon the following circumstances: The Deputy Commissioner has written a letter dated April 28, 1966 strongly appreciating his services as an officer. While so, it is a matter of surprise that adverse remarks came to be made in September, 1966. The nature of the adverse remarks has been referred to by the Division Bench. It is admitted by the State that the Promotion Committee had met in the end of September, 1966 and made recommendations regarding the officers who are to be promoted. It is also admitted by the State Government that the confidential rolls of all the officers were before the Selection 'Committee. They have not denied that the circular was not taking into account by the Committee. On the other hand, they have impliedly accepted that the circular was before the Committee at the time of considering the promotions. According to the appellant adverse remarks were communicated to him only on May 11, 1967, long after the decision of the Promotion Committee. Hence the Committee has illegally taken into consideration the adverse remarks made against him and has denied him promotion on that account. His contention is that after the adverse remarks were communicated to him, long afterwards he made representations and the adverse remarks were directed to be expunged. In this connection, learned counsel relied upon the counter-affidavit filed in this Court on behalf of the State in writ petition No. 76 of 1970 to the effect that the adverse entries in the

confidential rolls of Shri Guman Singh, the appellant, were expunged on his representations. Therefore, according to the appellant, his claims for promotion have not been properly dealt with by the promotion Committee.

64. The allegation of the appellant in his writ petition that the promotion Committee had taken into consideration the adverse remarks, when it met in September, 1966, does not appear to be unfounded, however, as we are giving directions for reconsideration of the appellant's claims for promotion, if otherwise he is eligible under the Rules, we do not express any opinion on this aspect as facts have to be investigated.

65. The learned Judges of the Division Bench have brushed aside the grievance of the appellant regarding this matter by observing that as the Departmental Promotion Committee is not a party to the proceedings, the question whether the Committee took into account the adverse remarks said to have been made against the appellant, cannot be gone into in these proceedings. This approach made by the learned Judges does not appeal to us. The Government, which is the appointing authority, was a party before the High Court. It must have had before it, when it passed the orders on January 4, 1967, all the records regarding promotion. It was the duty of the State Government to place before the High Court all the materials available before it to enable the Court to consider whether the grievance or the appellant was justified or not. The appellant had made a specific grievance in his writ petition about the uncommunicated adverse remarks having been taken into account by the Committee. The Government could have obtained a report or an affidavit regarding the true facts from a responsible officer of the Committee and placed it before the High Court. Anyhow, as mentioned earlier, it is not necessary for us to pursue this aspect further except to point out that we do not agree with the reasoning of the High Court in this regard. The High Court has also declined to interfere with the order dated January 4, 1967 as it upheld the validity of Rule 28B and 32 as well as the circular of August 27, 1966. Though we are upholding the validity of the two rules, we disagree from the High Court's view regarding the validity of the circular. We are also giving separate directions regarding the order dated January 4, 1967.

66. We are, accordingly of the opinion that so far as the appellant (in the civil appeal) and respondents Nos. 2 to 4 are concerned, the officiating promotions made of the latter officers on January 4, 1967 as well as their confirmation by order dated January 22, 1970 will have to be reviewed and reconsidered by the Departmental Promotion Committee and the Government. It is needless to state that the circular dated August 27, 1966 should not be taken into consideration. The claims of the appellant and respondents Nos. 2 to 4 in the appeal will have to be considered only on the basis of the Rules. We also make it clear that a reconsideration of the claims of the appellant and respondents Nos. 2 to 4 will be necessary, only if the appellant, is found, in the first instance, to be eligible as per the Rules for being considered for promotion. His eligibility is to be decided

with reference to the date when the Departmental promotion Committee met in September, 1966 for considering promotion. This direction becomes necessary as we are upholding the validity of Rules 28B and 32. If ultimately, respondents Nos. 2 to 4 are found eligible for promotion under the rules, they will retain their rank on the basis of promotion given to them on January 4, 1967. If not, suitable alterations will have to be made both in this order as well as in the order of January 22, 1970. Once again we are emphasising that the fact that the respondents Nos. 2 to 4 have been confirmed on January 22, 1970, is of no consequence because if their original promotion on January 4, 1967 is not valid, their confirmation on January 22, 1970 will not have any greater sanctity. Of course, if on reconsideration they are found eligible for promotion, their confirmation and rank given to them will stand.

67. The allegations of mala fides made by the appellant against the State have been, in our opinion, rightly rejected by the Division Bench. Mala fides were alleged against the State in amending the Service Rules from time to time and the delay in making promotions on the ground that they were all done with a view to help the son-in-law of the Chief Minister and the other officers who were relations of persons in the good books of the Chief Minister. The same allegations have been repeated in the two writ petitions also. Those allegations have been denied by the State. For the reasons given by the Division Bench, with which we agree, we have no hesitation in rejecting the allegations of mala fides made by the appellant in the appeal and in the writ petitions.

68. In the appeal and the writ petitions we hold that Rule 28B and 32 are valid and that the circular dated August 27, 1966 is struck down as illegal and invalid. In the writ petitions there will be only a declaration that the circular dated August 27, 1966 is invalid and that it is struck down. In other respect both the writ petitions will stand dismissed. There will be no order as to costs.

69. So far as the appeal is concerned there will be a further order at subject to the observations contained in this judgment a direction will issue to the first respondent, the State to instruct the Departmental Promotion Committee to review and reconsider the promotions already given to respondents Nos. 2 to 4 in the appeal under the order dated January 4, 1967 and to decide their claims afresh only on the basis of the Rules. If the appellant is found eligible for being considered for promotion under the Rules, his claim also will have to be considered along with that of the respondents Nos. 2 to 4. No directions are necessary regarding respondent No. 5 as he is already dead. Depending on the fresh recommendations, any, made by the Departmental Promotion Committee, the first respondent, will also make any modifications that may be found necessary in the orders dated January 4, 1967 and January 21, 1970. The modifications, if any, will be confirmed only to the appellant and the respondents Nos. 2 to 4 as the appellant is not challenging the promotions given to other officers under the said two orders. If ultimately respondents Nos. 2 to 4 are found eligible for promotion and the appellant is not found eligible, the rank

given to those respondents will remain the same as is now due to them as per the orders dated January 4, 1967 and January 21, 1970. Otherwise, suitable alterations will have to be made.

70. Pending the review and reconsideration, ordered as above, and which must be done as expeditiously as possible, and depending upon the result of the same, the promotion already given to respondents Nos. 2 to 4 to the senior scale will continue to be in force.

71. In the result the order and judgment of the Division Bench of the High Court upholding the validity of the circular dated August 27, 1966 and declining to interfere with the order dated January 4, 1967 so far as the appellant and respondents Nos. 2 to 4 are concerned are hereby set aside and the appeal allowed to that extent.

72. Parties will bear their own costs throughout.