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**(1981) 10 AP CK 0003**  
**In the Andhra Pradesh High Court**  
**Case No : W.A. No. 440 of 1979**

M.S. Sharma

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

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**Date of Decision :** 23-10-1981

**Acts Referred:**

**Citation :** (1982) 2 LLJ 40

**Hon'ble Judges :** Punnayya, J

**Bench :** Single Bench

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## Judgement

1. This writ appeal, which was directed against the judgment of the learned single Judge, P. A. Chaudary, J., in Writ Petition No. 5055 of 1978, reported in (1979) 2 Andh. W.R. 439 was heard by a Division Bench consisting of V. Madhava Rao and K. Amreswari, JJ. But there was difference of opinion between the two learned Judges. The papers were, therefore, placed before the Hon'ble the Chief Justice for necessary orders under clause 36 of the Letters Patent. The Hon'ble Chief Justice referred the matter to me. Thus this appeal came up before me for hearing.

2. The appellant and the third respondent were recruited at one and the same time directly from the Bar as District & Sessions Judges, Grade-II, in the Year 1968 and both were confirmed as such. In the seniority list the appellant's place was fixed above the third respondent. Respondents 4 to 6, who were Sub-Judges, were promoted as District & Sessions Judges, Grade-II on 29-6-1969, 10-12-1969 and 6-7-1970, respectively. Thus respondents 3 to 6 were juniors to the appellant.

3. In the year 1977 two more Grade-I District & Sessions Judges, posted besides the existing four post, were sanctioned by the Government under G.O. Ms No. 714 GAD (SCX) Department. Another vacancy arose consequent upon Sri T. Narasinga Rao, who was working as District & Sessions Judge, being elevated to the Bench of the High Court. For filling up these three vacancies the High Court held its meeting on 24-10-1977 and selected and promoted Sri T. L. N. Reddy,

who was senior to the appellant for one post. So far as the selection and promotion of Sri T. L. N. Reddy is concerned, there is no grievance. For filling up the other two posts, the High Court perused the confidentials of the appellant and respondents 3 to 6, who were eligible and selected and promoted respondents 3 and 4, i.e., Sri P. V. Ranga Reddy and Sri R. Natesan, who are the immediate juniors to the appellant overlooking him on the basis of the adverse remarks made in the confidentials of the appellant regarding his integrity and reputation and also the adverse remarks made by the Judges in the Opinion Forms, while disposing of some Criminal Appeals, which were directed against the judgments rendered by the appellant. On the basis of the decision taken on 24-10-1977, the High Court recommended to the Government and the Government accepting the recommendations of the High Court issued G.O. Rt. No, 4066 GAD (SCX) Department dated 23-11-1977 in respect of Sri T. L. N. Reddy and Sri P. V. Ranga Reddy and G.O. Rt. No. 4149 GAD (SEX) Department dated 2-12-1977 in respect of the fourth respondent.

4. Thereafter again two vacancies in the post of Grade-I District & Sessions Judge arose. Even for those two vacancies the same material was used by the High Court against the appellant in its meeting held on 17-3-1978 and the High Court selected and promoted respondents 5 and 6 overlooking the appellant and the same was recommended to the Government.

5. Aggrieved with the selections and promotions of respondents 3 and 4 and also the recommendations made in favour of respondents 5 and 6, the appellant submitted a representation dated 4-5-1978 to the Chief Secretary, Government of Andhra Pradesh, Hyderabad, questioning the selections and promotions given to respondents 3 and 4 and the recommendations made in favour of respondents 5 and 6 on several grounds. But yet the Government issued G.O. Ms. No. 370 GAD (SCX) Department dated 25-5-1978. Hence the appellant filed this petition.

6. While dismissing the writ petition the learned single Judge observed that High Court had seriously found fault with the official performance and public image of the appellant, that no one could suggest that if a fair and impartial body like the High Court with its technical qualifications finds one of its subordinate officers not fit to be promoted, such a decision should ordinarily be set aside on the ground of violation of principles of natural justice, that in this case there is no such violation either, that by the time of the first meeting of the High Court on 24-10-1977 the appellant has already been communicated with some of the adverse entries and by the time of the second meeting of the High Court in March, 1978 the appellant has a full hearing accorded by the learned Chief Justice and that in those circumstances, it cannot be said that the appellant has been denied fair play. The learned single Judge rejected the contention that the communicated adverse entries are vague and are, therefore, incapable of being answered. The learned single Judge observed that the appellant knew the meaning and the significance of these remarks and he used this to knowledge to the fullest extent in this meeting with the Hon'ble Chief Justice. He cannot now

be heard to say that he did not know what these entries mean. The learned single Judge also observed that the High Court has condemned the appellant both on its administrative side and also on its judicial side that Judge after Judge of this Court had found the appellant's performance inadequate and unsatisfactory and what is more the High Court was obliged to direct the seizure of certain records from the appellant's office and nothing more is required for the supersession of a judicial officer and that as respondents 3 to 6 are superior in merit, ability and entirety to the appellant the appellant was being over looked.

7. In the writ appeal the findings of the learned single Judge were assailed. While Madhava Rao, J., did not agree with the decision of the learned single Judge for the reasons given by him and allowed the appeal. Amareswari, J., agreed with the reasons given by the learned single Judge and dismissed the appeal.

8. During the course of the arguments addressed before me, Sri Venkata Ramanaiah, the learned counsel for the appellant, contends that the learned single Judge is not correct in holding that when the High Court finds its subordinate officers not fit to be promoted such a decision should not be set aside on the ground of violation of principles of natural justice. He contends, on the other hand, that it is well-settled that if any authority whether judicial or quasijudicial gives its decision in violation of principles of natural justice, it has to be set aside. He also contends that it is not sufficient if the appellants was communicated with some of the entries by the time of the first meeting of the High Court on 24-10-1977 but he submits that specific instances should have been given in support of the adverse remarks, that when the appellant wanted the High Court that he should be furnished with specific material or instances in support of the adverse remarks communicated to him, the High Court ought to have furnished such material and that when such specific instances were not furnished, then the adverse remarks should be treated to have been vague and they should, therefore, be ignored. He further contends that even in the personal hearing accorded by Sambasiva Rao, J. (as he then was) the appellant was not furnished with specific instances, so that he could have an opportunity to meet the allegations or the make an effective representation and that in the absence of furnishing such specific material the personal hearing is proved to be an empty formality, that the learned single Judge is, therefore, not justified to hold that the appellant was given full opportunity of being heard and principles of natural justice were not violated. He also contends that the observations of the learned single Judge that the High Court had condemned the appellant both on its administrative side and also on its judicial side and Judge after Judge of this Court found the appellant's performance inadequate and unsatisfactory is sweeping not based on record, that merely because five judgments were reversed by the High Court that does not form the basis for condemning the appellant, when all other judgments of the appellant were confirmed by the High Court. He also contends that it is impossible to think that all the judgments of a judicial officer will be confirmed by the High Court and merely because a few judgments were reversed by the High Court, they were condemned on that

account. He also contends that some of the judgments of respondents 3 to 6 must have been reversed by the High Court and hence the finding of the learned single Judge after Judge is uncharitable and is, therefore, unsustainable. Sri Venkata Ramanaiah also contends that the learned single Judge appears to have been more obsessed by the fact that the High Court directed seizure of certain records from the appellant's office ignoring the fact that the Judge, who seized the records, ultimately had to express that the appellant cannot be found fault with unless the appeals are disposed of by the High Court on judicial side and the learned single Judge also ignored the fact that ultimately the Bench, which disposed of the appeals, did not make any observation suspecting the bona fides of the awards passed by the appellant. He finally contends that the specific allegations made against the appellant were proved to be false as could be seen from the result of the enquiries made by M. Ramachandra Raju, J., and the adverse remarks are without any basis or material and hence they are vague and sweeping and the findings given by the learned single Judge are, therefore, erroneous and the decision taken by the High Court on administrative side in overlooking the appellant is contrary to law and principles of natural justice and fair play should therefore, be set aside.

9. From the facts narrated above, it is clear that the High Court had overlooked the appellant in giving promotion to the post of Grade-I District & Sessions Judge mainly on the ground that his integrity is doubtful and his reputation is not good.

10. It is an indisputable fact that a member of the judiciary should maintain high degree of integrity and reputation. The ideal of justice cannot be achieved in a Court of law unless the judicial officer possesses sterling integrity and maintains high reputation. Indeed they are sine qua non for a judicial officer to infuse confidence in the public towards Courts of law and the Judges in charge of administration of justice.

11. The question is whether the appellant's integrity is doubtful and his reputation is not good ?

12. The appellant worked as Additional District & Sessions Judge at Anantapur in the year 1968, During this year there were no comments against his integrity or reputation. In the succeeding year also he continued to be there as Additional District & Sessions Judge. In that year, i.e., in 1969 a petition was received by the High Court with an allegation that the appellant received a bribe of Rs. 15,000 and acquitted the accused in S.C. No. 39 of 1969. On the basis of this petition the Disciplinary Committee of the High Court requested the then M. Ramachandra Raju, J. to hold a preliminary enquiry. The learned Judge enquired into the allegations and came to the conclusion that nothing was made out and submitted his report that the matter should be ordered to be closed. Accordingly, the Disciplinary Committee closed the matter. No entry touching his integrity or his reputation was made in his confidential of 1969. So also in the years 1970, 1971, 1972 and 1973 and there were no entries made in his confidential commenting his reputation or integrity.

13. But in the year 1974 from out of the five Judges of the Committee in charge of the District & Sessions Judge, one Judge observed that the officer does not enjoy good reputation; another observed that the officer requires careful watching and the then Chief Justice observed "that he was not satisfied with his conduct as a judicial officer and he is a great disappointment and he is being watched, that he is recently shifted from Labour Court, Guntur to District & Sessions Judge's Court, Adilabad, and that there were complaints against him when he was in the City Civil Court, Secunderabad and so he was transferred to the Labour Court, Guntur and he is a constant headache for us." The other two Judges did not make any observation with regard to the appellant's integrity or reputation. The Judge, who wrote that the appellant does not enjoy good reputation, has not furnished specific material or instances in the confidentials. If the remarks expressed by the three Judges constitute majority view, then it is to the effect that his reputation is not good. This was not communicated to the appellant.

14. In the same year, i.e., 1974 some allegations were made against the appellant that he passed awards inspired by corrupt motives. Hence M. Ramachandra Raju, J. was even requested by the High Court to seize records and make an enquiry. The learned Judge seized the records and made enquiry. Ultimately, he did not find any material to proceed with the enquiry. The learned Judge submitted his report observing that if in the appeals filed against those awards it is found that there is mala fide enhancement of compensation, then necessary action can be taken against him. But the Division Bench consisting of Chinnappa Reddi, J. (as he then was) and myself did not have any occasion to suspect the bona fides of the appellant in passing the awards nor could the Bench find that there is mala fide enhancement of the compensation. In fact the Bench has enhanced in some matters the rate given by the appellant and also confirmed the rate given by him in some matters and in a few cases reduced the rate given by the appellant. But in no case the Division Bench felt suspicious of the awards being passed by the appellant influenced by corrupt motives.

15. In the year 1975 one Judge made an observation in his confidential that "in recent years his reputation has not been good and it is really unfortunate." The then Chief Justice made a remark in his confidentials that "he agreed with these remarks regarding his reputation. It was noted in the confidentials of the appellant that the letter Roc. No. 2814/76 B. Spl. dated 30-8-1976 was addressed to the appellant. In that letter, the High Court informed the appellant that in his confidential report for the year 1975 the High Court was pleased to make the following remarks (i) that the quality of his work is unsatisfactory and that (ii) his reputation has not been good in recent years. It was also mentioned in the letter that the above remarks were communicated to him for his future guidance so that short-comings noted above are rectified in future.

16. On this the appellant submitted his representation stating that the remarks of the High Court while disposing of the appeals or revisions, which were directed

against the judgments or orders rendered by him were not communicated to him and hence he had no occasion either to correct himself or to have an opportunity to explain to comments made thereon. With regard to the remark relating to his reputation he stated that it was vague and no indication was given in what respect his reputation was found to be not good. He further explained that several rumours sometimes made against innocent officers are afloat by interested parties and sometimes even by the practitioners in order to patch up their deficiencies. The remarks made are really harmful to his career when in particular even a slightest indication was not forth-coming from the Higher Appellant Authorities. He also stated that if an opportunity was given to him he would have explained his predicament in the matters. He, therefore, prayed that the above remarks should be expunged by reviewing the previous orders.

17. In the year 1976 three Judges did not make any observation against the integrity or reputation of the appellant while one Judge made a remark that the appellate has no good reputation and he himself has been largely responsible for this unfortunate situation and with this remark of this Judge the then Chief Justice agreed. On the basis of this remark the Registrar again addressed a letter in D.O. 2589/77 B. Spl. dated 29-7-1977 to the appellant informing him that in his confidential report for 1976 with regard to his work and character the High Court has observed that he should improve his image and the above adverse remark was communicated to him for his guidance so that the same may be rectified in future. On this letter, the appellant submitted in his representation standing that he made a representation on 15-12-1976 to give him the necessary opportunity and also make available the material on the basis of which the remarks were made for the year 1975 and he had not heard so far about that, that for the reference in question he again submitted that without the necessary material on which the proposed remark was made available to him, he would not be able to correct himself or make necessary explanation in this regard and that it was prayed that the proposed remark may not be allowed to stand without giving him an opportunity to explain the same including a personal hearing under the circumstances of the case.

18. On 24-10-1977 the High Court met and selected and promoted respondents 3 and 4 overlooking the appellant. After this decision was taken by the High Court a personal hearing was given to the appellant on 13-11-1977. The note placed in the confidential file of the appellant reveals that Sambasiva Rao, J. (as he then was) informed the appellant that several times the Judge of the High Court have pointed out while disposing of the appeals against his judgment that his judgments were unsatisfactory and that that was the basis for adverse remarks, that on the second point the learned Judge told the appellant that he had unsavory episodes in Anantapur and Hyderabad and the High Court was obliged to order seizure of certain records, that the acting Chief Justice and the other Judges received many complaints when he was Presiding Officer, Labour Court, Guntur, which resulted in his transfer to Adilabad. The appellant appears to have contended that the allegations were not true and thereupon the acting

Chief Justice informed the appellant that the fact remained that his reputation was under cloud and that he appellant promised that he will put in every endeavour to improve the quantity and quality of his work and also the manner of his behavior as a Judicial Officer.

19. Again the High Court used the same material for overlooking the appellant and preferring respondents 5 and 6 in filling up the two more vacancies, which arose subsequently. The appellant made a representation to the Chief Secretary, Government of Andhra Pradesh, Hyderabad, complaining that he was unfairly and arbitrarily overlooked. But the Government did not give any weight to the representation and accepted the recommendations of the High Court and issued G.O. Ms. No. 370 GAD (SCX) Department dated 25-5-1978.

20. The above facts make it clear that till 1973, there were no adverse remarks in the confidentials of the appellant. But in the year 1974 for the first time one Judge from out of the five Judges in charge of the District Judges has positively observed in the confidential that the appellant does not enjoy good reputation, while the then Chief Justice observed "that he was not satisfied with the appellant's conduct as a judicial officer and he is a great disappointment and he is being watched and there were complaints against him when he was in the City Civil Court, Secunderabad and hence he was transferred to the Labour Court, Guntur". These remarks were not communicated to the appellant.

21. Sri Venkata Ramanaiah, the learned counsel for the appellant, contends that since these adverse remarks were not communicated to the appellant, it should be deemed that they have no value, since the appellant was denied opportunity of making an effective representation. In the counter filed by the High Court it is contended that there was no administrative instructions till 1975 requiring them to communicate adverse remarks to the concerned officer, if any adverse remarks are passed and hence they were not communicated.

22. It is true that there were no administrative instructions till 1975 requiring the High Court to communicate adverse remarks, if any, relating to the judicial officers. It is only in the year 1975 for the first time that administrative instructions requiring communication of adverse remarks to the concerned officer were issued. Ordinarily the adverse remarks against any officer are made by their superiors. They should be communicated to him. The object as to why the adverse remarks are to be communicated to the concerned officer is to provide an opportunity to make an effective representation so that he can satisfy or convince his superiors that the adverse remarks are uncalled for and they should, therefore, be expunged from his confidentials. Thus the need to communicate adverse remarks to the concerned is based on salutary principles of natural justice that one should be condemned without being heard. These principles of natural justice should be followed in every case whether there are administrative instructions or not. Hence the contention that the adverse remarks were not communicated because there were no administrative instructions requiring the High Court to communicate them is contrary to the

principles of natural justice and is, therefore, unsustainable.

23. Since the adverse remarks as entered in the confidentials of the appellant in the year 1974 were not communicated to the appellant in violation of principles of natural justice, they have no value. But the adverse remarks pertaining to 1975 and 1976 were communicated to the appellant by the Registrar under the letters cited above. The communication of the adverse remarks under the said two letters to the appellant and also the personal hearing given by Sambasiva Rao, J. (as he then was) were given much importance by the learned single Judge. On the basis of these factors the learned single Judge came to the conclusion that principles of natural justice were complied with and the appellant's grievance on this aspect is devoid of any merit.

24. Sri Venkata Ramanaiah, the learned counsel for the appellant, on the other hand, contends that when no specific instances were furnished to the appellant in support of the adverse remarks either in the remarks communicated to him or in the personal hearing especially when the appellant requested the Registrar as well as the Judge, who gave personal hearing, the adverse remarks should be treated to be vague and are of general nature and they should, therefore, be ignored.

25. It is not in dispute that even after the representation was made by the appellant or in the personal hearing given by Mr. Justice Sambasiva Rao the appellant was not furnished with specific instances or particulars to show how his reputation was bad. It should, therefore, be concluded that the High Court relied upon only rumours or the wild allegations made by the interested parties who fight shy to furnish specific instances or particulars for overlooking the appellant. It is highly undesirable and dangerous even if the High Court arrives at conclusions on the basis of rumours or wild allegations made by interested parties.

26. It is for this reason that R. 5 of the Rules framed for Maintenance and Scrutiny of Confidential Reports (Personal File) of the Judicial Officers in the Andhra Pradesh State Judicial Service (published in A.P. Gazette, Rules Supplement, dated 5th June, 1975) which will be hereinafter referred to as Rules, requires the officers, who make adverse remarks in the confidential files regarding character and integrity of an officer to give specific evidentiary examples or instances based on adequate knowledge. The Rules are published in the Andhra Pradesh Civil Services Code, Third Edition, edited by Rama Reddi (Volume No. 1), at page 448. Rule 5 reads as follows :

"Adverse remarks in the confidential reports regarding character and integrity of an officer shall be supported by specific evidentiary examples or instances, if any, as far as possible impressions based on adequate knowledge may also be recorded."

27. The object in providing this Rule is to obviate the superior officers from making wild allegations regarding the character and integrity of the subordinate

judicial officer at their whims and fancies or based on rumours, as the Legislature is aware that there will be always one party aggrieved in every case disposed of by a judicial officer and such party will generally indulge in spreading rumours of making wild allegations against the integrity, honesty and reputation of the judicial officer and need to provide this rule requiring the superior officers to give specific instances or particulars in support of the adverse remarks, which they make in the confidential reports. At this juncture even Instruction No. 4 framed under these Rules assumes much importance. Instruction No. 4 reads as follows :

"Instruction No. 4. In case where the District Judge has reason to doubt the integrity of an officer and he is not in a position to make a specific adverse entry about the integrity, he may leave that column (column No. 9(a) in the form) blank and submit a secret report to the High Court stating the reasons for his suspicion. The High Court after receiving such a secret report may take suitable steps to find out the correctness or otherwise of the report."

28. If the provisions of R. 5 and Instruction No. 4 are appreciated in their proper perspective, it should be understood that the superior officers, who write confidentials of their subordinates in the Judicial Department, should be more careful and cautions in writing confidentials and they should not make adverse remarks in the confidential reports regarding the character and integrity of an officer unless they have specific evidentiary examples or instances to support such adverse remarks. They should not make adverse remarks in the confidentials on the basis of rumours. It is true that there are no separate rules or instructions framed for the maintenance of the confidential reports of the District Judges. But the learned Advocate General submits that the very same Rules which were framed for the maintenance and scrutiny of confidential reports (personal file) of the Judicial Officers in the Andhra Pradesh State Judicial Service are followed equally even in the case of the District & Sessions Judges till separate rules are framed for the District & Sessions Judges in this regard. When the District & Sessions Judge is required to be so cautious and careful in writing the confidentials of District Munsifs as well as the Subordinate Judges and when the District Judge is required to give specific instances or particulars in support of the adverse remarks made by him in the confidential reports, the High Court also should follow the same principle whenever it makes adverse remarks in the confidentials of the District Judges. It follows that when the High Court makes adverse remarks against any District Judge regarding his character and integrity, it should furnish specific instances or particulars in support of such adverse remarks. Consequently these particulars and instances must be noted along with the adverse remarks in the confidential files of the particular officer. In the absence of such specific evidentiary examples or instances, adverse remarks regarding the character and integrity of the District Judge should be treated to be vague and based on rumours spread by the interested parties and hence they have no value. Since adverse remarks with regard to the integrity and reputation of the appellant are not supported by specific evidentiary examples or instances either in the confidential files or in the letters addressed by the Registrar

indicating the adverse remarks to the appellant or in the personal hearing given Mr. Justice Sambasiva Rao, they have no value at all.

29. It is true that Mr. Justice Sambasiva Rao mentioned the two unsavory episodes to the appellant during the personal hearing. One of them relates to the allegation that he acquitted the accused in S.C. No. 39 of 1969 as Addl. District and Sessions Judge, Anantpur having taken a bribe of Rs. 15,000 and the other relates to the seizure of records relating to the awards passed by the appellant when he was Addl. Chief Judge, City Civil Court, Secunderabad. But in respect of Anantapur episode M. Ramachandra Raju, J., who enquired into these allegations, gave a positive finding that it was not substantiated. With regard to the awards the learned Judge reported that if in the appeals filed against the awards passed by the appellant it is found that there is mala fide enhancement of compensation, then necessary action can be taken against him. The Bench while disposing of the C.M. As. did not make any observation suspecting the bona fides of the awards passed by : he appellant. Hence the two so called episodes mentioned in the note of Mr. Justice Sambasiva Rao are of no consequence. There is no other material or instance mentioned in support of adverse remarks. It was also mentioned by Mr. Justice Sambasiva Rao in his note that when the appellant was presiding officer of the Labour Court at Guntur, several complaints were made against him. But the complains were not shown to the appellant. If they were shown to the appellant he could have been in a position to explain as to the circumstances under which such complaints were made against him. When they were not produced, it should be understood that those were anonymous or pseudonymous. They cannot, therefore, be given any weight. Keeping in view of this sort of situation, the Legislature provided R 5 of the Rules and Instruction No. 4 of the Instructions requiring the superior officers to cite specific instances or particulars in support of the adverse remarks, which they make against their subordinate judicial officers. In the absence of furnishing such specific instances or particulars in support of the adverse remarks, the personal hearing, which was given by Mr. Justice Sambasiva Rao has to be held as an empty public relations exercise.

30. The several judicial pronouncements make it abundantly clear that when a hearing is given in order to comply with the well-established principles of natural justice that the person affected must have a reasonable opportunity of being heard, the hearing must be a genuine, real and substantial hearing but not an empty public relations exercise.

31. In *Gurdial Singh Fijji Vs. State of Punjab and Others*, , their Lordships observed (at p. 1191 of Lab IC) :

"The principle is well-settled that in accordance with rules of natural justice an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object,

partially being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether adverse report is justified."

32. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, his Lordship Mr. Bhagwati, J. at page 629 observed :

"... The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

33. It follows that in order to treat the hearing real, genuine and effective, it is not sufficient, if the adverse remarks are communicated to the affected officer. The principles of natural justice further require that specific instances or materials should be furnished in support of the adverse remarks, if the adverse remarks are with regard to the integrity and reputation of the officer. If the instances or particulars are not furnished to the affected officer, then the hearing, even if it is a personal hearing, should be treated to be an empty formality, or in the words of the Supreme Court an empty public relations exercise.

34. The Supreme Court in *Regional Manager v. Pawan Kumar* 1976 I L.L.J. 266 observed :

"..... we find that the respondent was not, despite his requests, given particulars of any facts upon which the conclusion that he was disrespectful or disobedient was based. To allege such misconduct against him and then to stigmatise the respondent as "not fit" for working in the higher post could appear, on the facts and circumstances of the particular case, to be more vindictive than just and fair."

35. Thus, it is clear that the Supreme Court requires that particulars should be furnished when it is alleged that the adverse remarks are that the officer was disrespectful or disobedient.

36. A Division Bench of this Court in *Writ Appeal No. 711 of 1973*, D/- 11-4-1974 observed as follows :

"If objectivity is to be maintained then every remark which is made must be supported by some material, and the material and the remarks made thereon should be supplied to the Government servant with a view to provide him an opportunity of being heard. This is the minimum part of fair play, when confidential reports are taken into account not only for the purpose of regularising one's services, but also for the purpose of promotion. They thus affect the tenure of service of the employees. Confidential reports, therefore, have not only to be maintained with such objectivity as is humanly possible, but must as far as possible be supported by some material. The officer likely to be affected must be given a fair opportunity of saying what he has to say in regard to the

remarks made on such material."

37. Thus the Division Bench of this Court is unequivocal in insisting upon the furnishing of specific instances or material on the basis of which the adverse remarks are made and furnishing of such specific instances or particulars are necessary in order to give the officer against whom the remarks were made an opportunity to make an effective representation and in the absence of such material being not furnished the communication of the adverse remarks is not intended to give a fair opportunity to the affected officer of making an effective representation but is only intended to discharge an empty formality.

38. The Punjab High Court in *Angpal Kapoor v. State of Punjab* (1973) 1 Serv LR 989, also held that the affected officer was entitled to know the material on which the adverse remarks were made. The learned single Judge observed :

"No person should be condemned unheard is the well known canon of natural justice. The petitioner was entitled to know the material on which the opinion was formed by the Sub-Divisional Engineer that he did not possess a good reputation of integrity."

39. In view of R. 5 of the Rules and Instruction No. 4 of the Instructions mentioned above and the principles of natural justice and the judicial pronouncements requiring the personal hearing to be real and effective but not an empty formality, specific instances or particulars should be furnished in support of the adverse remarks.

40. But the learned Advocate General contends that specific instances need not be cited in support of the adverse remarks and it is sufficient if the adverse remarks are communicated to the concerned officer. In support of his contention he relied upon the decision in *R.L. Butah Vs. Union of India (UOI) and Others*, which was followed in *Union of India (UOI) Vs. M.E. Reddy and Another*, by the Supreme Court. In Butal's case their Lordships held :

"It is not necessary to give specific instances in respect of adverse remarks made. Only in a case where a censure or warning is issued as a result of any specific incident and when such warning is by an order to be kept in the personal file of the Government servant, then only the officer making the order has to give a reasonable opportunity to the Government servant to present his case with reference to the particular instance. In other cases, it is not necessary that specific instances should be furnished in support of the adverse remarks. It again follows that the contention that because of that omission the appellant could not make an adequate representation and hence the confidential report is vitiated cannot be accepted."

41. In fact the learned single Judge also relied upon the decision in *R. L. Butail v. Union of India* (supra) for holding that specific instances need not be furnished. The facts of the above two cases reveal that in these cases there are no rules like R. 5 and Instruction No. 4 mentioned above requiring the superior officers to cite

specific instances or evidentiary examples in support of adverse remarks. Hence the rulings of the Supreme Court cited above do not apply to these cases in respect of which specific rules like R. 5 and Instruction No. 4 govern the matters. Thus I have no hesitation to hold that the High Court is not justified to observe in the confidentials on the basis of rumours that the integrity of the appellant is doubtful and his reputation is bad. Hence the adverse remarks attaching stigma to the integrity and reputation of the appellant should be ignored and excluded. If they are excluded, then there is nothing tangible to overlook the appellant and to prefer his juniors to him.

42. But the learned single Judge placing reliance upon the remarks made by the Judges of this Court in some criminal appeals, which were directed against the judgments rendered by the appellant in six Sessions Cases, took the view that the appellant is inferior in merit and ability to respondents 3 to 6 and the High Court was, therefore, justified in overlooking, the appellant and preferring his juniors, i.e., respondents 3 to 6. It is true that the Division Benches while disposing of the Criminal Appeals Nos. 447/1969, 757/1969 and 288/1970 which were directed against the judgments rendered by the appellant in Sessions Case Nos. 15/1969, 21/1969 and 80/1969 and also the Criminal Appeals, which were directed against the judgments of the appellant in Sessions Cases Nos. 25/1970, 6/1971 and 37/1970, made strong remarks, which show that these judgments were not satisfactory. But these judgments were rendered by the appellant in the years 1969, 1970 and 1971. The appellant rendered numerous judgments in Sessions Cases, Criminal Appeals, Civil Suits and Civil Appeals as Additional District & Sessions Judge, Anantpur, Chittor and as District & Sessions Judge, West Godavari at Eluru and Adilabad, as Additional Chief Judge, City Civil Court, Secunderabad and in numerous awards passed by him as presiding officer of Labour Court, Guntur, in the years 1969, 1970 and from 1971 to 1978 and several appeals or revisions must have been preferred in the High Court against several of the judgments rendered by him during this period. Except in respect of the above six criminal appeals, which were directed against the judgments of the appellant, the record does not disclose that while disposing of these matters the Judges of the High Court made any adverse comments against the appellant. If that be so, the judgments of the appellant in these six matters will not determine the merit and ability of the appellant.

43. The High Court ought to have taken into consideration the over-all picture of the appellant with reference to the views or observations of the Judges of the High Court made in all their judgments or orders up to the date of the meetings instead of relying upon the observations made in the opinion forms relating to the said six criminal appeals from out of the hundreds of judgments, which were not subjected to any comment by the learned Judges of the High Court. In fact even the judgments of the third respondent, Sri P. V. Ranga Reddy, during 1969 and 1970 were equally not satisfactory as can be seen from his confidentials. With regard to the judgments rendered by the third respondent one Judge observed "in some cases some Judges have remarked that his judgments are

unsatisfactory and must show improvement in quality." Another Judge observed "quality of his judgments is unsatisfactory". The learned Judge while disposing of A.S. No. 110 of 1967 on 2-1-1970 observed "the learned Judge's disposal of the appeal shows that the only document he had to consider was not carefully read by him and the legal positions which were obvious, were overlooked." Another learned Judge observed in S.A. No. 258 of 1969 dated 8-9-1970 "the quality of his judgments is below average and appreciation of evidence is unsatisfactory". Two other Judges observed he has to improve". It is, therefore, clear that both the appellant and the third respondent stand on the same footing with regard to the quality of their judgments and the third respondent cannot be treated to be superior in merit to the appellant, if these judgments are taken into consideration. As stated above the over-all picture of judicial officer should, therefore, be taken into consideration for judging the merit and ability of a judicial officer and he should not be condemned or overlooked on the basis of the observations of the Judges of the High Court in a few handful of matters that too in the beginning of his service as a judicial officer.

44. It is common knowledge that due to inexperience the judgments of the judicial officers will not be up to the mark in the first two or three years. But the very same judicial officers, whose judgments were considered not satisfactory, were receiving the appreciation of the High Court in their later period of service with regard to their quality of judgments.

45. In *Brij Behari Lal Agarwal Vs. Hon"ble High Court of Madhya Pradesh and Others*, their Lordships observed that it was possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance.

46. I think that these observations of their Lordship will hold good even in the case of promotion. It is, therefore, clear that it is the confidentials of the later years that are of direct relevance and utmost importance and they should, therefore, be taken into consideration, while judging the merit and ability of the appellant. The judgments of the appellant from 1971 onwards are satisfactory and not subjected to any comment and criticism by the Judges of the High Court. Even in the years 1969 and 1973 all the judgments of the appellant are not unsatisfactory. Only a few, which respondent put above, are found to be unsatisfactory. Same is the case even with regard to respondent No. 3. Thus both stand on equal footing. If a Judicial Officer is condemned on the basis of a few judgments, rendered by him in the earlier period of his service, then the career of a judicial officer would be ruined and consequently his life would be doomed. The High Court is, therefore, not justified in making use of the observations made by the Judges in Opinion forms in the six criminal appeals mentioned above for overlooking the appellant, while the judgments rendered by

him in hundreds of matters, which are not subjected to any comments by the Judges of the High Court and are, therefore, satisfactory, especially when the judgments of the third respondent for the same period, i.e., 1969 and 1970 are found to be equally unsatisfactory.

47. With regard to the quantum of disposal the quarterly reviews, that were prepared by the High Court, clearly show that the appellant stands on equal footing with respondents 3 to 6. The record shows that in several quarterly reviews his work was found to be satisfactory and also good. It is, therefore, clear that if the quality and quantity of the judgments of the appellant are taken into consideration for all the years from 1969 till 1978 when the two meetings were held for filling up the posts of District & Sessions Judges, Grade-I with that of respondents 3 to 6, the respondents 3 to 6 cannot be treated to be superior in merit and ability to the appellant. On the other hand, he stands on equal footing with respondents 3 to 6, if not superior to them. In such a case he cannot be overlooked.

48. Further the record discloses that the High Court appears to have preferred respondents 3 to 6 to the appellant mainly on the consideration that the integrity of the appellant is doubtful and his reputation is bad. If the High Court would not have been under the influence of this consideration, it would have certainly selected and promoted the appellant even in its first meeting and would not have selected respondents 3 and 4 in preference to the appellant.

49. Further it is unfortunate that the High Court made use of the same material for overlooking the appellant even for filling up the subsequent two vacancies and preferring respondents 5 and 6 though there was no comment or criticism with regard to his integrity or judgments for the later period when the second meeting was held.

50. The learned Advocate General contends that when the High Court preferred respondent 3 to 6 to the appellant on the basis of merit and ability the decisions of the High Court should be deemed to have been given under Art. 235 of the Constitution and as such it cannot be justiciable and hence the High Court in exercise of its jurisdiction under Art. 226 of the Constitution is not competent to give a decision on a matter decided by it under Art. 235 of the Constitution on administrative side. In support of this contention the learned Advocate General relies upon the decision of the Supreme Court in *High Court, The High Court, Calcutta Vs. Amal Kumar Roy*, .

51. I do not think that such a broad proposition of law, as contended by the learned Advocate General, was laid down in the above cited decision. The contention that the decision taken by the High Court on its administrative side under Art. 235 of the Constitution is not justiciable however defective or vitiated by the non-observance of principles of natural justice, cannot be accepted. In that case, the plaintiff, who was a District Munsif, was not given promotion though his juniors were promoted since the special report called for from the

District Judge concerned, the plaintiff was not thought fit at that time to act as Subordinate Judge. The District Munsif then filed a suit in his own Court and issued an injunction in his own favour. The learned Judges deprecated the conduct of the plaintiff and took the view that his conduct showed a total disregard of all judicial propriety and, therefore, held that he was unfit to be given any promotion. This decision, therefore, cannot be an authority that whatever be the decision of the High Court under Art. 235 of the Constitution the aggrieved officer in the judicial department is debarred from approaching the High Court under Art 226 of the Constitution seeking for justice. It is true that the High Court is given the power under Art. 235 of the Constitution to promote a District & Sessions Judge, Grade-II to the post of District & Sessions Judge, Grade-I. In giving such a promotion it is incumbent on the part of the High Court to follow the well established principles of natural justice and also the rules governing the matter and if the principles of natural justice or the rules governing the matter are not followed it is open to the affected officer to question the decision of the High Court on its administrative side in a writ under Art. 226 of the Constitution. Thus I find myself unable to accept the contention of the learned Advocate General.

52. In view of my above discussion I have no hesitation to hold that the appellant's integrity is not doubtful and his reputation is not bad and he stands on equal footing with respondents 3 to 6 in merit and ability and hence he should be given his place in the order of seniority even as Grade I District & Sessions Judge in preference to respondents 3 to 6. Hence the orders issued in respect of the respondents 3 to 6 in G.O.R. No. 4366 GAD (SCX) Department dated 23-11-1977, G.O. RT. No. 4149 GAD (SCX) Department dated 2-12-1977 and G.O.Ms. No. 370 GAD (SCX) Department dated 25-5-1978 respectively are declared as illegal and a writ of mandamus as prayed for is issued,

53. In the result, the writ appeal is allowed, the judgment of the learned single Judge is set aside and the orders issued by the first respondent in G.O.Rt. No. 4046 GAD (SCX) Department dated 23-11-1977 in so far as the third respondent is concerned, G.O.Rt. No. 4149 GAD (SCX) Department dated 2-12-1977 in respect of the fourth respondent and G.O.Ms. No. 370 GAD (SCX) Department dated 25-5-1978 in respect of respondents 5 and 6 are quashed and respondents 1 and 2 are directed to consider the appellant's claims for promotion as Grade I District & Sessions Judge along with the other respondents afresh as on the date of the first meeting dated 24-10-1977 in the order of seniority without taking into consideration the adverse remarks communicated to him under Roc. No. 2814/76 B. Spl. dated 30-8-1976 and D.O. No. 2588/77 B. Spl. dated 29-7-1977, and the personal hearing given by Mr. Justice Sambasiva Rao. The selection so made should be given retrospective effect. No costs.

54. An oral application on behalf of the third respondent is made for leave to the Supreme Court. As no substantial questions of law of general importance to be decided by the Supreme Court are involved, leave refused.