

(2008) 04 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No. 33696 of 2007

Jawahar Santhakumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(1)
Administrative Service (Recruitment) Rules, 1954 — Rule 4(2), 8(1), 9
Administrative Tribunals Act, 1985 — Section 5(1)
Constitution of India, 1950 — Article 14
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 39

Citation : (2008) 5 MLJ 994

Hon'ble Judges : K. Suguna, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Vijayanarayan, for P.V.S. Giridhar Associates, for the Appellant; K. Sridhar, for R. 2 and Dhandapani, Spl. G.P. For R. 3, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—The petitioner was directly recruited as the Deputy Collector by the Tamil Nadu Public Service Commission in the year 1985. It is seen from the materials placed on record that when the juniors of the petitioner, including Mr.N.Mathivanan, the 4th respondent herein, were promoted to the grade of District Revenue Officer (DRO) w.e.f. 25.1.1995, without promoting him, he filed O.A. No. 1 69 of 1995 before the Tribunal, praying to consider his name for inclusion in the panel of District Revenue Officers for the year 1994, without reference to the adverse remarks and censure suffered for him in 1988.

2. The Single Member of the Tribunal, by the order dated 7.2.1995 has allowed the said O.A. and directed the Government to consider the claim of the petitioner for inclusion of his name in the panel of District Revenue Officers for 1994-95, without reference to the belated order of censure passed on the petitioner. Thereupon, the Government filed Review Application No. 70 of 1995 before the

Tribunal, challenging the competency and jurisdiction of the single Administrative Member in deciding the matter, after the Chairman demitted the office, quoting Section 5(1) of the Administrative Tribunals Act, 1985 and a judgment of this Court in a Writ Petition, holding that such orders passed by a single Member of the Tribunal are illegal since in terms of Section 5(1) of the Administrative Tribunals Act, the Tribunal must consist of a Chairman and other members and that a single member cannot function unless he is authorized by the Chairman. In the said Review Application, the Government also questioned the finding that adverse remarks and punishment of censure need not be a bar for inclusion of the petitioner's name in the panel. It was also contended that the petitioner suffered the punishment of "censure" and had adverse remarks and hence he was "not found fit" by the Government to be included in the panel of District Revenue Officers for 1994-95. The Tribunal by the order dated 8.12.1995 directed that the orders "to consider the claim without reference to the order of censure is deleted". As against the said order of the Tribunal, the petitioner filed SLP No. 6059 of 1996 before the Honourable Supreme Court and the Honourable Supreme Court, by the order dated 26.8.1996 in Civil Appeal No. 1 1025 of 1996, has remitted the matter back to the Tribunal for its disposal on merits and in accordance with law. On such remittal, the Tribunal, by the order dated 26.6.2002, in Review Application No. 70 of 1995, has observed as follows:

3. Therefore, the fact that the applicant has suffered a punishment by way of censure cannot be ignored and no direction can be given to the respondents to include the name without considering the punishment. Punishment of censure will have an effect and will be in currency only for a period of six months. The Administrative Member also has referred to the currency for the punishment of censure as six months and this is not refuted by the Government. The respondents have not produced any rule or G.O. to show that the currency of punishment of censure will be for more than six months. Therefore, the applicant also has not challenged the punishment of censure imposed on him and the punishment of censure has to be taken into consideration for the purpose of deciding as to whether the name of the applicant could be included in the list for 1993-94. The order of punishment of censure is dated 24.6.1993. This punishment will be in currency for six months so that the applicant cannot be considered for promotion or inclusion till 24.12.1993."

5. ... No doubt, the performance of the applicant during the check period of five years should be considered as a whole and the only adverse remark found during this period is the following:

Satisfactory with short-comings

The Reporting Officer is the then District Collector, Chengalpattu, under whom the applicant was serving as R.D.O., Saidapet. The period under review for this adverse remark is only from 1.1.1989 to 15.2.1989. But, at the same time, the respondents cannot dispute the very good remarks passed by the succeeding reporting officers for the same check period. Uniformly, all the subsequent

reporting officers have commended on the performance of the applicant as very good for two periods and outstanding for six periods. Moreover, the adverse remark relied upon by the State now is only to the following effect, "Satisfactory with short-comings". We are at a loss to understand as to how this can be taken as an adverse remark, because the Officer has stated that his performance is satisfactory with short-comings. Anyhow, in view of the subsequent assessments made by more than six reporting officers, the first remark, if we can call it as an adverse remark, cannot stand in the way of including the applicant's name for the panel 1993-94. We are also now informed that even though the name of the applicant was included in the panel 1994-95, which was actually prepared in October, 1995, whereas persons whose names were included in the panel for 1994-95 were all promoted early and they are juniors to applicant....

3. With such categorical observations and findings, the Tribunal, has ultimately ordered that "the applicant is deemed to have been included in the panel for 1994-95 and he is further deemed to have been promoted according to his due seniority from the date on which his immediate junior was promoted." There is no dispute to the fact that this order of the Tribunal has become final.

4. The case of the petitioner is that even though the Tribunal has passed the order as early as on 26.6.2002 and the same has also become final, and in spite of his repeated representations and appeals, the Government has not implemented the orders of the Tribunal and after a delay of 3 years, the Government has issued G.O.Ms. No. 924 Public (Special-A) Department, dated 5.9.2005 wherein it has been directed as follows:

4. The Government therefore, direct that the name of Thiru Jawahar Santhakumar, District Revenue Officer be included in the panel of District Revenue Officer for the year 1994 published in the G.O. first read above as S. No. 1 0A below Thiru R.Venkatesan (Sl. No. 1 0) and above Thiru N.Mathivanan (Sl. No. 1 1) and temporarily promoted as District Revenue Officer under General Rule 39(a)(i) of the Tamil Nadu State and Subordinate Services notionally with effect from 25.1.1995 i.e. the date of appointment of his junior viz., Thiru N.Mathivanan promoted to the grade of District Revenue Officer.

5. Now, the grievance of the petitioner is that in the meanwhile, several of his juniors were considered for promotion to the Indian Administrative Service (IAS) and two of them i.e. the fourth and fifth respondents herein were promoted by the order dated 20.5.2005, to the I.A.S. for the three vacancies which arose for the year 2004 by a Selection held on 18.12.2004, but, no review DPC was conducted for considering his promotion to the IAS afresh, following alteration of his original seniority. Therefore, he filed O.A. No. 749 of 2006, challenging the order dated 20.5.2005 promoting the respondents 4 and 5 to the IAS and seeking to direct the respondents 1 to 3 to convene Selection Committee for reviewing the promotions made to the IAS for the vacancies of the year 2004 and consider him for promotion thereto, with all consequential benefits. The Tribunal, holding that there is no irregularity committed by the Committee in

making the relative assessment or any violation of rules or non-application of mind or discriminatory approach, has dismissed the said O.A. filed by the petitioner. Aggrieved, this writ petition has been filed by the petitioner.

6. The consistent stand of the respondents 2 and 3 herein is that the name of the petitioner was also considered by the Selection Committee, which met on 18.12.2004, along with other DROs for promotion to IAS as per the relevant rules and regulations in the matter and while his name was considered, he was junior to respondents 4 and 5. It is also contended that the Selection Committee for the year 2004 considered his case and assessed him only as "good", whereas his juniors the respondents 4 and 5, were assessed as "very good" and included in the select list of 2004 and it cannot be said that due to non-inclusion of his name in the 1994 DRO panel, he was not appointed to IAS, since even if he has been included in the 1994 year panel of DROs, based on the orders of the Tribunal and his seniority revised, the assessment of the Committee will not change and thus the change of seniority in DRO grade will not alter the assessment of the Committee and would pray to dismiss the writ petition.

7. We have heard Mr.Vijaynarayanan, learned senior counsel appearing for the petitioner, Mr.K.Sridhar, appearing for the Union Public Service Commission and Mr.Dhandapani, Special Government Pleader, appearing for the Government of Tamil Nadu and perused the materials placed on record.

8. There is no dispute regarding the fact that the Tribunal, by the order dated 26.6.2002 has held that "the applicant is deemed to have been included in the panel for 1994-95 and he is further deemed to have been promoted according to his due seniority from the date on which his immediate junior was promoted." There is also no dispute regarding the fact that this order of the Tribunal has become final.

9. When the Tribunal, by the judgment dated 26.6.2002, rendered in the R.A. No. 70 of 1995 filed by the Government as against the order of the Tribunal in O.A. No. 1 69 of 1995 has ultimately ordered that the petitioner is deemed to have been included in the panel of DRO for 1994-95 and further he is deemed to have been promoted as DRO according to his due seniority from the date on which his immediate junior was promoted, and when the said judgment of the Tribunal has become final, the Government, in spite of repeated representations by the petitioner from the year 2003 onwards, has not bothered to implement the same in a reasonable time. But, at last, has issued G.O.Ms. No. 924 Public (Special-A) Department, dated 5.9.2005, with a long delay of 39 months, by which time, the juniors of the petitioner were promoted to the next cadre i.e. IAS. Though no time limit was fixed by the Tribunal in its order dated 26.6.2002 in R.A. No. 70 of 1995, to comply with its directions, when the said order of the Tribunal has become final, in all fairness, the Government should have implemented the order of the Tribunal, within a reasonable time. Instead, it has slept over the matter for more than 3 years, in spite of repeated appeals and requests by the petitioner, as could be seen from the materials placed on record.

No reason of any sort, has been offered on the part of the respondents for such a long delay in considering the representations of the petitioner, that too a direction of the judicial forum, which has reached finality, well to the knowledge of the Government. This dilatory tactic exhibited on the part of the Government, taking advantage of the fact that no time limit has been fixed by the Tribunal should be condemned, since the said direction has become final and such delay in action of the Government has prejudicially affected the petitioner, for no fault of him. This slackness or dilatory tactic exhibited on the part of the Government has costed the petitioner, depriving him of his due consideration for the promotion, when his juniors were considered and even promoted to the IAS. Such slackness exhibited on the part of the Government, in complying with the directions of a judicial forum, merely taking advantage of the fact that no time limit was fixed by the Tribunal, could not be pitted against him, so as to deprive him of his due and to pave way for his juniors to become his superiors. Such tendency should not be appreciated, at the cost of the rights of a genuine candidate.

10. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , Krishna Iyer, J., as His Lordship then was, commented that

Natural justice, though varying, is the soul of the rule as fair play in action. It extends to both the fields of judicial and administrative. The administrative power in a democratic set up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Good administration demands fair play in action and this simple desideratum is the fount of natural justice. Fairness is flexible and it is intended for improving the quality of government by injecting fair play into its wheels.

11. In *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, , the Honourable Apex Court has held:

Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time hallowed phrase "that justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. As Lord Pearson said in *Pearlberg v. Varty* (1972) 2 All ELR 6, fairness does not necessarily require a plurality of hearings or representations and counter-representations. Indeed, it cannot have too much elaboration of procedure since wheels of administration must move quickly.

12. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , a seven Judge

Bench of the Honourable Apex Court has held that "reasonableness and non-arbitrariness is part of Article 14 of the Constitution". It follows that the Government must act in a reasonable and non-arbitrary manner, otherwise Article 14 of the Constitution would be violated.

13. In *O. Konavalov Vs. Commander, Coast Guard Region and Others*, , it has been held by the Honourable Apex Court that "the State action is restrained by the principles of reasonableness, justice and fair play."

14. Thus, citations could be multiplied since there is fairly abundant case law regarding the fairness to be exhibited by the Government.

15. On direction by us, the files regarding the promotions to the IAS pertaining to the years 2002, 2003 and 2004 were submitted before us by the UPSC. We have gone through the said files and found that in all these proceedings, the petitioner has been considered only as a junior to Mr.N.Mathivanan in the category of District Revenue Officer.

16. It is seen from the records submitted before us that during the years 2002 and 2003, the Central Government in terms of Rule 4(2)(b) of the IAS (Recruitment Rules, 1954 read with Regulation 5(1) of the IAS (Appointment by Promotion) Regulations 1955 had determined the number of posts for recruitment by promotion as two and four respectively. For the said posts, for the select list of 2002, Mr. S. Murugaia and Mr. D. Vivekanandan were selected and for the year 2003, Mr. D. Uthirakkumaran, Mr. V.M. Xavier Chrisso Nagayam, Mr. P. Ekambaram and Mr. V. Chandrasekaran.

17. As could be seen from the said records, the Chief Secretary of the State, by the letter dated 8.12.2003, addressed to the Secretary, Union Public Service Commission, New Delhi, has stated that:

Similarly, Thiru Jawahar Santhakumar who is senior to Thiru N.Mathivanan, in the category of Deputy Collector was promoted on 20.12.1995 to the category of District Revenue Officer later than Thiru N.Mathivanan, on 25.1.1995 and therefore Thiru S.Jawahar Santhakumar is junior in the category of District Revenue Officer to Thiru N.Mathivanan.

18. Likewise, as could be seen from F. No. 6/18/2003-AIS, it has been mentioned:

....Similarly, Sh.Jawahar Santhakumar who is senior to Sh.N.Mathivanan in the category of Dy.Collector is junior in the category of District Revenue Officer to Sh.N.Mathivanan as he was promoted later....

19. These are just examples of many such communications, emanated from the Government officials, that too after the verdict of the Tribunal, dated 26.6.2002, wherein it has been consistently observed that the petitioner is junior to Mr.N.Mathivanan, though such position has already been clarified by the Tribunal, holding that he is senior to Mr.N.Mathivanan and his seniority should be fixed

appropriately. All such things happened only because of the slackness or lethargic attitude exhibited on the part of the Government and in giving a go-bye to the principles of fair play and non-arbitrariness, in giving implementation to a judgment of the legal forum, which has become final, thus causing unnecessary hardship to the petitioner. The non-fixation of the inter-se seniority, as has been directed by the Tribunal, within the reasonable time, besides other things, which we will discuss later, have prejudicially affected the case of the petitioner, in getting his due.

20. As this juncture, it is relevant to quote a Division Bench judgment of this Court delivered in W.P.Nos. 16712 to 16714 of 1997, dated 13.11.1997, relied on by the petitioner, wherein it has been observed as follows:

The Tribunal was of the view that their inter se placements as arrayed within the area or zone of consideration would necessarily have had an impact also on the method, nature and extent of consideration for assessment of merits and to what extent the same had influenced the mind of the select committee in so assessing the merits also could not be ascertained or postulated by the CAT and therefore, in the view of the Tribunal and in the light of the principles laid down by the Apex Court noticed in the order, the only justifiable course that was permissible and rightly adopted by CAT was to set aside the list with a direction to re-consider the same in accordance with law afresh, in the light of the revised inter se seniority position. This view of the Central Tribunal below could not be said to be either unreasonable or vitiated by any infirmity in law to call for our interference.

21. Even though, it has been vehemently argued on the part of the respondents, that under the rules, the seniority has no role to play, under the facts and circumstances of the case and in view of the above judgment of the Division Bench of this Court, we are able to see that seniority would also influence the process of selection.

22. When the petitioner's seniority was ordered to be re-fixed, and when such conclusion has reached its finality, for no reason offered, the authorities have "slowed down" the process of including his name in the appropriate place of seniority, and have taken 39 long months to implement the orders of the Tribunal, thus paving the way for the juniors of the petitioner to climb over him. For all the above discussions, we have no hesitation to hold that the Government has committed an illegality on the petitioner, by not implementing the orders of the Tribunal, within a reasonable time, which is expected of by it. Thus, had the petitioner been considered as a senior to Mr.Mathivanan, as has been held by the legal forum as early as on 26.6.2002, which has become final, and had the Government has revised the seniority list, as has been directed by the CAT, within a reasonable time, definitely, the petitioner's name would have been within the zone of consideration much earlier to the period when his junior's cases were under consideration for promotion to the IAS and would have had its own advantage in the process of consideration.

23. When the seniority of the petitioner was upheld by the legal forum, and when the authorities were directed to fix his seniority in the cadre of DRO, a manifest illegality was committed to the petitioner by the Government, in ignoring his name from being selected. On the contrary,, unfortunately, the Select Committee, have preferred Mr.T.K.Ponnusamy to select him provisionally to the IAS. It is seen that against the said Mr.T.K.Ponnusamy, criminal cases in Special C.C.Nos. 3, 4 and 5 of 2003 are pending trial before the Chief Judicial Magistrate, Villupuram relating to demand and acceptance of illegal gratification, while he was functioning as Special Officer, Kallakurichi Cooperative Sugar Mills Limited, besides a Vigilance and Anti-corruption proceedings for acquisition and possession of disproportionate assets to known sources of income, are pending. On the other hand, insofar as the petitioner is concerned, no such criminal cases were reported against him. When a person's seniority was ordered to be re-fixed, and when such conclusion has reached its finality, for no reason offered, the authorities have "slowed down" the process of including his name in the appropriate place of seniority, thus paving the way for the juniors of the petitioner to climb over him. From the perusal of the files, it is also seen that pursuant to the re-fixation of the seniority, as ordered by G.O.Ms. No. 924, dated 5.9.2005, no DPC was conducted, to consider the case of the petitioner.

24. Now, let us deal with the other part of the argument of the learned Counsel for the respondents that since the Selection Committee has assessed the petitioner only as "good", even if his seniority is revised, it will not alter the situation.

25. The Indian Administrative Service (Appointment by Promotion) Regulations, 1955, framed by the Government of India, in pursuance of Sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 govern the issue.

Regulation 5 the said Regulations, reads as follows:

Preparation of a list of suitable officers:

5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission:

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when,

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of

the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules:

Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso, as and when the Committee meets again, the select list shall be prepared separately for each year during which the Committee could not meet, as on the 1st December of each year;

(c) Explanation- In the case of joint cadres, a separate select list shall be prepared in respect of each State Civil Service;

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred in Sub-regulation (1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in Sub-regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Civil Service unless, on the first day of January of the year for which the Select List is prepared he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Provided also that in respect of any released Emergency Commissioned or Short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year for which the select list is prepared, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Explanation:- The powers of the State Government under the third proviso to this sub-regulation shall be exercised in relation to the members of the State Civil Service of a constituent State, by the Government of that State.

5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared

Provided that a member of the State Civil Service whose name appears in the Select List [prepared for the earlier year] before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included [provisionally in that Select List] shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty four years:

Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year for which the select list is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to Sub-regulation (1)

5(3A) The Committee shall not consider the case of such member of the State Civil Service who had been included in an earlier Select List and -

(a) had expressed his unwillingness for appointment to the Service under regulation 9:

Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the service;

(b) was not appointed to the Service by the Central Government under regulation 10.

5 (4)The Selection Committee shall classify the eligible officers as "Outstanding", "Very Good", "Good" or "Unfit", as the case may be, on an overall relative assessment of their Service records.

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as "Outstanding" then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of any officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the second proviso to Sub-regulation (1), the officer included

provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as having come to the notice of the State only if the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential.

26. Thus, as could be seen from Regulation 5(5), the classification/ of an individual by the Selection Committee is very crucial and no procedure has been brought to the notice of this Court as to how the Selection Committee offers its remarks, that too as against the confidential reports offered by the immediate superior officers of the individuals concerned. As could be seen from the UPSC File No.F.6/18/2003-AIS, dated 24.12.2003, pertaining to the select list of 2003, the "overall relative assessment" of the petitioner had been adjudged as "very good" by the Committee. But, as could be seen from UPSC File No.F.6/18/2004-AIS, dated 18.12.2004 pertaining to the select list of 2004, the "overall relative assessment" of the petitioner has been adjusted just as "good". There is no reason, of whatsoever, as to why suddenly the petitioner has been down-graded in his classification/overall rating. It is also seen that while in the select list of 2003, the "overall relative assessment" of Mr.T.K.Ponnusamy was noted as "unfit", for the select list of 2004, he has been adjudged as "very good". The question hovering in our minds, as to why there is sudden decline in the classification/overall rating of the petitioner and why there is sudden hike in the classification/overall rating of Mr.T.K.Ponnusamy, has been remained unanswered throughout. Our endeavour to find out the reasons for such assessment by the Selection Committee, on a thorough perusal of the entire files submitted before us, ended in vain. By this, what we want to insist is that the Selection Committee, is not following the uniform standards in classifying/overall rating the assessment of the individual, which has a direct bearing on their selection to the IAS.

27. The whole record of the confidential reports of the petitioner would show that never there was any adverse entry against him, except the sudden down-grading offered by the reviewing authority/the Selection Committee, that too without offering any opportunity to the petitioner, to explain.

28. We are unable to appreciate such a prejudicial attitude exhibited on the part of the authorities concerned and the illegality perpetuated on the petitioner.

When the law mandates that a negative entry in the confidential report of any officer has to be communicated to him, for his comments/explanation, in the case on hand, the reviewing authority viz. the Selection Committee, has simply down-graded the ranking of the petitioner, which got the effect of making a negative entry in his confidential report, since it has a direct bearing about his future prospects, no opportunity was afforded to the petitioner to explain the same. An argument was advanced on the part of the respondents that while acknowledging the Annual Confidential Reports for the particular year, the officer has privilege to appeal before the Government, objection, if any, and he has not made any representation to the Government. But, we find no material on record to show that such down-grading remark, which got the effect of making a negative entry against the individual, has been communicated to the petitioner, calling for his remarks or objections. It is also on record that the petitioner, only by invoking the provisions of the Right to Information Act, has got the copies of his confidential reports and never there was any communication from the authorities concerned about his down-grading. Thus, the action of the Government and the Selection Committee clearly violates the principles of natural justice and the reasonableness and fairness in action which are expected of them, are lacking in the case on hand. Apparently, when a manifest illegality has been committed to a candidate, the petitioner in the case on hand, we are unable to accept the argument advanced on the part of the respondents that the Selection Committee, being the body to decide the matter, no interference by the Court is called for, since such restriction would make the entire justice rendering system a mockery. Therefore, this Court should exercise its extraordinary jurisdiction to set right the illegality committed to an officer, who was deprived of his due, for no fault of him.

29. Another factor to be pointed out here is that when the petitioner was made to run from pillar to post, virtually throwing him to knock the doors of justice, every time, even to fix his seniority, besides denying him his due promotion, for no fault of him, he was slapped with a charge memo. on 18.4.2005 for which the petitioner has submitted his explanations on 2.6.2005 and 15.5.2007 and now it has been brought to the notice of this Court that the Government, by the letter No. 2335/2002-24, Public (Special-A) Department, Chennai, addressed by the Chief Secretary to Government to the petitioner has intimated him that the further action in the disciplinary action initiated against the petitioner is dropped. Thus, a legal presumption would arise that the said unproved disciplinary proceedings itself have been initiated against the petitioner, to create a black mark on the petitioner.

30. From the above discussions, the following conclusions would emerge:

(i) The entire materials on record would show that in spite the direction of the Tribunal, dated 26.6.2002, the seniority of the petitioner was not re-fixed within a reasonable time by the Government, taking advantage of the fact that no time limit was fixed by the Tribunal to comply with its direction, and has issued

G.O.Ms. No. 924, dated 5.9.2005 complying with the directions of the Tribunal, with a long and unexplained delay of 39 months, which is very unfortunate and unfair as it has caused much prejudice to the petitioner, since in the meantime, his juniors respondents 4 and 5 were promoted to IAS.

(ii) Even though the petitioner's seniority was re-fixed by G.O.Ms. No. 924, dated 5.9.2005, no review DPC was conducted by the respondents.

(iii) When the immediate superior officer of the petitioner has offered overall rating as "outstanding" in the confidential report of the petitioner dated 21.5.2004, by offering reasons for the same, the reviewing authority viz. the Selection Committee, has down-graded the overall rating of the petitioner as a mere "good", without offering any reason, which has affected the prospects of the petitioner and no opportunity of any sort has been afforded to him to explain the same.

(iv) A person of doubtful integrity and against whom criminal cases are pending trial was preferred over the petitioner, though no criminal cases are pending against him, which cannot be appreciated.

(v) The further action in the disciplinary action initiated against the petitioner for the certain alleged irregularities committed, while he was District Revenue Officer (Land Estates), Corporation of Chennai was dropped.

(vi) Had the petitioner's seniority was fixed within the reasonable time, as per the direction of the Tribunal and had the petitioner's classification/overall rating was offered correctly by the Selection Committee, with due regard to the overall rating offered by the immediate superior under whom the petitioner was working and had not a candidate of doubtful integrity was considered, definitely, the petitioner would have been promoted to the IAS. Because of the inaction of the Government or improper action of the Selection Committee, the prospects of a genuine candidate should not be put at stake. It seems, the petitioner has been victimized just for the simple reason that he has approached the legal forum for redressal of his genuine grievances, which should not be allowed to continue.

(vii) The Selection Committee and the Tribunal have miserably failed to assess all the aspects of the case in their proper perspective. Therefore, the argument that the judicial interference is not called for into the findings of the Selection Committee cannot be appreciated, since the findings of the Selection Committee, based on non-application of mind, have resulted in manifest illegality to the petitioner.

For all the above discussions and reasons, this writ petition is allowed. The order of the Tribunal is set aside. The respondents 1 to 3 are directed to convene Selection Committee Meeting for reviewing the promotions made to the IAS for the vacancies of the year 2004 and promote the petitioner to the IAS from the date when his juniors, the respondents 4 and 5 herein, are promoted, with all consequential benefits and by this the petitioner shall be deemed to have been

promoted to the IAS cadre, from the date when his juniors were promoted. It cannot also be a problem to the Government, since, admittedly, for that year, three vacancies were lying vacant and out of which, only two vacancies were filled-up by promoting respondents 4 and 5 and Mr.Ponnuswamy, whose name was provisionally included in the list, was not selected. Therefore, in the third vacancy, the petitioner could be accommodated. The entire process shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.