
(1981) 11 KAR CK 0015
In the Karnataka High Court
Case No : WP 10271 & 2761/80

Mallaraj Urs, B.C.

APPELLANT

Vs

State Bank of Mysore and Others

RESPONDENT

Date of Decision : 05-11-1981

Acts Referred:

State Bank of India (Subsidiary Banks) Act, 1959 — Section 24

Citation : (1982) 1 KarLJ 321

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The two petitioners are "A" Grade Officers in the service of the State Bank of Mysore. They have prayed for setting aside the promotion of respondents 3 and 4 (in WP 10271/1980) as Assistant General Managers and for the issue of a consequential direction directing the Bank to consider their cases for promotion as Assistant General Managers with effect from the date when respondents 3 and 4 were promoted.

2. As common questions of law and fact arise for consideration, the two petitions are being disposed of by this common order.

3. The relevant and undisputed facts of the case are these: The petitioners and respondents 3 and 4 were "A" Grade Officers of the State Bank of Mysore ("Bank" for short) which is a subsidiary of the State Bank of India. The next promotional post for "A" Grade Officers in the service of the Bank is that of Assistant General Manager. A Staff Committee constituted by the Bank interviewed the petitioners respondents 3 and 4 and other eligible candidates on 11-10-1979 and 12-10-1979. The selections were made on 12-10-1979. Thereafter respondents 3 and 4 were promoted as Assistant General Managers by order dated 17-11-1979 (Annexure-A in WP 10271/80). The petitioner in WP No. 10271 of 1980 B.C. Mallaraj Urs. was the seniormost Grade "A" Officer. The petitioner in WP 2761 of 1980 M.R. Jayadeva was at Sl. No. 12 among the candidates interviewed and he is junior to respondent 3 S.M. Mahadev and respondent 4 K. Sundaram, who have been selected and appointed as Assistant

General Managers. They have questioned the legality of these promotions on various grounds.

4. Sri H.N. Narayana and Sri S.C. Javali, learned counsel appearing for the petitioners, urged that the selection of respondents 3 and 4 was liable to be set aside and a writ of mandamus should be issued to the Bank to make fresh selection on the following grounds:

(i) The Staff Committee which made the selection was not validly constituted.

(ii) The method of recruitment was not prescribed.

(iii) There was no fair and proper consideration of the candidates for selection.

5. I shall take up the first two grounds together for consideration, The Bank was constituted under S. 3 of the State Bank of India (Subsidiary Banks) Act, 1959 ("the Act" for short). The management of the Bank is vested in its Board of Directors subject to the directions given by the State Bank of India as provided in S. 24 of the Act, which reads-

"24. (1) The State Bank may, from time to time, give directions and instructions to a subsidiary bank in regard to any of its affairs and business, and that bank shall be bound to comply with the directions and instructions so given.

(2) Subject to any such directions and instructions, the general superintendence and conduct of the affairs and business of a subsidiary bank shall, as from the appointed day, vest in a Board of Directors who may, with the assistance of the General Manager, exercise all powers and do all such acts and things as may be exercised or done by that Bank".

S.50(1) of the Act which provides for regulating appointments and conditions of service of the staff of a subsidiary bank reads as follows:

"50. (1) A subsidiary bank may, subject to such limitations and conditions as may be prescribed, appoint such number of officers, advisers and employees as it considers necessary or desirable, for the efficient performance of its functions and on such terms and conditions as it may be deem fit".

S. 63(2)(m) of the Act provides that the State Bank of India may lay down the conditions and limitations subject to which the Bank may appoint officers, advisers and other employees and fix their remunerations and other terms and conditions of service by making regulations.

6. It was argued for the petitioners that unless regulations were made by the State Bank of India laying down the conditions and limitations subject to which the Bank may make appointments and promotions including the qualifications and conditions of eligibility for such appointment, the Bank which is a subsidiary of the State Bank had no authority to regulate the recruitment as has been done in this case. It was further argued that laying down of the method of recruitment, conditions of eligibility and the procedure for appointment by

regulations made by the State Bank of India was a condition precedent for making appointments to the posts in the service of the Bank and as no such regulations had been made, the selection and appointment of respondents 3 and 4 was invalid.

7. As against this Sri S.G. Sundaraswamy, learned Counsel appearing for the Bank, submitted that having regard to the provisions of S. 24(2) read with S. 50(1) of the Act, it was competent for the Bank to prescribe the method of and the procedure for, recruitment and this power was subject only to the conditions and limitations laid down in the regulations made by the State Bank of India and in the absence of any such regulations, it was competent for the Bank to regulate recruitment and conditions of service of persons appointed to the service of the Bank. He submitted that in fact the Board of directors of Bank had prescribed the method of recruitment, conditions of eligibility for appointment to the posts of Assistant General Managers and had also constituted a selection committee for making selections and that there was no substance in the first two submissions made on behalf of the petitioners.

8. Having regard to the plain language of S. 24(2), 50(1) and 63(1)(2)(m) of the Act, I do not find any substance in the first ground urged for the petitioners. Under sub-section (2) of S. 24 of the Act, the entire management of subsidiary Bank is vested in the Board of Directors of the Bank. This power is only subject to such directions and instructions as may be issued by the State Bank of India in exercise of its powers under sub-section (1) of S. 24 of the Act. Again under sub section (1) of S. 50, it is competent for the subsidiary bank to appoint such number of officers and employees as it considers necessary or desirable and on such terms and conditions as it deems fit. This is also subject to such limitations and conditions as may be prescribed by regulations made by the State Bank of India under S. 63(2) (m) of the Act. Though a subsidiary bank is bound to conform to the regulations made by the State Bank of India, until such regulations are made, it has full powers to regulate recruitment and conditions of service of persons appointed to its service. Admittedly there were no regulations framed by the State Bank of India. Consequently the entire field was uncovered and it was competent for the Bank to regulate recruitment to the posts of Assistant General Managers. (See: Mysore State Road Transport Corpn. v. Gopinath Gundachar, AIR 1968 SC 464.

9. Now I shall refer to the method of recruitment and conditions of service laid down by the bank for making appointments to the cadre of Assistant General Managers. The relevant documents have been produced as Annexures 1 and 2 in WP 2071 of 1980 along with the statement of objections. They read:

"Meeting of the Board of Directors dated 23rd November 1976.

Agenda Item No. 14.

To consider and approve promotion policy for promotions to the cadre of- (1) Assistant General Manager and (2) Deputy General Manager.

Memorandum: November 2, 1976.

Promotions to the cadre of- (1) Assistant General Manager and (2) Deputy General Manager. Policies have already been rationalised in respect of promotions to different cadres except the above two cadres in the Bank.

2) The posts of Assistant General Managers and Deputy General Managers have assumed greater importance with the expansion of the Bank and the diversified activities in which it is engaged. In the interests of planned and proper development of the Bank, there is urgent need to formulate a more purposeful and rationalised promotion policy in respect of selection of officers to occupy these key posts. With this end in view, we recommend adoption of the norms outlined in the annexure in respect of promotions to these two cadres, for implementation with immediate effect.

Sd/-Deputy General Manager (P&D) Sd/- (H.C. Sarkar)

Managing Director."

x x x x

"Promotions to the cadre of- (1) Assistant General Manager (2) Deputy General Manager

1) Promotions to the cadre of Assistant General Manager.

(a) Eligibility: Subject to satisfactory service, all "A" Grade Officers who have put in a minimum of five years service in that grade would be eligible. If, however, on any occasion it is felt that the base of selection requires to be widened, relaxation in the minimum service limit of five years may be permitted to the extent required, at the discretion of the Managing Director of the Bank.

(b) Process: (i) Performance Appraisal: As an initial step, data on the performance of the eligible officers should be collected on a format to be specifically designed for the purpose on the basis of the one designed by the State Bank of India in connection with promotions to Staff Officers" cadre of that Bank. While the performance appraisal format would need to be completed by the Managing Director of the Bank in each case, assignment appraisal reports are to be completed by the concerned controlling authorities at the Head Office in respect of the current and immediately preceding assignments of the officer concerned, provided he has been in each of the assignments for a minimum period of six months.

(ii) Interview: The above performance appraisal reports, together with the service files of the officers, would be placed before the Staff Committee for scrutiny. The Staff Committee would thereafter interview the officers and give individual ratings based on the Confidential Reports gained by them during the past five years, the performance appraisal data placed before them and the performance at the interview.

The final selection would be based on the results of such combined ratings, subject to the approval of the Board.

(c) Constitution of the Staff Committee: The Staff Committee for interviewing the eligible "A" Grade Officers for promotion to AGM's grade shall consist of the Managing Director of the Bank, a non official director of the Bank and the head of the Subsidiary Banks Department of State Bank of India, Central Office". (Underlined (Italics) by me)

The above documents indicate that decision had been taken by the Board of Directors on the following aspects:

(i) "A" Grade Officers of the Bank, who had put in a minimum of five years of service in that grade would be eligible for appointment.

(ii) The performance Appraisal report had to be prepared by the Managing Director in respect of each officer.

(iii) The performance appraisal report together with the service file of the officers should be placed before the Staff Committee for scrutiny and the Staff Committee should make the selection after interview and after consideration of the confidential reports, of each of the officers, for the past five years.

(iv) The Staff Committee should consist of a Deputy Managing Director of State Bank of India, Managing Director of the Bank and a non-official Director of the Bank.

Thus it may be seen, the method of recruitment, conditions of eligibility, procedure for selection as also the personnel of the selection committee were fixed by the Board of Directors of the Bank. It is not in dispute that the Committee consisting of the Managing Director of the Bank Sri M.B. Deshmukh, the Deputy General Manager of the State Bank Sri P.S. Vaidya and a non-official Director of the Bank Sri S.V. Govindarajan, constituted the selection committee, and they interviewed all the candidates including the petitioners on 11/12-10-1979 and selected respondents 3 and 4. Therefore I do not find any substance in the second ground urged for the petitioners also.

10. The third submission for the petitioners was that there was no fair and proper consideration of the cases of all the officers. The petitioners have alleged that the 3rd respondent had been favoured in spite of his having uncomplimentary service records, in that he had been punished in a departmental inquiry in respect of serious irregularities committed by him while functioning as Manager at Coimbatore and even in the face of such adverse record of service, he had been selected. The relevant allegations read as follows:

"5. The petitioner learns and believes the same to be true that when the 2nd respondent in the interview decided that respondents 3 and 4 should be promoted in preference to him without assigning any reasons, one of the Directors of the Bank did not concur in the resolution passed promoting

respondents 3 and 4 initially, but later had to concur after persuasion by the Managing Director and others. The petitioner submits that the promotion of respondents 3 and 4 is in violation of well accepted principles of fairplay in administrative action and ignoring both seniority and merit of the petitioner. The order promoting respondents 3 and 4 is vitiated for want of mala fides. Further, it seeks to confer undue favour to them. The petitioner submits that he has an absolutely clean and unblemished record in the service of the Bank and respondent 1 had absolutely no acceptable reason to promote respondents 3 and 4 in supersession of his claim. In this context, the petitioner submits that respondent 3 had been punished in a departmental enquiry by the stoppage of increments for two years with a bar for promotion for a certain period which appears to have come to an end in January 1979. The Bank has chosen to prefer him as against the petitioner against whom there can be no complaint whatsoever. Besides, his service being very satisfactory and having received a number of commendations for his outstanding performance from his official superiors, apart from having already worked as an Officiating Assistant General Manager, ought to have been promoted regularly. The promotion of respondents 3 and 4 is actuated by mala fides and favouritism". (Underlining (italics) by mine)

11. The relevant paragraph in the statement of objection in which respondent-bank has met with the above averment in para 9. It reads:

"9. Re:para 5: The allegations in this paragraph as to what is said to have transpired while respondents 3 and 4 were interviewed and eventually selected for promotion is without any basis and contrary to facts. It is absolutely untrue that there was any dissent by any one director initially and that there was any persuasion on him by the Managing Director or others. The allegation that principles of fair play in administrative action was ignored and that the promotion is vitiated by mala fides and favouritism is absolutely baseless. The selection was based on Performance Appraisal and interview by the Staff Committee and by an honest desire to select the best man in the interest of the Bank".

The petitioner in WP 2761 of 1970 has also alleged that respondent 3 (respondent 5 in that petition) had been favoured. (See paragraph 9 of the petition and paragraph 8(x) of reply statement). In view of the allegation, in order to find out as to whether there was fair and proper consideration of the cases of all the candidates or not, respondents 1 and 2 were required to produce the original records relating to the selection. Accordingly, they were produced. The records disclose that on 5 10 1979 the Managing Director Sri M.B. Deshmukh had prepared an appraisal sheet in respect of each "A" Grade Officer and that he had recorded his own assessment in respect of each of the candidates. The gist of the entries in the confidential reports for the specified years of each of the officers was typed on the back side of the appraisal sheet. The period in respect of which the extracts from confidential reports were typed on the back side of the appraisal sheet and the appraisal of the candidates made by the Managing Director in respect of the two petitioners, respondents 3 and 4

and officers in between them in the order of seniority was as follows:

Sl. No. Name Years pertaining to which the extracts from CRs were included in the format Initiative Decision making Problem solving Interpersonal skills Leadership skills

1 2 3 4 5 6 7 8

1. B.C. Mallaraj Urs 1974 to 1978 Good Good Good Good Good

2. G.R. Kalayanaraman 1974 to 1978 Good Above average Above average Good Good

3. S.M. Mahadev 1976 to 1978 Excellent Good Good Excellent Good

4. S. Jagannathan 1973 to 1978 Good Good Good Above average Above average

5. J.C. Kamdar 1973-74 and 1976 to 1978 Above average Above average Above average Above average Above average

1 2 3 4 5 6 7 8

6. G.B. Nagabushanam 1973-74 and 1976 to 1978 Average Poor Poor Average Average

7. M. Shivaswamy 1973-74 and 1976 to 1978 Average Average Average Average Average

8. K. Sundaram 1974 to 1978 Above average Good Good Good Good

9. R.S. Anandarao 1972 to 1975, 1977 & 1978 Average Average Average Average Average

10. C.P. Antony 1974 to 1978 Excellent Excellent Excellent Excellent Excellent

11. M.R. Jayadeva 1975 to 1978 Poor Poor Average Average Average

According to the criteria laid down for making the selection, the Staff Committee was required to consider the confidential reports for a period of five years, in respect of each of the officers, preceding the date of selection. The statement given above shows that this principle had not been uniformly followed in respect of several officers. I shall now deal with its effect on the consideration of the cases of the petitioners and respondent 3. As stated earlier, the petitioners have specifically alleged that respondent 3 had been favoured though he had adverse service record. Significantly enough, as regards respondent 3, the gist of the entries in the confidential reports about him for the years 1974 and 1975 were not incorporated in the format. The reports for these years would have been written in 1975 and 1976, respectively during which period a departmental inquiry had been instituted which ultimately resulted in the imposition of penalty on him.

12. After the aforesaid serious omission in the preparation of the format was

noticed, at the time of hearing on 20-8-81, learned counsel for the Bank took time to seek clarification from his clients about the omission. On the next day, an additional statement was filed supported by the affidavit of Sri M.B. Deshmukh, Managing Director. The statement reads as follows:

"With reference to the questions raised at the hearing of the above cases on 20th of August, 1981, regarding difference in the length of service record considered by the Staff Committee which made the impugned selection, the Respondent Bank submits as follows:

1) The Staff Committee constituted for the purpose of making selections to the post of Assistant General Managers in the year 1979 consisted of Sri P. S. Vaidya, Deputy Managing Director of State Bank of India, Dr. S.V. Govinda Rajan and Sri M.B. Deshmukh, Managing Director of State Bank of Mysore. This Committee interviewed the candidates on 11-10-1979 and 12-10-1979 and made the selections on 12-10-1979.

2) In respect of all the candidates who appeared for the interview, the promotion appraisal form containing a summary of the Bio data, Confidential Reports, Remarks of the reporting authority and the Managing Director's appraisal on the basis of reports on assignments had been placed before the Members of the Committee. In addition to the summary of information given in the forms, the annual confidential reports pertaining to the candidates were also placed before the Committee before they interviewed the candidates. As regards Respondent No. 5 against whom there was a disciplinary enquiry in the year 1975 76 the records pertaining to it were also placed before the Committee. The opinion of the Members was arrived at after perusal of the promotion appraisal form, the confidential report and the impression formed at the interview.

3) In the promotion appraisal form relating to Sri S.M. Mahadev-Respondent No. 5 in the above writ petition, the abstract of the Service Record is given for the years 1976, 1977 and 1978 only, whereas in the case of the petitioner in WP No. 2761/1980 and WP No. 10271/1980 as also Respondent No. 6 herein, the abstract covers a further period of 2 years, that is 1974 and 1975. The reason why there was no abstract from the Service Records for the year 1974 and 1975 in the case of respondent No. 5 herein was that the file containing the annual confidential report relating to him as also in the case of two other Senior Officers in Grade A, for the period earlier to 1976 had been mislaid and was not traceable.

4) However, the fact that there was a disciplinary proceeding against Respondent No. 5 in the year 1975 and the fact of his being punished in the year 1976 for that misconduct had been noted in Column 15(b) of the Confidential Report of the year 1977 and also 1978. This, as also, particulars of the misconduct and punishment therefor were taken note of by the Members of the Committee. They also took note of the fact that the period of disqualification for promotion of the said respondent had expired by the time of selection. It is after taking note of all these facts, that the Committee selected respondents 5 and 6.

(5) The relevant Confidential Reports and the Disciplinary Proceeding against Respondent No. 5 which had been placed before the Committee will be placed before this Hon'ble Court for perusal in addition to rating and minutes of the Selection Committee."

Sri P.S. Vaidya, Deputy General Manager of the State of India, Member of the Selection Committee has also filled an affidavit supporting the averments in the additional statement filed by Sri Deshmukh. Later, on 3-9-1981 Sri S.V.Govindarajan, who was a Member and Chairman of the Selection Committee, has also filed a similar affidavit. The explanation given for omitting to incorporate the entries in the confidential reports of respondent 3, S.M. Mahadev for 1974 and 1975 is that they were mislaid and were not traceable. The petitioners have filed reply stating that no value could be attached to the affidavits of the aforesaid three persons and they have characterised the statement as clearly an after thought. They have also criticised that it was surprising that these persons have come forward with a version which was not supported by any record and submitted that no weight could be attached to these statements made after nearly two years from the date on which the interviews were held.

13. The records relating to the disciplinary proceedings against respondent 3, S.M. Mahadev, were produced. I shall now set out the contents of the final decision dated 21-9-1976 made in the inquiry. It reads:

"Memorandum: Date 21-9-1976.

Staff Supervising

Sri S.M. Mahadev, "A" Grade Officer

The Executive Committee, at its meeting held on the 2th June 1976 (Agenda Item No. 11) resolved that the following punishment be awarded to Sri S.M. Mahadev, for having committed irregularities during his tenure as Manager of our Coimbatore Branch:

(i) Cancellation of two increments due on 1-1-1977 and 1-1-1978 (his next increment will be due on 1-1-1979 and the quantum increment on 1-1-1979 will be what he would have been entitled to on 1-1-1977) and (ii) his case for promotion to the next higher cadre should not be considered for the next two years.

2) The decision to award the above punishment was conveyed to Sri Mahadev on the 12th July 1976. In response, he has submitted a representation which is placed on the table for perusal.

3) In the representation, Sri Mahadev has averred that the five proven charges against him relate to acts of omission/commission on the part of other officials of Coimbatore Branch who deposed for the Bank during the enquiry against him. He has alleged that the Bank has not taken any action against the officials for their lapses. This and the other points mentioned in his representation have no

relevance to the case against him. The punishment proposed to be awarded to him has been determined on the basis of the serious nature of his own lapses and acts of irregularity. He has not brought out any new points or extenuating circumstances which warrant reconsideration of the proposed punishment.

4) We, therefore, recommend that the proposed punishment be confirmed.

Sd/-

Deputy General Manager. Sd/-

Managing Director."

After the above Memorandum was approved in the meeting of the Executive Committee dated 25th October 1976, the following order dated 17th November 1976 was communicated to respondent 3:

"x x x x

Dear Sir,

Irregularities during your tenure at Coimbatore Branch.

Your representation dated the 26th July 1976. in response to our letter No. Per/Mgr/3201 dated the 12th July 1976, was considered by the Executive Committee of the Board of Directors of the Bank, at its meeting held on the 25th October 1976 As no new points or extenuating circumstances have been brought out in your representation to warrant reconsideration of the punishment proposed to be awarded to you, the Executive Committee has confirmed the punishment.

2) Accordingly please note that:

(i) the two increments which will be due to you on 1-1-1977 and 1-1-1978 will be "cancelled", i.e., your next increment will be due on 1-1-1979 and the quantum of increment on 1-1-1979 will be what you would have been entitled to on 1-1-1977, and (ii) your case will not be considered for promotion to the next higher cadre for the next two years.

3) Please acknowledge receipt on the copy of this letter".

The above order indicates that, during the year 1974-75 respondent 3 had adverse service record.

14. At this stage, it should be observed that in order that the procedure adopted in making promotion by selection, to be considered as fair and just to all the officers concerned, the period of confidential reports, which are taken into account at the time of making selection, must be uniform. Omission to place the confidential reports of any of the candidates for a part of the prescribed period or of placing of the reports of the period earlier to the relevant period, would result in either advantage or disadvantage, as the case may be, to one or the other eligible candidate, depending upon the nature and contents of the relevant report

omitted to be placed or irrelevant report placed, before the selection authority. If such a thing has taken place in a given case, the selection cannot be considered as fair and just, as it would result in the violation of the right to equality and equal opportunity in matters relating to promotion under the State guaranteed under Arts, 14 and 16(1) of the Constitution. Considering a similar question, in the case of T.K. Devaraju v. State of Karnataka, 1979 (2) Kar. L.J. 85. it was observed as follows:

"Another infirmity disclosed from the records is that no uniform criteria is adopted in the matter of taking into account the confidential records of the eligible officers. In the note prepared on 16-9-1978 by the Deputy Secretary of the Commerce and Industries Department, it is stated that the confidential records for the last three years of the three officers were placed in the file for consideration by the Department of Personnel and Administrative Reforms in making the selection. But the original records produced disclose that confidential records of respondent 3 from the year 1960 upto 31-3-1978 were put up, whereas the confidential records of the petitioner and another for the period commencing from 1-1-1976 to 31-3-1977 and for the year ending-31 12-1975 alone were put up. The latest confidential reports for the year ending 31-3-1978, pertaining to the petitioner and another are not found in the file. It should be pointed out that even in the matter of taking confidential records for consideration, adoption of uniform rule is necessary to ensure fair and proper consideration. If three years' confidential records of the eligible officers preceding the date of consideration is treated as relevant, it must be so in respect of all the officers. Because exclusion of good or bad record even for any one year out of three years' record which is considered relevant for taking into account, confidential records earlier to three years in the case of one and not taking into account the confidential records for similar period in the case of another, is sure to place one or the other officer under an advantage or disadvantage as the case may be and open to the criticism that there has been no fair and proper consideration by applying uniform criteria and consequently the right to equality is denied".

15. (1) In fact in order to ensure that no such discrimination took place, the Board of Directors had laid down that records of service for the past five years should be scrutinised by the selection committee, while considering the cases of "A" Grade Officers for promotion as Assistant General Managers. Therefore, there can be no doubt that the omission on the part of the Managing Director to incorporate the confidential reports of respondent 3 for the year 1974 75 in the format was a serious omission, which vitiates the selection. The Managing Director has, how. ever, come forward with his additional statement set out earlier in which reason for not furnishing the extracts of adverse confidential reports of respondent 3 in the format is given and it is further stated that information that respondent 3 was punished in 1976 was indicated in column 15(b) of the confidential report for 1977 and 1978 and that the records of the departmental inquiry in which he was punished were taken into account.

(2) Learned counsel for the Bank submitted that the explanation furnished in the additional statement, the correctness of which is verified by all the three Members of the selection committee should be accepted and the selection should be upheld.

16. After giving careful consideration to the submission, I find it extremely difficult to accept it and to reject the case of the petitioners that there was no fair and proper consideration of the candidates for selection for the reasons set out hereinafter.

In my view, the clarification furnished in the additional statement supported by the affidavit of the Managing Director has created more doubts than it has cleared and they can be itemised as follows:

(i) The reason given for not entering the confidential reports of respondent 3 for 1974-75 in the format is that the records were mislaid. It is not explained as to when it was noticed and as to whether any step was taken to search for them or to make an inquiry into the matter and as to the persons responsible for such lapse.

(ii) Why it was not at least stated in the format that the confidential reports for the two years were missing?

(iii) Why the officers, who were authorised to write the confidential report of S.M. Mahadev for the relevant period, were not asked to rewrite the report once again or as to why a special report was not called for?

(iv) Why at least the nature of the charges proved and the penalty imposed on respondent 3 was not incorporated in the format?

16A. However, the learned counsel for the Bank submitted that in the absence of the confidential reports of respondent 3 for 1974-75, the order made against respondent 3 in the disciplinary proceedings were looked into by the selection committee and even after considering those documents which were adverse to respondent 3, he was considered more merited than the petitioner and other candidates. A statement to this effect is also made in the additional statement.

17. I shall now refer to the proceedings of the Committee. For the purpose of rating the comparative merit of the candidates, the expressions used, as explained by the learned counsel for the Bank, were: suitable (A); marginally suitable (B); not suitable (B minus). The Committee rated the two petitioners and the two selected candidates as follows:

Sl. No. according to seniority

Name

Rating

1. B.C. Mallaraj Urs (Petitioner in WP 10271 of 1980) B +

2. S.M. Mahdev (respondents) A

3. K. Sundaram (respondent 4) A

4. M.R. Jayadeva (Petitioner in WP 2761 of 1980) B minus

The Committee recorded its decision and submitted it to the appointing authority, viz., the Board of Directors, on 13-10-1979 and it was passed by the Board in circulation. The decision of the committee and the resolution of the Board read:

"Meetings of the Staff Committee

Minutes of the meetings of the Staff Committee of the Board of Directors of the State Bank of Mysore held at Bangalore on the 11th and 12th October 1979.

Present

Present

1. Sri S.V. GovindaRajan

2. Sri P.S.Vaidya

3. Sri M.B. Deshmukh -

-

- Chairman of the Meeting

Member

Member

Agenda

Item No. 1

Confirmation Minutes of the Staff Committee Meeting

Submitted for confirmation the minutes of the meetings of the Staff Committee held on the 17th August 1979.

Confirmed

Item No. 2

Selection: For Promotion of "A" Grade Officer to Assistant General Manager" Cadre.

The Staff Committee interviewed 21 candidates and recommended that the following 2 (two) candidates be promoted to Assistant General Managers" Cadre.

Name Branch

1. Sri S.M. Mahadev

2. Sri K. Sundaram -

- Head Office

Head Office

Sd/-Managing Director Sd/- S.V. Govindarajan,

Chairman of the Meeting.

Sd/ Dy. Managing Director (Associate Banks)".

x x x x

"Memorandum submitted to the Board of Directors (in Circulation

To consider and approve the recommendations of the Staff Committee for promotion of "A" Grade Officers to Assistant General Managers" cadre with effect from 1st November 1979.

Memomrandum Dated 13th October 1979

Staff Supervising promotion to Assistant General Managers" cadre

The Executive Committee at its meeting held on the 25th June 1979 (vide Agenda Item No. 31) approved increase in the number of posts in the Assistant General Managers" cadre from 6 to 9 for the year 1979. There are at present 7 Assistant General Managers, leaving a deficit of 2 posts to be filled up in the grade.

2) The Staff Committee interviewed 21 eligible "A" Grade Officers on the 11th and 12th October 1979 and recommended that the following officers be promoted to Assistant General Managers" cadre:

Sl. No.

1.

2. Name of the Officer

Sri S. M. Mahadev

Sri K. Sundaram.

3. We recommend that the above officers selected by the Staff Committee be promoted to the Assistant General Managers" cadre with effect from the 1st November 1979. These officers will be placed on probation for a period of one year from the date of promotion.

Sd/- General Manager

(Planning & Development). Sd/-Managing Director

Passed in Circulation:

Considered the memorandum dated 13-10-1979 submitted by the Managing Director recommending that the two officers selected by the Staff Committee be

promoted to Assistant General Managers" cadre with effect from 1st November 1979.

Approved and resolved that the officers stated in the memorandum be promoted to Assistant General Managers" cadre with effect from 1st November 1979, with a probationary period of one year.

Sd/-Chairman".

18. There is absolutely no indication in the recommendation of the selection committee that out of the five years" confidential reports required to be considered according to the principles laid down by the Board, confidential reports of respondent 3 for the two years, viz., 1974 75, were mislaid and were not available and that there was a disciplinary proceeding against respondent 3 during that period which resulted in the imposition of penalty against him in 1976 and even after considering the said material, the committee found him more merited than other candidates. If as stated by the Managing Director, the two crucial confidential reports pertaining to respondent 3 were mislaid, the committee should have brought this fact to the notice of the appointing authority through its resolution, so that the Board of Directors was appraised of those facts particularly because the Board had prescribed that the committee should consider the confidential records for the past five years of all the eligible officers. As pointed out earlier, by virtue of S. 24 read with S. 50(1) of the Act, the Board of Directors was the appointing authority. The selection committee was constituted by it authorising to scrutinise the records, interview the candidates and send its recommendations to the Board of Directors for its approval. Therefore, it was obligatory for the Board to look into the records of the recommended officers as well as of those rejected and particularly of the senior officers, who were being superseded and to take a final decision in the matter. Admittedly, the petitioner in WP No. 10271 of 1980 was the seniormost "A" Grade Officer. The remarks in the confidential reports of that officer given in the format show that he had very good record of service and personal traits and the reports also said that he was fit for promotion to the higher post. As regards respondent 3 though the confidential reports for 1976 to 1978 are very good, for 1974-75 it does not appear to be so as it was in respect of negligence of duty on his part during this period that disciplinary proceedings were instituted in which he was found guilty and punished. The committee failed to make a mention in its recommendation about the missing of the confidential reports and about the record of service as disclosed in the final order made in the disciplinary proceedings in respect of respondent 3. It also did not furnish any reason for superseding the claim of the petitioner in WP No. 10271 of 1981 in favour of respondent 3 in spite of such adverse record against him and in the absence of any such adverse record against the petitioner. As a result without looking into the service records of the senior and eligible officers, and the adverse service record against respondent 3 and without knowing that the confidential records of respondent 3 for 1974 and 1975 were missing, the Board mechanically accepted

the recommendation. This betrays, lack of application of the mind, by the appointing authority, i.e., the Board, in other words, its failure to consider the cases of eligible officers in a fair and just manner.

19. In the light of the above discussion, I uphold the third contention urged for the petitioners that there has been no fair and proper consideration of their cases for promotion by the Bank and consequently there has been an infraction of the right to equality and equal opportunity in the matters relating to promotion guaranteed to them under Arts. 14 and 16(1) of the Constitution and, therefore, the selection of respondents 3 and 4 cannot be sustained.

20. The Petitioner in WP No. 2761 of 1980 had also raised an additional contention that two members of the selection committee were biased against him. In view of my acceptance of the third ground urged by him in common with the other petitioner, it is unnecessary to consider that contention.

21. The only question which remains for consideration is about the form of the order. Respondents 3 and 4 have been appointed and are functioning as Assistant General Managers for the last two years. Their immediate displacement would cause dislocation in the administration in the Bank. Therefore, I consider it inexpedient to set aside their appointment, but it is sufficient to direct their displacement if in the fresh selection made pursuant to this order, they are not selected. Accordingly I make the following order.

(i) Rule made absolute, (ii) (a) The respondent-State Bank of Mysore-is directed to make fresh selection to the two posts of Assistant General Managers in accordance with law and in the light of this order.

(b) The respondent Bank shall be at liberty to refer the matter again to a selection committee constituted by it if it considers necessary to do so.

(iii) If at the fresh selection made, any officer other than respondents 3 and 4 is selected and appointed, the appointment of respondent 3 or 4 or both, as the case may be, shall cease to be effective from the date of such appointment.

(iv) This order shall be complied with, within three months from today, (v) No costs.