

(1999) 05 DEL CK 0056
In the Delhi High Court
Case No : C.W.P. No. 4334/97

Purshottam Dass Gupta (Shri)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 4 AD 645 : (1999) 80 DLT 230

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. U.N. Bachawat, Mr. Raj Kishore Gupta, Mr. Anil Bansal, Mr. Gaurav Puri and Mr. Tara Chand Sharma, for the Appellant; Mr. Sanjay K. Kaul, Mr. Viraj R. Dattar and Mr. Arvind Nigam Advs., for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner has filed the writ petition challenging the adverse remarks made by the High Court for the years 1994 and 1995 at one go and seeking promotion from the date on which his juniors were promoted to the Delhi Higher Judicial Service. The facts have to be stated in some detail in view of the circumstances under which the petitioner's case has been dealt with by the High Court.

The petitioner joined Delhi Judicial Service on 28.1.1978. He was put on selection grade of Rs. 3700-5000 in June 1993 w.e.f. 31.5.1991 as he has been having good service record. The petitioner was assigned with the work of Addl. Rent Controller for the period from 22.3.1992 to 24.8.1995 by the High Court. By order dated 8.6.1993 the petitioner was entrusted financial powers by the learned District Judge. The order reads as under :-

"Whereas Shri J.B. Geol, Addl. District & Sessions Judge and Shri R.P. Malik, Drawing and Disbursing Officers of this office will not be available w.e.f. 11.6.93 to 22.6.93, Therefore, the under signed in exercise of power as Head of Department under rule 10(a) of the Delegation of Financial Power, hereby declare Shri P.D. Gupta, Addl. Rent Controller, Delhi, as Head of Office and Drawing and

Disbursing Officer in respect of Pay and other Bills of the Establishment of this office as well as Judicial Officers for the period 11.6.93 to 22.6.93."

On 5.6.1995 the learned District Judge passed the following order:-

"In exercise of powers conferred upon me, under rule 10(a) of the Delegation of Financial Power Rules, 1958. I, as Head of the Department, hereby declare Shri A.K. Jain, D.J.S. Delhi & Shri P.D. Gupta, D.J.S., as Drawing and Disbursing Officer in respect of the establishment of this office w.e.f. 3.6.95 to 11.6.95 & 17.6.95 to 23.6.95 respectively."

This was done recognising the service rendered by the petitioner in the case of the petitioner. By order dated 6.1.1996 the High Court invested the petitioner with appellate power by virtue of Section 39 of the Punjab Courts Act, 1918. The order is as under:-

"NOTIFICATION

In exercise of the powers conferred by section 39(3) of the Punjab Courts Act, 1918, as extended to the National Capital Territory of Delhi, the Hon'ble the Chief Justice that within the limits of Delhi Civil District and with effect from the date he takes over, appeals lying to the District Court from decrees or orders passed by any Civil Judge.

(a) In a money suit of value not exceeding Rs.1,000/-

(b) In a land suit of a value not exceeding Rs. 250/-

(c) In a un classed suit of a value not exceeding Rs. 500/-

may be preferred to Mr. P.D. Gupta, Civil Judge, Delhi exercising the Jurisdiction within such Civil District.

The Hon'ble the Chief Justice and Hon'ble Judges are further pleased to direct that the Court of such Civil Judge at Delhi shall be deemed to be District Court for the purpose of all such appeals preferred to it."

This according to the petitioner was because of his integrity and efficiency in performing his duties.

2. On 18.5.1996 one of the items for consideration by the Full Court was selection of officers for promotion to Delhi Higher Judicial Service. For that purpose, though that was not on the Agenda, ACRs of 23 officers were recorded by the Full Court. For the petitioner, for the year 1994 and 1995 adverse remarks "C integrity doubtful" were recorded at one go. Thereupon the Full Court considered the officers for promotion and the petitioner was superseded. On 27.5.1996 a communication was sent from the High Court to the petitioner informing him about the adverse remarks and the same reads as under :-

"Sub: Annual Confidential Remarks for the year 1993.

MEMORANDUM

1. You are hereby informed that Hon"ble the Chief Justice and Hon"ble Judges of this Court have been pleased to record the following remarks on your work and conduct for the year indicated below:-

Year Remarks 1994 "C" (Integrity doubtful) 1995 "C" (Integrity doubtful)

2. Your attention is also invited to Government of India, Ministry of Home Affairs O.M. No.1/3/65-Ests (D) dated 20.2.67 and O.M. No. 51/3/69-Ests (A) dated 27.9.1969 which provides that representation against adverse entries if any, should be made within six weeks of communication of such remarks."

3. It may be noted at the stage that in the note put up by the office on 25.2.1997 for the 4 member committees ,reference is made to the Memorandums mentioned in the above communication. This aspect I shall be dealing with presently.

4. This communication was received by the petitioner, according to him, on 3.6.1996. He submitted his representation on 8.7.1996 through the learned District Judge. On 10.7.1996 while forwarding he representation the learned District Judge had remarked :-

"I am to forward herewith the representation of Shri P.D. Gupta, Addl. Senior Civil Judge, Delhi for favourable necessary action. It may be stated here that no complaint has been received/pending regarding Shri P.D. Gupta, Addl. Senior Civil Judge, Delhi as per record of this office."

There was no reply from the High Court on the representation submitted by the petitioner. On 21.2.1997 the petitioner made another representation stating that his case for promotion for Delhi Higher Judicial Service may be considered with retrospective effect. There was no response from the High Court. On 16.9.1997 the petitioner made a representation to the learned District & Sessions Judge for a personal hearing in the matter by the Full Court. By letter dated 19.9.1997 the learned District Judge forwarded the report to the High Court. By letter dated 25.9.1997 rejecting the case of the petitioner the High Court wrote to the learned District & Sessions Judge:-

"Sub: Representations of Mr. P.D. Gupta, an officer of Delhi Judicial Service for expunction of adverse remarks recorded on his ACR for the years 1994 and 1995 and against his supersession in the matter of promotion/appointment to Delhi Higher Judicial Service.

I am directed to refer to the representations dated 8th July, 1996 and 21st February 1997 of Mr. P.D. Gupta, an officer of Delhi Judicial Service received with your letter No. 3185 dated, the 10th July, 1996 and No. F.5(3)/correspondence/1086 dated, the 24th February, 1997, on the above subject, and to say that the said representations of Mr. P.D. Gupta have been considered and rejected by this Court.

The officer concerned may kindly be informed accordingly."

On 15.10.1997 the petitioner presented the writ petition to this Court. The petitioner had prayed for the following reliefs:-

"(i) issue a writ of certiorari and/or any other appropriate writ, direction or order to call for the records of the Respondent No. 2 and to quash and set aside the order/letter No. 891/Ga./VI.F.I dated 25.9.1997 (Annexure "9") and to expunge adverse entries made in the Confidential Reports for year 1994 and 1995 as illegal and nonest, and order modification of the relevant remarks in a suitable manner and to order that column(s) in the Confidential Reports for the year 1994 and 1995 are appropriately filled in or deemed to be filled in:

(ii) to issue appropriate writ, order or directions to the respondents to promote the petitioner to Delhi Higher Judicial Service with retrospective effect with appropriate seniority and other benefits or in the alternative to direct the respondents to consider the case of the petitioner for promotion to Delhi Higher Judicial Service with retrospective seniority and all other benefits;

(iii) issue a writ of prohibition and/or a writ in the nature of prohibition or any other appropriate writ, direction or order permanently restraining the respondents and/or their officers from taking into consideration the adverse entries made in the Confidential Reports for the year 1994 and 1995 pertaining to the petitioner while considering the petitioner for promotion to the post of Delhi Higher Judicial Service from the date his juniors were promoted; and

(iv) declare Rule 4 of the Delhi Judicial Service Rules, 1970 as amended up to date and schedule there under so far as it included the post of Senior Civil Judge/ Additional Senior Civil Judge as ultra virus and unconstitutional."

Subsequently, the petitioner gave up the challenge on the Rule 4 of the Delhi Judicial Service Rules, 1970.

5. Broadly, the petitioner has stated that he has been maintaining good service record. There are absolutely no materials on record for the conclusion that his integrity is doubtful. There was no justification in law for the Full Court to make the adverse remarks and superseding the petitioner. The petitioner ought to have been granted B+ for the year 1995 as for the year 1994 the learned Inspecting Judge himself was pleased to give the grading B+. The petitioner has stated that the office Memorandum issued by the Government of India on 30.1.1978 and 11.5.1990 are applicable and while considering the recording of ACRs the procedure prescribed had not been followed. Therefore, according to the petitioner, he was entitled to be promoted with effect from the date his junior was promoted on 18.5.1996.

6. The High Court in its counter has refuted the averments made in the writ petition. The High Court has stated that the Full Court had considered all the relevant aspects and had made the adverse remarks on 18.5.1996 and the petitioner was not found fit for promotion. The High Court has its own procedure

for recording ACRs and the office Memorandums referred to by the petitioner, would not apply.

7. The learned senior counsel Mr. U.N. Bachawat appearing for the petitioner submitted that the High Court was not justified in making adverse remarks for the years 1994 and 1995 without any materials on record. The learned senior counsel submitted that the petitioner was assigned duty of Addl. Rent Controller having regard to his service and he was invested with powers of appellate court when his juniors were not given those powers. And these things would show that the performance of the petitioner has been consistently good. The learned senior counsel pointed out that the petitioner has been graded B+ for the years 1987 to 1993. For the year 1994 on 2.2.1996 the learned Inspecting Judge had given the grading B+ and on 18.5.1996 without any basis the adverse remarks were recorded by the Full Court in the ACRs of the petitioner. The learned senior counsel submitted that the petitioner was entitled to be graded as B+ for the years 1994 and 1995 and on that reckoning he was entitled to be promoted to the Delhi Higher Judicial Service. The learned senior counsel Mr. U.N. Bachawat cited number of authorities to show the purpose of recording ACRs, how the ACRs should be recorded by the authorities including the High Court and without any materials on record there can be no justification for recording adverse remarks.

8. I shall be dealing with the authorities presently.

9. The learned senior counsel further submitted that a perusal of the record also would show that there are no materials to form a view that the integrity of the petitioner was doubtful.

10. Mr. Sanjay Kaul, the learned counsel for the High Court, submitted that taking into account all the relevant aspects ACRs were recorded on 18.5.1996 for the petitioner and other officers and the Full Court in its collective wisdom had taken the decision and it is not open to the petitioner to challenge the same. The learned counsel Mr. Sanjay Kaul submitted that no records need be there and the High Court is entitled to take a decision having regard to the circumstances.

11. Before considering the rulings cited by the learned senior counsel for the petitioner, it is necessary to note the broad aspects involved in the matter:-

1. The effect of the petitioner being put on selection grade in 1991;
2. The petitioner being assigned the work of Addl. Rent Controller;
3. The petitioner being invested with powers of Drawing & Disbursing Officer;
4. The petitioner being invested with appellate powers with respect to a few matters;
5. The materials available on record for forming the opinion by the Full Court;
6. The grading that could be given to the petitioner for years 1994 and 1995;
7. The entitlement of the petitioner for promotion to Delhi Higher Judicial Service.

12. In the year 1982 a special ACR was given by Leila Seth, J. (as she then was) and that was on 20.5.1982 and it is as under:-

Special Report

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon'ble Inspecting Judge on the work of Shri P.D. Gupta, Metropolitan Magistrate.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt Yes in the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has he maintained Judicial Yes reputation for honesty and impartiality? 7. Net result. (B+)"

13. For the year 1981-82 the remarks recorded on 17.11.1983 by the learned Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI (1981-82)

Confidential remarks by the Hon'ble Inspecting Judge on the work of Shri P.D. Gupta, Metropolitan Magistrate.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt Yes in the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, applicable and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has he maintained Judicial Yes reputation for honesty and impartiality? 7. Net result. Good (B+)"

14. For the year 1982-83 the remarks recorded on 17.11.1983 by the learned Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI 1982-82

Confidential remarks by the Hon'ble Inspecting Judge on the work of Shri P.D.

Gupta, Metropolitan Magistrate.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy work? Yes 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has he maintained Judicial reputation for honesty and impartiality? 7. Net result. Good (B+)"

15. For the year 1983-84 the remarks recorded on 03.01.1986 by the learned Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI (1983-84)

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta,

1. Knowledge of law and procedure Good 2. Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy work? Yes 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has he maintained Judicial reputation for honesty and impartiality? 7. Net result. Good (B+)"

16. For the year 1984-83 the remarks recorded on 03.01.1986 by the learned Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controller/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI (1984-85)

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta"

1. Knowledge of law and procedure Good 2. Is he industrious and prompt Yes in the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has maintained Judicial reputation for honesty Yes and impartiality? 7. Net result. Good (B+)"

17. For the year 1985-86 the remarks recorded on 05.11.1998 by the learned

inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, DJS FOR THE YEAR 1985-86.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt Satisfactory in the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the NA distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has he maintained Judicial Yes reputation for honesty and impartiality? 7. Net result. Good (B+)"

18. For the year 1986-87 the remarks recorded on 05.11.1988 by the learned Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, DJS FOR THE YEAR 1986-87.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt in the disposal of cases and Satisfactory has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the NA distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Yes Officer? 6. Has he maintained Judicial Yes reputation for honesty and impartiality? 7. Net result. Good (B+)"

19. For the year 1987-88 the remarks recorded on 24.08.1992 by the learned Inspecting Judge would read as under :-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, For the Year 1987-88

1. Knowledge of law and procedure Average 2. Is he industrious and prompt in

the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders Needs to well written and clearly improve expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the NA distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? 6. Has he maintained Judicial reputation for honesty and impartiality? 7. Net result.

I would like to talk to this officer. As I have not inspected his court work, his previous ratings be maintained. B+

20. For the year 1988 the remarks recorded on 24.08.1992 by the learned Inspecting Judge would read as under :-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controlers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, FOR THE YEAR 1988.

1. Knowledge of law and procedure Average 2. Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders Needs to well written and clearly improve expresses? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the NA distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? 6. Has he maintained Judicial reputation for honesty and impartiality? 7. Net result.

I would like to talk to this officer. As I have not inspected his court work, his previous ratings be maintained. B+

21. For the year 1989 the remarks recorded on 09.10.1990 by the learned Inspecting Judge would read as under :-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, DJS FOR THE YEAR 1989.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt in the disposal of cases and Yes has he coped effectually with heavy work? 3. Are his judgments and orders Satisfactory well written and clearly expresses? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Yes Officer? 6. Has he maintained Judicial No specific reputation for honesty and complaint impartiality? 7. Net result. B+"

22. For the year 1990 the remarks recorded on 19.12.1991 by the learned Inspecting Judge would read as under :-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, DJS FOR THE YEAR 1990.

1. Knowledge of law and procedure Satisfactory 2. Is he industrious and prompt in the disposal of cases and Yes has he coped effectually with heavy work? 3. Are his judgments and orders Judgments are well written and clearly written in a very expresses? stereotyped manner, and are of average quality. 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the NA distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Yes Officer? 6. Has he maintained Judicial No complaint reputation for honesty and heard. impartiality? 7. Net result. Good (B+)"

The officer has been assessed as "Good", inspire of remarks in respect to the Judgments because of the Explanation given by him to the effect that those were the months when lawyers at Tis Hazari were on strike and there was no assistance in the matter of citation of case law or even arguments."

23. For the year 1991 the remarks records on 31.07.1992 by the learned Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon"ble Inspecting Judge on the work of Shri P.D. Gupta, DJS FOR THE YEAR 1991.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt in the disposal of cases and Yes has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the NA distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Officer? Yes 6. Has he maintained Judicial No complaint reputation for honesty and heard impartiality? 7. Net result. Good (B+)"

24. For the year 1992, the learned Inspecting Judge would not appear to have made any remarks and the annual confidential remarks were recorded by the Full Court and in its meeting dated 22.5.1993 the Full Court gave the grading B+.

25. For the year 1993 the remarks recorded on 24.04.1994 by the learned

Inspecting Judge would read as under:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judge/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon'ble Inspecting Judge on the work of Shri P.D. Gupta. DJS FOR THE YEAR 1993.

1. Knowledge of law and procedure Good 2. Is he industrious and prompt in the disposal of cases and Yes has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Yes he is good Officer? officer. 6. Has he maintained Judicial Nothing adverse reputation for honesty and has to come my impartiality? notice. 7. Net result. B+(Good)"

26. From 1989 to 1993 he was graded B+. The facts mentioned by the petitioner are not disputed by the respondents. For the year 1994 the learned Inspecting Judge on 2.2.1996 made the following remarks:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon'ble Inspecting Judge on the work of Shri P.D. Gupta, Addl Sr Civil Judge, Tis Hazari FOR THE YEAR 1994.

1. Knowledge of law and procedure Reasonably good 2. Is he industrious and prompt in the disposal of cases and Yes has he coped effectually with heavy work? 3. Are his judgments and orders Yes well written and clearly expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Yes Officer? 6. Has he maintained Judicial Nothing adverse reputation for honesty and came to notice impartiality? 7. Net result. B+

27. For the year 1995 the learned Inspecting Judge had said:-

"Form to be used in the case of District/Additional District & Sessions Judges/ Subordinate Judges/Rent/Additional Rent Controllers/Metropolitan Magistrates).

HIGH COURT OF DELHI AT NEW DELHI

Confidential remarks by the Hon'ble Inspecting Judge on the work of Shri P.D. Gupta, DJS FOR THE YEAR 1995

1. Knowledge of law and procedure Good 2. Is he industrious and prompt Yes

in the disposal of cases and has he coped effectually with heavy work? 3. Are his judgments and orders well written and clearly Yes expressed? 4. (For District and Sessions Judges and Senior Subordinate Judges) Is his supervision and the distribution of business among, and his control over the Subordinate Courts good? 5. Is he an efficient Judicial Yes Officer? 6. Has he maintained Judicial reputation for honesty and impartiality? 7. Net result.

I have not inspected his court but I have heard complaints about his integrity. I am leaving col. nos. 6 & 7 for being filled up by the full court.

28. In his writ petition in paragraph 4 the petitioner has referred to, be being put on selection grade. In reply thereto in the counter, it is stated:-

"The contents of para 4 need no reply. However, it is submitted that no special significance can be attached to the posting of any officer, including the petitioner as Additional Rent Controller. Transfers/postings in the Judicial Services are purely administrative actions taken keeping in mind various factors such as efficiency, exigency of services, requirement of officers and other relevant considerations."

29. Regarding the assignment of work as Additional Rent Controller and drawing and Disbursing Officer, the High Court had said that it is a matter of no moment.

30. With reference to the applicability of the Memorandum issued by the Govt. of India, even though it was said to be relevant in the note put up by the office on 21.2.1997 for the purpose of consideration of 4 member committee. It is stated in the counter that the Govt. of India order would not apply to the High Court and the High Court has got its own procedure. In paragraph 2 of the Preliminary Submissions, and in paragraph 9, Reply in Merits, it is stated:-

"In this respect, it is submitted that the procedure of recording of ACRs being following by the Delhi High Court is as follows:-

(a) Annual Confidential reports of all the Judicial Officers are recorded by the Full Court of the High Court on a calendar year basis, at the end of the Calendar year:

(b) Groups of the Judicial Officers of subordinate Courts are placed under the direct supervision and control of individual Hon"ble Judges of the High Court for the purposes of inspection;

(c) The Hon"ble Inspecting Judges call for and assess the monthly disposal of Judicial Officers and also carry out inspection of the Courts of Officers allotted to them. They may also call for judgments from the particular Officers for perusal. Complaints, if any received against the Judicial officers are also placed before the Hon"ble Inspecting Judges and the Hon"ble Judges, after perusal of the complaints, depending upon the nature and merits of the allegation, some times, call for judicial files of the cases to which the complaints are related and pass appropriate orders on the administrative side;

(d) The Hon"ble Inspecting Judges, thereafter, give their Inspection Reports/

Confidential remarks on the working of the Officers concerned, on the proforma prescribed containing columns as mentioned therein; and

(e) At the time of recording of ACRs by the Full Court, the reports of the District and Sessions Judge, if any given, the Inspection, Report of the Hon'ble Inspecting Judge, if made, summary of monthly disposal of the Officer and a precis of previous 5 years ACRs are placed before the Full Court for its consideration for the recordings of the ACRs of the Judicial Officers. The personal files and complaint files, if called for, are also placed before the Full Court."

31. It may be noticed at the stages that the learned senior counsel for the petitioner Mr. U.N. Bachwat submitted even this was not followed by the High Court while recording the adverse remarks against the petitioner. There is force in the submission.

32. With reference to the recording of the adverse remarks, as per the counter the above procedure was followed. Answering the case of the petitioner that "Confidential Reports of the petitioner for years 1994 and 1995 were not recorded by the Full Court till the matter of petitioner's promotion was taken up for consideration by Full Court on 18.5.1996 only the confidential reports for the years up to 1993 were to be considered. In paragraph 12 of the counter, it is stated:-

"The contents of para 12 are wrong and denied. It is denied that when the matter of the petitioner's promotion/selection to the DHJS was taken up by the Full Court, the ACRs of the petitioner for the years 1994 and 1995 had not been recorded."

In paragraph 12.1 of the counter it is stated:-

"It is submitted that the Full Court on 18.5.1996 before taking up for consideration the matter regarding promotion/selection of Officers to DHJS, recorded the ACRs of the Judicial Officers including the petitioner's ACRs for the years 1994 and 1995. It is only after the recording of all pending ACRs in respect of the Judicial Officers falling within the zone of consideration that the Full Court took up the matter for promotion/selection to DHJS."

With reference to the materials, the High Court has stated in 12.2:-

"It is respectively submitted that adverse remarks were recorded in the ACR of the petitioner by the Full Court after taking into consideration all the relevant factors including the reputation generally enjoyed and character ascribed to the petitioner. It is also submitted that it is not imperative that in the case of a judicial Officer there must necessarily be documentary or other evidence to justify the remarks about the doubtful character or integrity. The existence of such material would generally entail far more serious consequences including severe disciplinary action. However, in a given case, inference about the integrity of a Judicial Officer may also be drawn on the basis of general assessment and reputation of the Officer."

About the remarks made by the learned District Judge on 10.7.1996 while forwarding the representation dated 8.7.1996 by the petitioner, it is stated in the counter:-

"It is further submitted that the recommendations of the Distt. Judge and his remarks to the effect that no complaint had been received against the petitioner were also taken into account at the time of consideration of the petitioner's representation even though the said remarks were unsolicited and were not called for.

It is further denied that there was no basis for the Full Court to make the adverse remarks. It is respectfully submitted that the adverse remarks against the petitioner were recorded taking into consideration all the relevant factors."

33. From the above it is very clear that the adverse remarks have been made on the basis of inference and without any material on record.

34. Regarding the consideration of the case of the petitioner for promotion, it is stated in the counter in paragraph 16 Reply on Merits:-

"The petitioner was duly considered for promotion by selection to the DHJS by the Full Court in its meeting held on 18.5.96. The Full Court, after considering the petitioner's ACRs and taking into consideration other relevant factors found the petitioner unfit for promotion to the DHJS. As such there is no question of the petitioner being superseded in the matter of promotion since he was never selected in the first place. It is further submitted that the fact that the representation was pending is of no consequence, especially since the same was subsequently rejected by the Full Court."

35. In paragraph 22-23 of the counter, it is stated:-

"It is submitted that the Full Court after considering the petitioner's ACRs for the past five years and also other relevant factors found the petitioner unfit for promotion to the DHJS."

36. It may be noted at the stage that the officers who had been graded B+ and B had been selected and promoted by the Full Court.

37. Regarding the consideration of the representation made by the petitioner, it is stated in the counter:-

"It is further submitted that the representations dated 8.7.1996 and 21.2.1997 submitted by the petitioner were duly considered by the Full Court and rejected on 20.9.97. Also, another representation dated 16.9.97 seeking personal hearing was also duly considered by the Full Court and was rejected on 30.9.97.

38. It is stated in paragraph 22-23.1:-

"It is denied that the petitioner merited promotion or that the same was wrongly denied to him. It is submitted that the Full Court after considering the petitioner's ACRs for the past five years and also other relevant factors found

the petitioner unfit for promotion to the DHJS."

39. What are the other relevant factors which made the High Court find the petitioner unfit for promotion is not stated in the counter?

40. Regarding the delay in disposal of the representation, it is stated in the counter:-

"The Full Court is not bound by any period of limitation envisaged by any G.D.I. Memorandum."

41. Reference is made to a case of J.K. Pali in paragraph 31-37.8, which read as under:-

"It is also pertinent to mention that another member of the DJS, Sh. J.K. Pali (since retired) who had been conferred with the power of a Senior Civil Judge u/s 39(3) of the Punjab Courts Act and was later posted as a Relieving Magistrate, challenged his posting by way of W.P. No. 2284/94 before this Hon"ble Court raising substantially the same issues. The Writ Petition was rejected by the Hon"ble Court by its judgment and order dated 19.10.1994 and his petition in the Hon"ble Supreme Court seeking special leave to appeal being SLP (c) No. 2517/95 was also dismissed by the Hon"ble Supreme Court on 4.4.1995. As such the issue raised by the petitioner is no longer rest integra."

The order referred to in the paragraph reads as under:-

"By virtue of posting order, the petitioner is working as Metro politan Magistrate. There is no adverse civil consequences from that posting order. We are not inclined to entertain this petition. Dismissed."

42. The claim of the petitioner was that he was invested with the appellants powers having regard to his good service record and he never challenged he being invested with the appellate powers. Therefore, the order dated 19.10.1994 passed by this Court in the case of some other officer would not be of any relevance.

43. It is in this backgrounds, the authorities cited by the learned senior counsel Mr. U.N. Bachawat along with the facts that could be gathered from the file have to be considered.

44. These facts clearly show that there are no materials to come to the conclusion that the petitioner should be graded as " `C" integrity doubtful".

45. We have to now notice the principles laid down by the Supreme Court with reference to the protection given to the civil servants under the constitutional scheme, and the purpose of writing ACR and how the authorities concerned have to proceed to assess the conduct of officers. In Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., a Constitution Bench of seven Judges of the Supreme Court laid down:-

"At this stage, we ought to add that in a modern democratic State the efficiency

and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a permanent civil servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject, of course, to the safeguard prescribed by Art. 311(2); but in regard to honest, straightforward and efficient permanent civil servants, it is of utmost importance even from the point of view of the State that they should enjoy a sense of security which alone can make them independent and truly efficient."

46. In *Ishwar Chand Jain Vs. High Court of Punjab and Haryana and Another*, the Supreme Court had to consider the validity of the order dated 30.12.1986 dispensing with the services of the appellant ad d. District & Sessions Judge in terms of rule 10(3) of the Punjab Superior Judicial Service Rules, 1963. The facts culminating in the filing of the appeal before the Supreme Court are:-

47. Initially, the appellant was an advocate practicing law in their High Court of Punjab and Haryana. He was selected for appointment to the Haryana Superior Judicial Service by the High Court. On the recommendation of the High Court the State Government by its order dated 14.4.1983 appointed the appellant as Addl. District and Sessions Judge on probation for a period of two years in accordance with R. 10(1) of the Punjab Superior Judicial Service Rules 1963, as adopted by the State of Haryana (hereinafter referred to as the Rules). The High Court by its order dated 27.4.1983 posted the appellant to Hissar as Addl. District and Sessions Judge where he joined his duties on 2.5.1983. While he has posed at Hissar certain incident took place as a result of which the Bar Association of Hissar passed a resolution against the appellant and as a result of which he was transferred from Hissar to Narnaul as Addl. District and Sessions Judge where he assumed charge of his office on 5.5.1984. While the appellant was posted at Narnaul, inquiry into certain complaints against him was held by a Judge of the High Court. After the inquiry the High Court at its meeting held on 21.3.1985 resolved that the appellant's work and conduct was not satisfactory during his probationary period and as such his services deserved to be dispensed with forthwith. The High Court forwarded its recommendation for terminating the appellant's service to the State Government by its letter dated 28.3.1985. Before the State Government could issue any orders, the appellant filed a writ petition under Art. 32 of the Constitution before this Court challenging the High Court's decision. On 14.4.1986 this Court permitted the appellant to withdraw the petition with liberty to file the same before the High Court. The appellant thereafter filed a writ petition before the High Court challenging the resolution of the High Court as well as certain other consequential orders to which reference shall be made at a later stage. A Division Bench of the High Court by its elaborate order dated 9.12.1986 dismissed the writ petition on the findings that the appellant's work and conduct was not satisfactory and as he was on probation his services were rightly terminated without giving any opportunity to the appellant. Thereafter, the State Government pursuant to the

recommendation of the High Court issued orders on 30.12.1986 terminating the appellant's services in accordance with R.10(3). Aggrieved the appellant has challenged the order of the High Court under appeal as well as the order of the State Government terminating his services.

48. The argument on behalf of the High Court was that the resolution by the High Court did not cause any stigma to the appellant and inquiry held by the High Court was merely to judge his suitability for the service. The Supreme Court dealing with the material on record observed:-

"We do not consider it necessary to deal with these rival submission as in our opinion the High Court had no relevant material in coming to the conclusion that the appellant's work and conduct was not satisfactory during his probationary period. It appears to us as we shall presently show that the material which was taken into account was non-existent, while the other material was not relevant and further the allegation which were taken into consideration remained unsubstantiated. Having perused the entire material placed before us we are of the opinion that the High Court committed error in holding that the appellant's work and conduct was not satisfactory and that his services were liable to be terminated."

The Supreme Court having regard to the fact that the judicial officer as entitled to the protection under Constitution went into the facts to decide the point whether the High Court was justified in taking the decision on its Administrative Side. It has become necessary to cull out the relevant portion from the judgment of the Supreme Court to show that how the Court has to approach the problem:-

"We would now consider the facts and circumstances which persuaded the High Court on its administrative side in taking the decision to dispense with the appellant's services. On his selection the appellant was firstly posted at Hissar where he joined his duties on 2.5.1983. While at Hissar the appellant decided a criminal case under Ss. 363/366 IPC (State v. Ram Niwas) on 10.9.1983. The appellant acquitted the accused for the offence under S. 366 IPC but convicted him under S. 363 IPC and released him on one year's probation. The accused preferred appeal against his conviction to the High Court. Justice A.S. Bains by his order dated 5.4.1984 allowed the appeal on the ground that the prosecution had failed to prove its case against the accused beyond reasonable doubt and Therefore it was not safe to maintain his conviction. In the course of his judgment Justice Bains made the following observations against the appellant:

"I am constrained to remark that the judgment recorded by the trial Court is extremely poor and is not based on the evidence on the record. The trial Court seems to have wrongly convicted the appellant."

The appellant made representation against the aforesaid remarks but the High Court refused to grant any relief to the appellant on the ground that the remarks awarded to him had been made in judicial proceedings. The appellant made a representation for placing his representation before the learned Judge who had

awarded remarks against him but that too was not accepted. The appellant, thereafter, approached the High Court in the judicial side by means of an application under S. 482 of the Code of Criminal Procedure for expunging the aforesaid remarks but he could not get any relief. Ultimately, the appellant approached this Court by means of Criminal Misc. Petition No. 1377 of 1987 for expunging the aforesaid remarks. This Court by its order dated 7th September 1987 held that from the facts and circumstances of the case it could not be said that the order and judgment of the Addl. District and Sessions Judges was not based on the evidence on record and the remarks made by Justice Bains were unwarranted. This Court directed that the aforesaid remarks should be expunged from the judgment in appeal. These facts show that the remarks made by Justice Bains against the appellant were unjustified, unwarranted and they ceased to be in force.

On 26.9.1983 while the petitioner was recorded the statement of an Assistant Sub Inspector of Police in a sessions case, in advocate of Hissar Sh. Nar Singh Bishnoi, came into the appellant's court and made a request to the appellant that Thakur Dass, the Assistant Sub Inspector of police whose statement was being recorded as a witness in a sessions case should be directed to appear in a complaint case against him (the Assistant Sub-Inspector of Police) pending in the Court of Chief Judicial Magistrate, Hissar. The appellant told the Advocate Sh. Nar Singh Bishnoi that the Chief Judicial Magistrate should direct Thakur Dass the witness to appear in his court and Shri Bishnoi might himself bring summons and serve the same on Thakur Dass. Sh. Bishnoi went to the Court of Chief Judicial magistrate for bringing summons; meanwhile the statement of Thakur Dass was recorded and on being discharged from the witness box he became free. The appellant waited for more than half an hour but Shri Bishnoi did not turn up with the summons. Thereupon he discharged Thakur Dass. It was not strictly his duty as a Judge to detain the witness after his evidence was recorded for the purpose of serving summons in a complaint case on him. Shortly, thereafter Sh. Bishnoi, advocate came to the appellant's court and finding that the witness had already left he Court he expressed his anger towards the appellant who was still presiding over his Court and threatened him saying that he would see that no judicial officer would dare to act in such a manner, Sh. Nar Singh Bishnoi, advocate, thereupon addressed a letter to the President of Bar Association requesting that a meeting of the Bar Association should be held which read as follows:

"To

The President,

Distt. Bar Association, Hissar.

Subject: To consider the behavior of Sh. I.C. Jain, Additional Sessions Judge.

Sir,

It is submitted that today i.e. on 26.9.1983 I had presented an application in the court of Sh.I.C. Jain, Additional Sessions Judge, Hissar in the presence and on behalf of my client, Sh. Punam Chand, for effecting the service of summons on accused Thakur Dass S.I. At that time Thakur Dass S.I. was appearing as witness in the witness box in the court of Sh. I.C. Jain, and I.C. Jain refused to pass any order on my application and I was asked to bring the summon. When after obtaining the dusty summons from the court of Sh. L.N. Mittal, C.J.M. Hissar, in whose court complaint was pending, I went to the court of Sh. I.C. Jain. By that time Thakur Dass had already filed away and he was seen going on Motor Cycle by my client. behavior meted out tome by Shri I.C. Jain is in fact wrong and misbehaviour with the lawyers" community at large. I pray to all the members of Bar Asso ciation, Hissar that matter may be considered by calling for urgent meeting.

Sd/-

Nar Singh Bishnoi

Advocate, Hissar"

On the aforesaid letter a meeting of the Bar was convened on 27.9.1983 and the following resolution was passed:

"Resolved that the attitude and the behavior of Shri I.C. Jain, Additional District & Sessions Judge, Hissar towards the members of the Bar is most deplorable, verges (sic) and condemnable for being rude, un-cooperative and insulting".

The Bar Association forwarded as copy of the resolution to the High Court and also to the District and Sessions Judge, Hissar. The appellant on getting information about the resolution ad dressed a letter to the Registrar of the High Court on 8.10.1983 giving his version about the incident and he further sought advice of the High Court as to whether in the circumstances the witness (Thakur Dass) should have been detained on the request of the counsel for a party to enable him to bring summons for ef fecting service on him and further whether it was the duty of the appellant as an Addl. District & Sessions Judge to get the service effected without there being any requisition from the court of the Chief Judicial Magistrate. It appears that the High Court did not give any reply to the appellant and the guidance sought for by the appellant remained unattended. These facts clearly show how the members of the Bar Association passed the resolution condemning a judicial officer on trifling matter without applying their mind to the question. The appellant being an Additional sessions Judges was not bound by law to detain the witness to enable counsel of a private party to bring dusty summons for effecting service on the said witness. The members of the bar practicing before the court should be aware of the legal position and they should not have indulged in passing a resolution condemning the appellant without there being any justifiable cause for the same. If the members of the bar association pass resolution against the presiding officers working insubordinate courts without there being any justifiable cause it would be difficult for judicial

officers to perform their judicial functions and discharge their responsibilities in an objective and unbiased manner. We are distressed to find that the High Court instead of protecting the appellant took this incident into consideration in assessing the appellant's work and conduct."

Referring to the decision of the High Court that the work of the appellant was not satisfactory, the Supreme Court observed:-

"It is asserted on behalf of the High Court that since the appellant's work and conduct were not found satisfactory during the period of probation of two years the court decided to discontinue his service forthwith. Consequently it made recommendation to the State Government for issuing necessary orders. The decision to discontinue the appellant's services was taken at the full court meeting of the High Court held on 21st March, 1980 (sic, 21.3.85). Along with agenda a note was circulated to the Hon'ble Judges, referring to five complaints out of which four complaints had been inquired into by Justice Surinder Singh and the fifth complaint remained without any inquiry. The report of Justice Surinder Singh was considered by the High Court along with appellant's service record. The High Court formed opinion that the appellant's work and conduct was not satisfactory. Since the report of Justice Surinder Singh, vigilance judge, formed the foundation for taking action against the appellant, we consider it necessary to refer to the same in detail. A copy of the report is on file. On perusal of the same we find that in all four complaints were referred to Justice Surinder Singh who was Vigilance Judge for inquiry. The first complaint was by R.N. Mehlawat, Project Director, Adult Education. He raised a grievance that on July 25, 1984 the appellant convicted the four accused but he went out of the way to institute an inquiry against Ranjit Singh accused and also against the defense witness for forging a document. He further released all the convicted accused persons to probation. Shri Mehlawat was aggrieved that though he was a public servant, the accused were not convicted u/s 332 of the Indian Penal Code. He alleged that he had received information that the appellant had received illegal gratification to the tune of Rs.25,000/- from the accused for taking lenient view in the matter. The vigilance judge recorded the statement of the appellant and of other relevant persons. In his report he stated that it was difficult for him to come to a definite finding although the allegations contained in the complaint filed by Shri Mehlawat could not be said to be without any basis but he recommended that the complaint required further investigation. We have earlier noted that Mehlawat had filed appeal and revision against the appellant's order but he failed. Justice Tiwana found no merit in the appeal and revision and he upheld the order of the appellant. Justice Tiwana expressly held that Mehlawat was not a public servant even though he was a Project Director of the Adult Education Project, and the conclusion of the trial court was correct and there was no merit in the appeal and revision. We are distressed to notice that even though the High Court had upheld the appellant's order to the judicial side it took exception to the appellant's conduct in passing the orders against Sh. Mehlawat. Sh. Mehlawat had also made allegations that the appellant had

accepted illegal gratification in installments in giving judgment in his case but during the enquiry by the vigilance judge he could not produce any evidence to that effect. It is a matter of common knowledge that many a time when a litigant is unsuccessful he makes allegations against the presiding officer stating that he had received illegal gratification. Sh. Mehlawat was an unsuccessful litigant and he was highly prejudiced and biased against the appellant. Any complaint made by him against the appellant could not be taken at its face value specially so when the appellant's order had been upheld by the High Court. The vigilance judge did not record any finding against the appellant. He observed that the complaint required further investigation."

The Supreme Court considered each and every one of the points dealt by the High Court as the matter involved the career of a judicial officer. Referring to the vigilance inquiry on an anonymous complaint, the Supreme Court observed:-

"The second matter in respect of which the vigilance judge held inquiry was on the basis of an anonymous complaint pertaining to a civil appeal entitled *Sher Singh & Ors Vs. Mahender Singh* in which it was alleged that the appellant had during the course of arguments, tried to persuade the respondent to compromise the matter. It was alleged that after the arguments were concluded the case was adjourned for several dates for judgment. There was no allegation of any corruption or dishonest motive. The vigilance judge came to the conclusion that the adjournment of the case was unnecessary as the case was a very old one. However the vigilance judge, further held that the complaint being anonymous it required further probe. The third complaint was made by Mukul Bihari Sanghi, an advocate, practicing at Narnaul. He alleged that the appellant heard civil appeal entitled *Mohan Lal Vs. Honda Ram* on 20th September 1984 and fixed the same for orders for 22nd September, 1984 but the judgment was pronounced on 10th October, 1984. We have perused the copy of the complaint made by Shri Sanghi but there is no allegation that the appellant committed any misconduct or that he acted on any extraneous reasons in granting adjournment. The appellant stated before the vigilance judge that after arguments were completed he had fixed a date for order but as the parties wanted to compromise, he postponed the delivery of judgment for few days in order to enable the parties to settle the dispute but since no settlement was communicated to the court he pronounced the judgment on 10th October, 1984. The vigilance judge, however, made an observation that the case was glaring example of the manner of working of the appellant of any judicial cases. In the absence of any extraneous circumstances, we do not find any impropriety in a judicial officer postponing the pronouncement of the order to enable the parties to settle the dispute. It is interesting to note that Sh. Mukut Bihari Sanghi, advocate, was twice held guilty for contempt of court. He was convicted for contempt of court by the High Court. He wanted to browbeat the appellant. His complaint, however, did not contain any allegation of corruption. The High Court failed to appreciate that no appeal was preferred against the appellant's judgment in the case of *Mohan Lal V. Honda Ram* as the parties were satisfied with the judgment. In our opinion the complaint deserved

no consideration; it should have been rejected outright. The fourth complaint had been made by one Khem Chand, his grievance had been that his Rent Control Appeal had been dismissed by the appellant on 24th November 1984 and he had allowed him two months time to vacate the premises. He applied for obtaining a certified copy of the judgment but he could not get the same. Instead he got the same, after inordinate delay. The appellant's Explanation was that the copying section was not under his control or supervision, Therefore, he could not be blamed for the delay caused in supplying certified copy of the judgment to Khem Chand. The vigilance judge did not express any opinion on this matter."

Reversing the decision of the High Court, the Supreme Court observed:-

"The above analysis of the report of the Vigilance Judges would show that out of four complaints the vigilance judge expressed opinion that matter relating to items Nos. 1 and 2 needed further investigation and enquiry as he was not in a position to record any definite finding on the allegations made in those complaints. As regards the third complaint of Mukut Bihari Sanghi there was nothing wrong in postponing the pronouncement of the order with a view to give time to the parties to compromise the matter. Finally, as regards Khem Chand's complaint the vigilance judge did not express any opinion on the matter. The report of the vigilance judge does not show that the appellant's work and conduct were not satisfactory or that he was not fit to act as a Judicial Officer. While considering this question it must be kept in mind that complaints, in respect of which the learned judge observed that the same needed further inquiry into the matter, could not at all be considered against the appellant. If the inquiry had been held and the appellant had been given opportunity to place his version before the inquiry officer, correct facts would have emerged. But in the absence of any further inquiry as suggested by the vigilance judge, the High Court was not justified in considering those matters in concluding that the appellant's work and conduct was not satisfactory."

Dealing with the ACRs, the Supreme Court observed:-

"As far as the confidential roll of the appellant if concerned it is noteworthy that when the High Court considered the matter on 21.3.1985 the appellant's annual report was available only for the first year of his service namely 1983-84. The report for that year was satisfactory. Entry for the year 1984-85 was awarded by Justice S.P. Goyal who was Inspecting Judge on 15.4.1985. He awarded Grade "B" plus to the appellant which means that appellant's work was good. But this entry could not be taken into consideration by the High Court as it had already taken the decision on 21.3.1985 to dispense with the appellant's services. We are distressed to find that when the aforesaid entry for 1984 85 came up for consideration before the full court of the High Court it modified the same and down graded the entry from "B" plus to "C" which means appellant's work was unsatisfactory. During the hearing we asked the learned counsel appearing for the High Court to produce material on the basis of which the High Court modified the entry given by Justice S.P. Goyal for the year 1984-85 but he

was unable to place any material before us to support the decision of the High Court in modifying the entry. The modification of the entry is Therefore without any material and is not sustainable in law. It is thus clear that so far as annual entry on the appellant's confidential roll is concerned there was no material against him which could show that the appellant's work and conduct was unsatisfactory. The facts and circumstances discussed earlier clearly show that the appellant's services were terminated merely on the basis of the report made by the vigilance judge which we have discussed in detail earlier. The note appended to the agenda of the meeting referred only to the inquiry report and it did not refer to any other matter. The Vigilance Judge failed to express any positive opinion against the appellant; instead he observed that the complaints required further investigation. If the High Court wanted to take action against the appellant on the basis of the complaints which were the subject of inquiry by the vigilance judge, it should have initiated disciplinary proceedings against the appellant, then the appellant could get opportunity to prove his innocence. We have already discussed in detail that the facts stated in the complaints and the report submitted by the vigilance judge did not show any defect in appellant's work as a judicial officer. While considering complaints of irregularities against a judicial officer on probation the High Court should have kept in mind that the incidents which were subject matter of inquiry related to the very first year of appellant's service. Every judicial officer is likely to commit mistake of some kind or the other in passing orders in the initial stage of his service which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be overlooked by the High Court and proper guidance should be provided to him. If after warning and guidance the officer on services should be terminated."

The Supreme Court delineated the role of the High Court in unambiguous terms:-

"Under the constitution the High Court has control over the subordinate judicial. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judicial is a sine qua non for Rule of law. If judicial officers are under constant threat of complaint and inquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is Therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Sh. Mehalwat and others were motivated

which did not deserve any credit. Even the vigilance Judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments."

The Supreme Court allowed the appeal setting aside the order of the High Court dated 9.12.1986 and the order of the state Government dated 12.12.1986.

49. There can be no doubt that from the judgment of the Supreme Court in order to come to a decision about the conduct of a civil servants/judicial officers there should be some material on record and those materials should be considered by the authority concerned. What would be the effect of the materials would depend upon the nature of the materials available and the decision would depend upon the ultimate conclusion on the materials. It may result in down grading of an officer or he being sent out of the service by whatever be the nomenclature that may be employed.

50. Again the Supreme Court had to deal with a situation where there were no materials to form an opinion for the compulsory retirement to judicial officer in Registrar, High Court of Madras Vs. R. Rajiah, . In that case two judicial officers were compulsorily retired by the High Court of Madras. Those orders were challenged before a Division Bench of that Court. Two questions were mooted before the Division Bench. One was whether there were no materials available on record that could persuade the High Court to pass the orders. The other question was whether the High Court had power to compulsorily retire member of the Tamil Nadu State Judicial Service, The two learned Judges Constituting the Division Bench concurred in taking the view that there were no materials to support the orders.

51. On the question of jurisdiction of the High Court, one of the learned took the view that it was within the jurisdiction of the High Court to take a decision but the formal order of compulsory retirement was to be passed by the Governor. the other learned Judge did not agree to this. As the Division Bench set aside the orders of compulsory retirement passed by the High Court, the matter was taken up in appeal to the Supreme Court. On the merits, the Supreme Court affirmed the view taken by the High Court. The Supreme Court held:-

"It is true that the High Court in its administrative jurisdiction has power to compulsorily retire a member of the judicial service in accordance with any rule framed in that regard, but in coming to the conclusion that a member of the subordinate judicial service should be compulsorily retired, such conclusion must be based on materials. If there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. Indeed, Article 235 of the Constitution does not contemplate the exercise by the High Court of the power of control over subordinate courts arbitrarily, but on the basis of some materials. As there is absence of any material to justify the impugned orders of compulsory retirement, those must be held to be illegal and invalid."

52. On the second question, the Supreme Court upheld the view taken by one of the Judges that it was not the High Court but the Governor, who had to pass the formal orders of compulsory retirement.

53. In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, the Supreme Court laid down the scope of Article 14 while considering the validity of Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service Regulations, 1952, Respondents 3 and 4 before the Supreme Court were served with termination notices on 4.6.1985 under that Regulation. They were challenged before this Court and the constitutional validity of Regulation 9(b) was challenged. A Division Bench of this Court allowed the writ petitioner and declared Regulation 9(b) to be illegal and ultra-vires and as a consequence thereof the notices were quashed and it was declared that respondent 3 and 4 were deemed to be in service of the Delhi Transport Corporation and directed payment of back wages with all other benefits. At page 716 Sawant, J observed that it was not necessary to discuss in detail the authorities which had widened horizons of Article 14 of the Constitution of India. But His Lordship proceeded to summarise the position of law. His Lordship observed:-

"There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

Emphasising the need for rules, the Supreme Court observed:-

"Both the society and the individual employees, Therefore, have an anxious interest in service conditions, being well defined and explicit to the extent possible. The arbitrary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place in any service conditions.

These are the conclusions which flow from *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , The Manager, Government Branch Press and Another Vs. D.B. Belliappa, , Managing Director, Uttar Pradesh Warehousing Corporation*

and Another Vs. Vijay Narayan Vajpayee, . A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others, , West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, , Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , Union of India and Another Vs. Tulsiram Patel and Others, Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. (1986) 4 SCC 377 , N.C. Dalwadi Vs. State of Gujarat : [1987]3SCR640 , M.K. Agarwal Vs. Guraon Gramin Bank : [1987]3SCR640 and Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, ."

The Regulation was sought to be sustained merely on two grounds, namely, that the power conferred by it is to be exercised only by high authorities and it is capable of being read down to imply circumstances under which along the power could be exercised. Dealing with the high authority principle, His Lordship was pleased to observed:-

"The "high authority" theory so-called has already been adverted to earlier. Beyond the self deluding and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much an ode to it."

/BLOCKQUOTE> K. Ramaswamy J. concurring with the view taken by Savant J. and observed:-

"In view of the march of law made by Article 14, in particular after Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , it is too late in the day to contend that the competent authority would be vested with wide discretionary power without any proper guidelines or the procedure."

54. In H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, , the Supreme Court expatiated on the role of judiciary. Therein the appointment made by the learned Chief Justice to various categories of posts on the ministerial side were challenged. The learned Judges of the Supreme Court who heard the writ petitions quashed the appointments made by the learned Chief Justice. Explaining the role of judiciary, the Supreme Court observed:-

"The Judiciary is the custodian of constitutional principles which are essential to the maintenance of rule of law. It is the vehicle for the protection of a set of values which are integral part of our social and political philosophy, Judges are the most visible actors in the administration of justice. Their case decisions are the most publicly visible outcome. But the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take account of the totality of the Judges behavior and their administrative roles. They may

appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute, in our opinion, a substantial part of the mosaic which represents the ordinary man's perception of what the Courts and how the judges go about their work. The Chief Justice is the prime force in the High Court. Article 229 of the Constitution provides that appointment of officers and servants of the High Court shall be made by the Chief Justice or such other Judge or officer of the Court as may be directed by the Chief Justice. The object of this Article was to secure the independence of the High Court which cannot be regarded as fully secured unless the authority to appoint supporting staff with complete control over them is disagreement on this matter. There can be no disagreement on this matter. There is imperative need for total and absolute administrative independency of the High Court. But the Chief justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law, not in the neighborhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others must necessarily maintain a higher standard of ethical and intellectual rectitude. The public expectations do not seem to be less exacting."

55. In *K.P. Tiwari Vs. State of Madhya Pradesh*, the Supreme Court had come down on the High Court of Madhya Pradesh and pointed out even while functioning on the judicial side how the high Court would have to consider the orders of the lower courts. The learned Single Judge of the Madhya Pradesh High Court while cancelling the bail granted by the learned Addl. District Judge passed strictures against him. The Additional District Judge took up the matter to the Supreme Court for expunging the remarks. The Supreme Court said:-

"We are, however, impelled to remind the learned Judge of the High Court that however anguished he might have been over the unmerited bail granted to the accused, he should not have allowed himself the latitude of ignoring judicial precaution and propriety even momentarily. The higher Courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And applies to judges at all levels from the lowest to the highest. Sometimes, the difference in view of the higher and the lower courts is only a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost

breathing down their necks more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, Therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticised intemperately and castigated publicly, no greater damage and be done to the administration of justice and to the confidence of the people in the judiciary can when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other. It must be remembered that the officers against whom such strictures are publicly passed, stand condemned for ever in the eyes of their subordinates and for the members of the public. No. better device can be found to destroy the judiciary from within. The judges must, Therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is certainly not one of them. That is the surest way to take the judiciary downhill."

56. The Supreme Court underlined the need to write confidential report jectively, fairly and dispassionately in *S. Ramachandra Raju Vs. State of Orissa*, . The appellant before, the Supreme Court was appointed as Lecturer on 29.9.1965 in a private college which as taken over by the Government of Orissa w.e.f. 9.3.1971. He was transferred from that college to another college. The Principal of that college made adverse comments for the period from 1.4.1987 to 21.2.1988. The appellant had made a representation to the higher authorities. On 20.3.1991 he was promoted as a Reader. On 28.5.1991 he was compulsory retired from service on the basis and the adverse remarks. Dealing with this aspect and the responsibilities of the reporting officer, the Supreme Court held:-

"The facts are eloquent. From 1973-74 the appellant started with a commendation of his performance to be" satisfactory "to "fair" in the year 1990-91. Would it be comprehensible that in the year 1987-88 whether he would suddenly drop and become an average or below average teacher? When he was a responsible teacher and he had cordial relations with the students community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down "if not watched"? When anterior to or subsequent to 1987-88 he was a man of ability and of integrity, the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and

personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commendations/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government display callousness and disregard of the duties of their officers and make it impossible for the superior or controlling officers to extract legitimate work from them. The writing of the confidential reports is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate-employee/officer should dedicate to do hard work and duty, assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service."

The Supreme Court allowed the appeal.

57. In *U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others*, (the date of the judgment is 31.1.1996) the supreme Court prefaced its judgment expressing the view that the system of recording CRs should be regulated. The first respondent before the Supreme Court was graded down and that was corrected by the Service Tribunal. The order of the Tribunal was challenged before the High Court of Allahabad. The argument was that grading down entries in confidential reports cannot be characterized as adverse entries so as to put the Nigam under an obligation to communicate the same to the employee and ask for an Explanation. That was rejected by the High Court on the ground that confidential reports were assets of the employee, since they weigh to his advantage at the promotional and extensional stages of service. The High Court explaining the position gave an illustration that if an employee has legitimately earned an "outstanding" report in a particular year and in a succeeding one, without any notice to him, is reduced to the level of "satisfactory", it will certainly be adverse. The Supreme court upholding the view said:-

"We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not down grading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily

communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advise. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would not frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can previously be adverse and to say that On adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting, the ultimate result arrived at by the High Court."

58. In *State Bank of India etc., Vs. Kashinath Kher and others, etc.,*, the Supreme Court dealing with the method adopted by the Bank for recording confidential reports laid emphasis on records being maintained. The respondents before the Supreme Court challenged the policy of the appellant Bank whereunder the officers who have not completed two years of line assignment and two years Rural/Semi-urban service were to be considered eligible for promotion to Middle Management Grade Scale III, the High Court of Madhya Pradesh held:-

"The High Court has held that they are ineligible and such a clubbing of ineligible officers with eligible officers is violative of Article 14 and accordingly struck down the criteria and given directions in the order. Calling in question of the said order, these appeals by special leave came to be filed."

In paragraph 15 the Supreme Court observed:-

"It would appear that the confidential reports and characteristics are being prepared by the officers of the same rank in the same MMGS II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. Ms. Nisha is right and the High Court is well justified in holding that such a procedure is violative of the principles of natural justice. Such procedure and practice is obviously pernicious and fraudulent with prejudices and manipulative violating the principles of natural justice and highly unfair. The object of writing confidential report is two fold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in *Delhi Transport Corporation's* case pointed out

pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, Therefore, be written by superior officers higher above the cadres. The officer should show objectively, impartially and fair assessment without any prejudices whatsoever with highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual ual officer. Last the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by superior officer of high rank, who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who was written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedures would be fair and reasonable. The reports thus written would form basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

Dealing with the importance of documents being maintained, the Supreme court ruled:-

"It would also appear form the record that the confidential reports submitted were adopted in toto by the Committee consider ing promotion without any cross verification from the character rolls or the record and independent assessment of merit and ability. That would also be clearly illegal. Being a competent authority to consider the claim of the candidates, the Committee for promotion has to independently assess the merit and ability of each candidate from the reports and the records etc. consistent with the weightage prescribed in the rules and then to determine the relative merit and ability of officers and then to arrange order of merit of the officers for promotion. Being selection posts, the selection record also must indicate reasons, however, brief they may be, so that when tested by judicial review, the Court would be better assisted by such record to reach correct decision in law. This exercise should also be done by the appellant, if the confidential reports written earlier are by superior officers, then the entire record could be secured by the controlling officers. They should be considered by the promotion Committee and each case must be examined in the light of the record of each officer. It would be desirable to prepare a columnar statement with all relevant columns. The C.Rs. and other relevant record should be preserved. The matters considered by the promotion committee should also be preserved."

59. In Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another, while dealing with the case of compulsory retirement the Supreme Court laid down the general principles to be applied while recording ACRs. The Supreme Court observed:-

"It is settled law that when the Government resorts to compulso rily retire a Government servant, the entire record of service, particularly, in the last period

of service required to be closely scrutinised and the power would be reasonably exercised. In *State Bank of India etc., Vs. Kashinath Kher and others, etc.,*, this Court has held that the controlling officer while writing confidential and character report, he should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. When an officer makes the remarks he must eschew of making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed of improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in waiting for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal. The Tribunal has not considered this aspect of the matter in dismissing the petition. The appellant is entitled to reinstatement with all consequential benefits. The appeal is accordingly allowed with exemplary costs quantified at Rs.10,000/- recoverable by the State from the officer who made the remarks."

60. In *State of U.P. Vs. Yamuna Shanker Misra and another*, the Supreme Court laid down the principle with reference to the recording of the ACRs. The facts shortly stated are.

61. The adverse remarks for the year 1987-88 and 1988-89 were recorded in Confidential Reports of the respondent. This stood in his way and he was not promoted. The respondent before the Supreme Court challenged the action of the State before the Service Tribunal. The petition filed by the respondent was allowed and the adverse remarks were quashed. That was challenged before the High Court of Allahabad at Lucknow Bench. The High Court upheld the order of the Tribunal. The State took up the matter in appeal. Before the Supreme Court it was submitted by the learned Advocate General that the respondent before the Supreme Court had been regularised and nothing survive for adjudication on merits. The State was only concerned with the findings recorded by the Tribunal

malice and arbitrariness on the part of the Secretary, the Supreme Court came to the conclusion that the adverse remarks cannot be said to be to smack of arbitrariness.

62. While dealing with the exercise of power relating to making remarks in the ACRs, the Supreme Court observed:-

"In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , to which one of us, K. Ramaswamy, J., was a member, the Constitution Bench had held that the Sword of Damocles hanging over the head of a public would inevitably create a sense of insecurity. The unbridled wide discretionary powers would conceivably be abused. Thereby this Court laid emphasis that "an assurance of security of service to a public employee is essential requisite for efficiency and incorruptibility of public administration. It is also an assurance to take independent drive and initiative in the discharge of the public duties to actuate the goals of social justice set down in the Constitution". In paragraph 275 at 740 41, it is further pointed out that the Court should take note of actualities of life that persons capable to manoeuvre with higher echelons in diverse ways and also camouflage their activities by becoming sycophants or cronies to the superior officers. Sincere, honest and devoted subordinate officers are unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for their honesty, integrity and apathy and inertia towards the corrupt and tend to undermine or show signs of disrespect or disregard towards the corrupt. Thereby, they not only become inconvenient to the corrupt officer but also stand as an impediment to the ongoing smooth symphony of corruption at a grave risk to their prospects in career or even to their tenure of office. The term "efficiency" is an elusive and relative one to the adept capable to be applied in diverse circumstances. If a superior officer develops killing towards sycophant, though corrupt, he would tolerate him and find him to be efficient and pay encomiums and corruption in such cases stand no impediment . When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential reports with delightfully vague language imputing to be not up to the mark, wanting public relations etc. At times they may be termed to be security risk to their activities. Thus, they spoil the career of the honest, sincere and devoted officers. Instances either way are galore in this regard. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide, arbitrary, uncanalised and unbridled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule."

63. In State of Maharashtra & Ors. Vs. Pratap Singh Dayal Singh Rajput 1998 II AD(S.C.) 405 the Supreme Court while dealing with selection made by the Court laid emphasis on the reasons being recorded. The matter arose under the following circumstances:-

"The Respondent No. 1 was appointed as a Civil Judge, Junior Division on 16.3.1972. He was promoted as Civil Judge, Senior Division-cum-Chief Judicial

Magistrate on 7.9.1983.

In 1986 process for making selection for purposes of promotion to the post of Additional District Judge was initiated by the High Court. On 20.10.1986, respondent No. 1 was called for interview. From the facts found by the High Court it appears that the Judgment Scrutiny Committee categorised respondent No. 1 as Grade "A". His confidential record was good and no adverse remarks were ever communicated to him. His performance at the interview was also and good his name was included in the select list for promotion to the post of Additional District Judges.

The select list prepared by the Interview Committee was considered by the Full Court of the Bombay High Court in its meeting on 2nd and 3rd May, 1987. The name of the respondent No. 1 was, however, excluded from the list finally prepared by the Full Court for being forwarded to the State Govt. for appointment on the post of Additional District Judge."

64. The exclusion was challenged by the petitioner in the petition before the Bombay High Court on the ground that the Interview Committee selected him and he was included in the select list but that was excluded by the Full Court of the Bombay High Court for reasons which were not disclosed to the Court. The High Court of Bombay allowed the writ petition and directed the name of the writ petitioner to be reconsidered for promotion to the post of Additional District Judge. The State of Maharashtra carried the matter in appeal to the Supreme Court. The Bombay High Court recorded the finding in the following terms:-

"In appreciating the contention raised on behalf of the petitioner, it has to be held that the specific averments made by the petitioner in his petition that he had been given 'A' to his judgments by the Judgment Scrutiny Committee, that his confidential record was good, that no adverse remarks were communicated to him that his performance in the interview was good, and that his name was included in the select list prepared by the interview Committee stand proved as they are not denied or contradicted by the respondents 1 and 2 although time was taken and was granted by us after the hearing commenced to enable them to file an additional affidavit on behalf of the respondents 1 and 2. In fact it is categorically stated before us that the respondents 1 and 2 do not want to file any additional documents in the instant case. It is also not shown to us by producing necessary material from the records that the above averments of the petitioner are incorrect.

At any rate, it is clear that the provisional select list prepared by the interview Committee circulated for consideration in the Chamber Meeting, which is brought to our notice did include the name of the petitioner, which was higher up in the said list on the basis of the inter se seniority of the Judicial Officers selected by the interview Committee. If the name of the petitioner is included in the select list prepared by the Interview Committee it would also substantiate the above specific averments made by him in his petition particularly when they are not

denied and are not shown to be wrong by bringing to our notice any material in that regard, such as his confidential records showing any adverse entry being communicated to him, grade granted this judgment by the Judgments Scrutiny Committee, evaluation of his performance at the interview, the reports of District Judge, if any against him, which reflects the material necessary to satisfy the requirement of the criteria laid down for promotion to the posts of the Additional District Judges.

It is pertinent to see in this regard that after passing through the rigorous stages of the process of selection discussed above as per the guidelines laid down by the High Court, the name of the petitioner has found place in the select list prepared for consideration in the meeting of the Hon'ble Judges of the High Court. It is clear from the process of selection that the confidential record of the petitioner, the reports of the District Judges about him and the remarks, if any, about him by the Honourable Judges of the High Court who have heard appeals from their decisions have been examined twice, first by the Judgments Scrutiny Committee before he is selected for scrutiny of his judgments and thereafter by the interview Committee, which takes into consideration all the above factors beside the rating, to his judgments and his performance at the interview. Unless otherwise shown it has to be presumed that there is nothing against him in his confidential reports the report of the District Judges and/or the remarks, if any, of Honourable Judges of this court who have heard appeals against this Court who have heard appeals against this decision but on the contrary as demonstrated by the process of selection then how his suitability and qualify him for selection para 44A) K. As regards the rating given to his judgment apart from the fact that the respondent 1 and 2 have not denied his averments that he has received grade "A" to his judgments, the very fact that the Judgments Scrutiny Committee has included his name in the list of the candidates to be called for interview shows that his judgments are of such quality and standard, which qualify him for being called for interview. Similarly the fact that the Interview Committee has included his name in its select list shows that this performance at the interview was good apart from the fact that as already pointed out, since the interview Committee applied all the criteria, referred to above, he also satisfied by inclusion of his name in its select list, all the criteria adopted for promotion to the post of Additional District Judge under the guidelines of the High Court.

It is in the context of the above facts and circumstances that we fail to see as to on what basis or material which has to be within the four corners of the criteria for promotion laid down by the High Court in its guidelines the name of the petitioner who is senior in the inter se seniority of the judicial officer selected by the interview Committee is excluded by the High Court in the final select list prepared by it in its Chamber Meeting, particularly when there is unfortunately no material in the return filed by the respondents 1 and 2 and when no material is even otherwise brought to our notice during the hearing of this petition, which has promoted the High Court in its Chamber meeting to exclude the name of the petitioner. In fact, it is expected that when the High Court in its meeting has to

consider, particularly independently as urged on its behalf, the question of promotion to the post of the Additional District Judge, at least a synopsis of the relevant material considered by its committees in terms of criteria for selection laid down in its guidelines such as the grades given to the judgments of the candidates by the Judgments Scrutiny Committee assessment of their work and conduct as per their confidential reports and in particular if there are adverse entries communicated to them the remarks if any about them in the report of the District Judge, their performance at the interview held by the interview Committee and other relevant material, if any not considered by the interview Committee or which has escaped its attention in the light of the above criteria, which any of the Honourable Judge want to be taken into consideration in the Chamber Meeting should be circulated to the Honourable Judge before the meeting so that it can be inferred from the same that in its meeting the High Court has applied its mind to the relevant material in the light of the relevant criteria adopted in its guidelines.

It is only the resolution of the Chamber meeting which is placed before us. The said resolution is too general and merely states vaguely that there was full and frank discussion in the meeting upon the list prepared by the interview Committee but does not refer to any material on which it is based. The said resolution itself is thus of no assistance to the respondents 1 and 2 to show that the said decision is based upon relevant data and the relevant criteria.

To conclude, in the absence of any material being placed before us, we have no other alternative but to hold after taking into consideration the above facts and circumstances that the decision of the High Court to exclude from the final list the name of the petitioner which was included in the select list of the interview Committee is not within the four corners of the relevant criteria discussed above. At any rate from the above facts and circumstances there is no doubt in our minds that the decision of the High Court in excluding the name of the petitioner from the select list for promotion to the post of the Additional District Judge suffers from lack of consideration or application of mind to the aforesaid relevant criteria for promotion to the post of the Additional District Judge. Suffers from lack of consideration or application of mind to the aforesaid relevant criteria for promotion to the post of the Additional District Judge and the relevant date relative thereto if not from extraneous consideration. The said decision is, Therefore, clearly violative of Articles 14 and 16 of the Constitution of India."

65. The Supreme Court noted that the reasons for excluding the name of the petitioner from the select list were not disclosed to the Division Bench. There was no relevant material placed before the Division Bench on the basis of which one could come to the conclusion as to why the petitioner, who had been selected at the earlier stages, was excluded from being included in the final list prepared by the High Court.

66. In the instant case, the High Court has taken the stand that the procedure referred to in paragraph 9 of the counter have been followed. It is stated in

paragraph 12.2:-

"It is respectively submitted that adverse remarks were recorded in the ACR of the petitioner by the Full Court after taking into consideration all the relevant factors including the reputation generally enjoyed and character ascribed to the petitioner. It is also submitted that it is not imperative that in the case of a Judicial Officer there must necessarily be documentary or other evidence to justify the remarks about the doubtful character or integrity. The existence of such material would generally entail for more serious consequences including severe disciplinary action. However, in a given case, inference about the integrity of a Judicial Officer may also be drawn on the basis of general assessment and reputation of the Officer."

Therefore, it is only on the basis of inference the remarks had been recorded is the stand of the High Court. In paragraph 20 of the writ petition the petitioner has stated that reasons should be given Paragraph 20 reads as under:-

"It is submitted that as per well settled and accepted principles the remarks like "Doubtful integrity" have to be made on established facts and not on mere suspicion. Further without communication the adverse remarks lose their significance and gravity of content, particularly when there is no opportunity of showing cause before treating them as attaining finality. Reporting officer should not be in a hurry to write all the reports on the day. The memo of services should invariably be consulted at the time of writing the annual report though the report itself should necessarily be based on the employee's performance during the year as a whole. Where an adverse remark is recorded in respect of an official having consistently good record, some details regarding the same should invariably be given."

In reply to paragraph 20, it is stated in the counter:-

"In reply to para 20 it is submitted that the uniform procedure for recording of ACRs has been followed in the present case and as such the petitioner can have no grievances in this respect. It is also submitted that the adverse remarks against the petitioner were duly communicated to him on 27.5.96. and he was given an opportunity to make representations against the same. The petitioner did in fact, make three representations against the adverse remarks which, after due consideration were rejected by the Full Court."

67. Therefore, that there are no materials on record and that there were no reasons, cannot be subject matter of any debate or dispute. Before me, Mr. Sanjay Kaul, the learned counsel for respondent No.2, submitted that remarks were recorded on the collective wisdom of the Full Court and there are no materials available on record and the Full Court was not obliged to give any reasons. The learned counsel Mr. Sanjay Kaul produced the proceedings of the Committee and the ACRs of the petitioner and the file relating to the preparation of select list.

68. I am of the view that the stand taken by the High Court cannot be sustained. It is in this connection what is laid down by the Supreme Court in paragraph 7 would be very relevant. The Supreme Court observed:-

"It is contended by the learned counsel for the appellants that it was not necessary either to record any reason in the Minutes of the Full Court meeting or to disclose those reasons to the Court on the judicial side. This is in our opinion, preposterous as the argument that it is not obligatory for the High Court to disclose reason why an officer was not proposed to be promoted when he had already been selected, runs counter to the spirit of Article 14 and 16 of the Constitution. At least this argument was not expected from a high judicial body like the Bombay High Court which is before us today as a litigant. The division Bench was, in our opinion, right in recording the findings extracted above and we see no reason to differ."

The respondent retired on 2nd of May 1990 during the pendency of the appeal in the Supreme Court. Ultimately, the Supreme Court directed the Addl. District Judge to be given notional promotion and he may get at least pensionary benefits on that basis.

69. The Supreme Court had elaborately to consider the facts in the case of Mr. R.C. Sood and laid stress on the fact that there should be materials to form an opinion. The case is reported in R.C. Sood Vs. High Court of Judicature at Rajasthan and Ors. 1998 V AD (S.C.) 55. The writ petitioner before the Supreme Court was a member of the Rajasthan Higher Judicial Service and he had challenged the disciplinary proceedings taken against him pursuant to the resolution dated 5.5.1995 (this was the second disciplinary action) by the Full Court of the Rajasthan High Court, with effect from 1st July 1989 to 1st February 1994 he was working as Registrar of the Rajasthan High Court. Thereafter, he was transferred as District & Sessions Judge, Jaipur. Disciplinary action was taken against him on two occasions. First action was initiated on the basis of a resolution of the Full Court dated 21.10.1994. That was challenged by him in a writ petition before the Supreme Court. The Supreme Court by order dated 22.11.1994 quashed the disciplinary proceedings and the resolution of the Full Court. That judgment is reported in R.C. Sood Vs. High Court of Rajasthan, . The second disciplinary proceeding was initiated by resolution dated 5/6.1.1995. The second disciplinary action was initiated as could be seen from the dates mentioned above after the judgment of the Supreme Court with reference to the first disciplinary action which was challenged before the Supreme Court, as is referred to above. Two main contentions were put forth. The Supreme Court noticed the above submissions:-

"Firstly, it was contended that with the passing of the order dated 31st January, 1994 by Chief Justice K.C. Aggarwal the complaint of Vijay Singh stood disposed off. This complaint, it was submitted, could not be reopened by the Full Court or the then Chief Justice specially which there were no attenuating circumstances by way of fresh evidence or material which would warrant a fresh look in the

matter and there was no such material.

Secondly it was submitted that the initiation of the impugned disciplinary proceedings by issuing a charge-sheet levelling charges which were stale and on materials gathered as an after thought was an action tainted with malice and such proceedings were liable to be quashed as being mala fide and malicious in law."

Ultimately, on the first submission, the Supreme Court held:-

"Another error which was committed was that the Court in its resolution of 30th November, 1994 took into consideration the complaint of Vijay Singh even though the same was not supported by an affidavit. The Chief Justice had by his order dated 12th May, 1994, decided that no complaint against a judicial officer should be entertained unless it is supported by an affidavit. Though this was an administrative order it was passed by the Chief Justice in exercise of the powers conferred on him by Rule 32(2) of the said Rules. There was no reason as to why this order should have been ignored and the complaint of Vijay Singh entertained even though it was not supported by an affidavit. The resolution of 30th November, 1994 also states that some of the judges have received fresh complaints against the petitioner making serious charges of corruption. No particulars are indicated as to which complaints were received by which judge. It is evident from the working of these minutes that what those complaints were, were not even known to all the members of the Full Court when they passed the resolution on 31st November, 1994. We have, Therefore, no doubt that when a valid decision had been taken by the then Chief Justice on 31st January 1994 exonerating the petitioner there was no valid reason in law for the Full Court to revoke that decision."

With reference to second point, the Supreme Court proceeded to analyze the report of the Committee in great detail. About the existence of any material for disciplinary action, the Supreme Court observed:-

"Based on such type of evidence the Committee submitted its report on 4th January, 1995 signed by all the three Judges. It is but natural that highest standard of integrity is expected of and is required to be maintained by every judicial officer. It is with this in view that even though the impugned initiation of proceedings is being alleged to be for mala fide reasons that it is proper to see whether the allegations against the petitioner were such which in any way warranted the holding of a disciplinary proceeding. We have, Therefore, carefully seen the report of the Committee and the complaints against the petitioner in order to satisfy ourselves whether there was any consent material which warranted initiation of disciplinary proceedings. We do not find, after such examination, that any material existed which could justify the initiation of the impugned action."

70. It is appropriate at this stage, to go aside a little to note the events, in the instant case, which ended up in the rejection of the representation made by the

petitioner before I come back to the relevant portion of the judgment of the Supreme Court. By letter dated 27.5.1996 received by the petitioner on 3.6.1996 the petitioner was informed that the Full Court of this Court had recorded the remarks. The letter is already extracted. On 8.7.1996 the petitioner made a representation to the High Court. A note was put up by the officer on the representation made by the petitioner. The same reads as under:-

"This case relates to the representation of Mr.P.D.Gupta, Additional Senior Civil Judge, Delhi (now Metropolitan Magistrate, Tis Hazari) made in connection with adverse remarks recorded on his work and conduct for the years 1994 and 1995.

In this connection, it is submitted that the Hon"ble Full Court in its meeting held on 18th May, 1996 while recording the Annual Confidential Remarks on the work and conduct of officers of the Delhi Judicial Service recorded the following Annual Confidential Remarks on the work and conduct of Mr.P.D.Gupta, an officer of Delhi Judicial Service for the years 1994 and 1995 as under:-

Year Remarks recorded 1994 "C" (Integrity doubtful) 1995 "C" (Integrity doubtful)

In compliance with the decision of the Hon"ble Full Court taken in its meeting held on 18th May, 1996, to Mr. P.D. Gupta through the District & Sessions Judge, Delhi vide this Court's Memorandum No.780/Gaz/VI.F.I. dated, the 27th May, 1996. The attention of Mr.P.D.Gupta was also invited to Government of India, Ministry of Home Affairs O.M. No.1/3/65-Ests (D) dated 20.2.1967 and O.M. No.51/3/69-Ests(A) dated 27.9.1969 which provides that representation against adverse entries (including reference to Warning or Communications of such displeasure of the Government or reprimands which are recorded in the Confidential Report of the Government Servant) should be made within six weeks of the date of communication of such remarks. It also envisages that the competent authority may, at its discretion entertain a representation made beyond the time specified, if there is satisfactory Explanation for delay. The aforesaid instructions further provides that the representation against adverse entries be decided expeditiously by the competent authority and in any case not later than six weeks from the submission of the representation.

Mr. P.D. Gupta, an officer of Delhi Judicial Service to whom the Annual Confidential Remarks were communicated on 3.6.96 by the District & Sessions Judge, Delhi has made the representation on 8.7.96. Therefore, he has made the representation within the specified time of six weeks.

In his representation dated 8.7.96, Mr. P.D. Gupta has stated that it is very embarrassing for a subordinate to comment and challenge the remarks of a superior and that too before that very superior, but it is essential, a demand of necessity and a permissible course under the law. He has further stated that he has been in the judicial service for the last more than 18 years and this career as a judicial officer so far has been unblemished and meritorious. This is for the first time that an adverse remark has been given to him. He has requested for

expunction of adverse remarks recorded for the year 1994 and 1995 on the following grounds:

He joined judicial service in January 1978. He has been discharging his duties most diligently, intelligently with great integrity and with a missionary zeal. His disposal of cases qualitatively & quantitatively has been of high order. It has always been more than the required proforma. This is well supported interalia from the following facts:-

(a) About 85/- to 90/-of his orders and judgments have been confirmed in appeals or revisions, as the case may be.

(b) His disposal has always been categorised as "good". A chart showing the disposal remarks given to him by Hon"ble High Court for the last five preceding years is appended as Annexure `A" with the representation.

(c) As per annual confidential reports form 1987 to 1993, both years inclusive, as communicated to him. He has been placed in grade "B". These remarks re annexed as Annexure-"B".

(d) As a general practice only judicial officers of the rank of Distt. & Sessions Judges are selected for attending the Advance Course in Criminology conducted by the Ministry of Home Affairs. But because of his excellent performance, he was sent to attend the said course from 1.4.80 to 1.5.80. In the said course he was the only Metropolitan Magistrate, all other who had come form different states were A.D.J. (S) or D.J. (S).

(e) The then Hon"ble Justice Mr. G.R. Luthra in his inspection note dated 11.11.83 had recorded an appreciation about his work in these words-"Judgments are well written and clearly expressed. The work done during the year 1982-83, as a whole, is good".

(f) He was granted selection Grade in June 1993 with retrospective effect from 31.5.1991, because of his good past record.

(g) His immediate superior, the respective District Judges, appreciated his performance as judicial officer on the following occasion:-

(i) The Distt. & Sessions Judge Sh.P.K. Jain (Now Hon"ble Judge of the Punjab & Haryana High Court) delegated powers of "Head of Officer and the Drawing and Disbursing Officer" for the period 11.6.1993 to 22.6.1993 i.e. during the period he was on vacation. (copy of letter in this regard is appended as Annexure-C) with the representation.

(ii) Sh. S.P. Saberwal, the then Distt. & Sessions Judge delegated his powers as "drawing and Disbursing Officer" for the period 17.6.1995 to 23.6.1995 i.e. during the period he was on vacation. (copy of the letter in this regard is appended as Annexure -D) with the representation.

(h) He was posted as Addl. Rent Controller from 22.3.1992 to 24.8.1995. It is a

matter of common knowledge that from amongst the subordinate judicial service only a person of high integrity irrespective of seniority is selected for posting as Addl. Rent Controller.

(j) He has been posted as Addl. Senior Civil Judge since January 1996 and delegated the powers of District Court which is empowered to hear appeals.

Violation of Procedure

(A) According to Government instructions, the annual report should be recorded within one month of the expiry of the report period. But in his case there is an inordinate delay in recording the impugned remarks for the year 1994 and 1995.

(B) As per Govt. instructions, when an adverse remark is recorded in respect of an officer having consistently good record, some details regarding the same should invariable be given. In his case no details have been given and unless there are specific instances such a sweeping remark is neither justified nor proper.

(C) He presumes that no complaints about his performance were ever made to Hon"ble High Court or Ld. Distt. Judge. This pre assumption is on the basis that neither the Hon"ble High Court nor Ld. Distt. Judge ever asked his comments on any complaint against him regarding his integrity. If there has been no written complaint against him there cannot be any basis on which his integrity has been reported to be doubtful.

(D) Since he has not been communicated with any adverse remarks relating to quality of his judicial work so far, he has every reason to believe that his judicial work has always been above standard. In this view of the matter overall category "C" abruptly given to him for the years 1994 & 1995 in one stroke may not be the correct assessment specially when all through his judicial career he has been given "B+" remarks.

He has further submitted that the adverse remarks are baseless, as neither inspection of his court was done by the Hon"ble in suspecting judge in 1995 nor an enquiry about his behavior or reputation was made from the concerned persons. He further presumes that his immediate superior Hon"ble Distt. & Sessions Judge for these years must have given a good report about him. He presumes from the fact that had there been any deficiency, as the general practice is, he would have given him an indication so as to give him an opportunity to improve.

He has further submitted that the submissions made above under the caption "Excellent career" militates against the adverse remarks in question and had there been any material to doubt his integrity the assignments mentioned above in these paragraphs would not have been given to him.

He has further prayed that the adverse remarks for the years 1994 & 1995 may be expunged.

In this connection, it is submitted that Mr. P.D. Gupta who joined Delhi Judicial Service on 28.1.98 (AN) has worked as Addl. Rent Controller from 23.2.92 to 24.8.95 and as Addl. Senior Civil Judge from 8.1.96 to 23.7.96. He has since been transferred and posted as Metropolitan Magistrate, Tis Hazari.

A statement showing the remarks recorded on the monthly disposal of Mr.P.D.Gupta for the years 1994 and 1995 is annexed hereto and marked as Annexure "B".

Precis of the Annual Confidential Remarks of Mr.P.D.Gupta which was placed before the Hon'ble Full Court at the time of recording the Confidential Remarks on the work and conduct of the officer for the year 1994 and 1995 is annexed hereto and marked as Annexure "C" Extract from the minutes of the Full Court meeting dated 18.5.1996 indicating the Confidential Remarks recorded on the work and conduct of the officer is annexed hereto and marked as Annexure "D".

Subject to the orders of Hon'ble the Acting Chief Justice, this case may be laid before the Full Court for consideration and orders."

The Judicial Officer of the rank of District & Sessions Judges are elected for attending the Advance Course in Criminology conducted by the Ministry of Home Affairs. The petitioner who was a Metropolitan Magistrate in 1980 was selected for the course from 1.4.80 to 1.5.80 having regard to his excellent performance. This aspect also was not considered by the Four Member Committee. The matters mentioned in the not are very relevant and they have not been considered at all.

The matter was placed before the Full Court on 27.7.96. The Minutes of the Full Court would read as under:-

"An Extract from the Minutes of the meeting of the Full Court held on Saturday, the 27th July, 1996 at 11.00 A.M. in the Judges Lounge.

A G E N D A M I N U T E S SUPPLEMENTARY AGENDA 5.To consider the representation Deferred dated 8.7.1996 for Mr. P.D. Gupta, M.M., Tis Hazari, for expunction of adverse remarks recorded in his ACR for the years 1994 and 1995. On 21.9.1996 the Full Court Decided:- "An Extract from the Minutes of the meeting of the Full Court held on Saturday, the 21st September, 1996 at 11.00 A.M. in the Judges Lounge. A G E N D A M I N U T E S SUPPLEMENTARY AGENDA 14.To consider the representation Deferred. dated 8.7.1996 for Mr.P.D. Gupta, M.M., Tis Hazari, for expunction of adverse remarks recorded in his ACR for the years 1994 and 1995.

71. On the 30th of November 1996 the Full Court constituted a two Member Committee. On 18.1.1997 the Full Court constituted a four Member Committee. The office on 25.2.1997 put up a note:-

"This case related to the representation of Mr. P.D. Gupta, an officer of Delhi Judicial Service made in connection with adverse remarks recorded on his work

and conduct for the years 1994 and 1995 and against his supersession in the matter or promotion from Delhi Judicial Service to the Delhi Higher Judicial Service.

It is submitted that the Annual Confidential Remarks recorded on his work and conduct for the years 1994 and 1995 as "C" (Integrity Doubtful) for both the years by the Full Court in its meeting held on 18.5.96 were communicated to Mr.P.D.Gupta, an officer of Delhi Judicial Service. Mr. P.D. Gupta then made a representation dated 8.7.1996 which was considered by the Full Court in its meeting held on 30.11.1996 and it was decided to refer the same to the Committee consisting of Hon"ble Mr.Justice Y.K. Sabharwal and Hon"ble Mr. Justice Mohammad Shamim. In its subsequent meeting held on 30.11.1996 and 18.12.1996, Full Court re-constituted the Committee and the new Committee consisted of Hon"ble Mr. Justice Y.K. Sabharwal and Hon"ble Mr. Justice D.K. Jain. However, while considering the representations from certain officers of Delhi Higher Judicial Service and Delhi Judicial Service, the Full Court in its meeting held on 18.1.1997 decided as under:-

"It was decided that the Committee consisting of Hon"ble Mr. Justice Y.K. Sabharwal and Hon"ble Mr.Justice D.K.Jain constituted pursuant to Full Court decisions dated 30.11.1996 and 18.12.96 to examine the representations of various Judicial Officers in the matter of recording of their Annual Confidential Remarks or promotion to higher posts etc. be re-constituted and that the reconstituted Committee would consist of Hon"ble Mr.Justice Y.K.Sabharwal, Hon"ble Mr. Justice D.K. Jain, Hon"ble Mr. Justice A.K. Srivastava and Hon"ble Mr. Justice Lokeshwar Prasad.

It was further decided that as a matter of policy, in future, such representations of the Judicial Officers will be placed before the aforesaid Committee for examination and thereafter the same Along with the report of the Committee would be laid before the Full Court for consideration."

In view of above, the representation dated 8.7.1996 of Mr. P.D. Gupta was also laid before the said Committee.

Now, Mr. P.D. Gupta, Metropolitan Magistrate, Delhi has made another representation dated 21.2.1997 (Annexure "A") wherein he has submitted that he has been superseded in the selection made by the Full Court in its meeting held on 18.5.1996 in which the adverse remarks for the years 1994 and 1995 were also recorded; and that he then made a representation dated 8.7.1996 for expunction of the adverse remarks. He has also stated that pending consideration of his representation, he has again been superseded in the selection made in November and December, 1996, on the basis of the adverse remarks; and that his representation against adverse remarks may be decided expeditiously. He has also stated that pending disposal of his said representation further selection against four posts in the Delhi Higher Judicial Service created consequent upon the amendment to the Schedule of the Delhi higher Judicial Service Rules may

not be made. He has, Therefore, prayed that his case for promotion from Delhi Judicial Service may be considered with retrospective effect with all the benefit including seniority over officers who were junior to him.

A copy each of the minutes of the meetings of the Full Court dated 18.5.1996/22.5.1996; 21.9.1996 and 30.11.1996 in which selection from Delhi Judicial Service to Delhi Higher Judicial service has been made may kindly be perused at flag "X" below (Annexure "B").

In this connection, kind attention is invited to the procedure to be followed by the Departmental Promotion Committee in case the representation against adverse remarks in the Confidential Reports of the officer is pending consideration, contained in Government of India, Department of Personnel & Training, O.M. No.22011/3/88-Estt.(D) dated, the 11th May, 1990 which is relevant in the instant case, is reproduced below:-

ADVERSE REMARKS IN A CR

12.1 Where the Departmental Promotion Committee find that the adverse remarks in the Confidential Report of an officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the Committee shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the CRs pertaining to three immediately preceding years prior to the year in which the DPC is held and direct the cadre controlling authority concerned to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a representation against the same. Where the excommunicated adverse remarks pertain to a period earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the officer concerned, the DPC may proceed with the consideration of the case but may ignore the remarks while making the assessment.

12.2 After a decision is taken by the competent authority on the representation made by the Government servant or in the event of the Government servant not making any such representations, after the period Therefore has expired, the DPC shall assess the suitability of the Government servant on the basis of the entries now contained in the CR. While considering the deferred case as above, if the DPC find the officer fit for promotion, the procedure prescribed in paragraphs 18.4.2 and 18.4.3 shall be followed.

12.3 In case where a decision on the representation of an officer against adverse remarks has not been taken or the time allowed for submission of representation is not over, the DPC may in their discretion defer the consideration of case until a decision on representation.

12.4 In both the cases referred to in paragraphs 12.1 and 12.3 above, where the consideration of a case is deferred on account of adverse remarks contained in

the Confidential Report, the concerned authority should intimate the result of the representation of the officer against the adverse remarks within a period of three months from the date of submission of the said representation, if any."

It could be seen that reference is made to the Officer Memorandum issued by the Govt. of India, Department of Personnel and Training.

72. On 21.2.1997 the petitioner made representation against supersession.

73. On 22.7.1997 the four Member Committee gave a decision and the same is as under:-

"The representations of Judicial Officers were considered by us in the meetings held on 6.2.97, 6.3.97, 14.5.97, 21.7.97 and 22.7.97. We have perused the personal files, complaint files, ACR files and also judgments of some of the officers. Some discrete enquiries were also made by us. Having fully considered and examined the matter, our recommendations on the representations are as follows:

S. Particulars of the Representation (s) No. Representation (s) Deserve/Deserves to be: 1. Two representation dated Rejected nil of Mr. Ravi Kumar, Addl. District & Sessions Judge, Delhi, for upgradation of ACRs recorded on his work and conduct for the years 1994 and 1995. 2. Representation dt. 12.7.96 Rejected of Mr. Prithvi Raj, a Member of Delhi Higher Judicial Service for expunction of adverse remarks recorded in his confidential report for the year 1994-95. 3. Application dated 16.7.96 Rejected of Mr. G.S. Jugti, a member of Delhi Higher Judicial Service for giving him full particulars on the basis of which remarks "C" have been recorded on his work and conduct for the year 1995. 4. Representation dated 15.7.96 Rejected of Mr. Sunil Gaur, a member of Delhi Higher Judicial Service for reconsideration of his Annual Confidential Report for the year 1995 and giving him better grade. 5. Representation dated Accepted. The 10.7.96 of Mr. P.S. Teji, a officer deserves member of Delhi Higher Judicial to be graded as Service for expunction of "B" (Average). adverse remarks recorded in However, the his ACR for the year 1995. work and conduct of officer deserves to be observed. 6. Representation dated Rejected. 15.7.96 of Mr. M.S. Rohilla M.M.Shahdara, for expunction of adverse remarks recorded in his ACR for the year 1995 and, if deemed fit, for giving him opportunity to explain personally. 7. Representation dated Rejected 6.7.96 of Mr. D.S. Sidhu, M.M. Tis Hazari for reconsideration/review of adverse remarks recorded in his ACR for the year 1995. 8. Representation dated nil Rejected. of Mr. J.K. Pali, representation dated 11/3/96 of Mr.Jaswant Singh and representation dated 8.3.96 of Mr. Z.S Solanki, Ex-members of Delhi Judicial Service, addressed to the Lt. Governor, Delhi, for review of their cases of premature retirement and for reinstating them in service treating the intervening period of absence as duty and the request of the Govt. of NCT of Delhi contained in their letter No.6/9-96-Judl. /665 dated 22.4.96 for views/ comments of the Hon"ble High

Court thereon to enable to submit the case to the Lt. Governor, Delhi, for his consideration. (i) Representation dated 11.7.96 Rejected. of Mr. Ghanshyam Gupta, M.M. New Delhi, for deletion of adverse remarks recorded in his ACR for the Year 1995 and for giving him appropriate gradation and personal hearing. (ii) Representation dated 26.8.96 Rejected. of Mr. Ghanshyam Gupta, against his supersession in the matter of promotion to Delhi Higher Judicial Service and for grant of personal hearing in the matter. (iii) Representation dated 20.9.96 Rejected. of Mr. Ghanshyam Gupta against adverse entries in his ACR for the year 1987-88 to 1991 and for the years 1992 to 1995. 10(i) Representation dated 16.7.96 Rejected. of Mr. Rajesh Kumar, M.M. New Delhi for expunction of adverse remarks recorded in his ACR for the year 1993, grant of promotion from the date of his juniors are promoted with consequential benefits, and upgrading the ACRs recorded on his work and conduct for the years 1994 and 1995 to "B+" grading. (ii) Representation dated 2.11.96 Rejected. of Mr. Rajesh Kumar, M.M. against his representation in the matter or promotion to Delhi Higher Judicial Service. 11(i) Representation dated 8.7.96 Rejected. of Mr. P.D. Gupta, M.M., Tis Hazari, for expunction of adverse remarks recorded in his ACR for the years 1994 and 1995. (ii) Representation dated 21.2.97 Rejected. of Mr. P.D. Gupta, MM., Delhi against his supersession in the matter of promotion/appointment to Delhi Higher Judicial Service. 12(i) Application dated 16.7.96 1993-Rejected. of Mr. S.S. Handa, M.M. Tis Hazari for supply of a copy of 1994 and 1995: the reasons, if any recorded at Accepted. the time of recording of his ACRs No remarks need for the years 1993, 1994 and be given for 1995 and a copy of the remarks 1994 and 1995. recorded for these years by the two Hon"ble Inspecting Judges, and for extension of time for making the full and effective representation. (ii) Representation dated 8.1.97 -do- of Mr. S.S. Handa, M.M. Tis Hazari against adverse Annual Confidential remarks recorded on his work and Conduct for the years 1993, 1994 and 1995. 13(i) Representation dated 3.10.96 Rejected. of Mr. A.B. Dateer, an officer of Delhi Judicial Service against recommendation of hon"ble High Court of the names of five officers of Delhi Judicial Service, who are Junior to him, for promotion to Delhi Higher Judicial Service. (ii) Representation dated 27.11.96 Rejected. of Mr. A.S. Dateer, an officer of Delhi Judicial Service against adverse Annual Confidential Remarks recorded on his work and conduct for the year 1995. 14. Representation dated 27.9.96 Since proposed of Mr. A.K. Chaturvedi, chargesheet an officer of Delhi against the Judicial Service who has officer is been placed under suspension coming up for w.e.f. 21.9.96 against the consideration. order of his suspension. before Full Court on 26.7.97 it would be appropriate that the matter of suspension is also taken up by Full Court. 15. Note dated 3.9.96 of Hon"ble The officer should Ms. Justice Usha Mehra in the be warned to be matter regarding inspection note careful in future dated 30.11.95 recorded by and his performance Mr. R.K. Sharma, should be watched by Additional District & Sessions the in charge Addl. Judge in respect of the court Distt. & Sessions of Mr. Mahavir Singhal, M.M. Tis Judge,

who may be Hazari pointing out certain directed to report irregularities in the claims of the matter to the units of disposal charged etc. High Court pursuant to Administrative quarterly with Committee decision regard to work and dated 17.9.1996. conduct of the officer. 16. Representation dated 2.1.97 Accepted and the of Mr. I.C. Tiwari an officer officer deserves of Delhi Higher Judicial to be graded as Service against adverse Annual per the recommen- Confidential Remark recorded on dation of the his work and conduct for the Inspecting Judge. year 1995. 17. Representation dated 6.1.97 Accepted and the of Mr. V.K. Malhotra, an officer officer deserves to of Delhi Higher judicial Service be graded as per against adverse Annual the recommen- Confidential remarks dation of the recorded on his work and Inspecting Judge. conduct for year 1995. 18. Representation dated 9.12.96 Accepted and of Mr. I.C. Tewari and work be representation dated 11.12.96 assigned to of Mr. V.K. Malhotra, officers the officers. of Delhi Higher Judicial Service against withdrawal of judicial work from them. 19. Representation dated 9.12.96 of Rejected. Mr. Shiv Charan, an officer of Delhi Judicial Service for review and upgrading of ACRs recorded on his work and conduct for the year 1995 and for his promotion as Additional District and Sessions Judge."

74. The case of the petitioner is shown in item No. 11(i) According to the Committee, the personal files, complaint files and ACR files and judgments of some of the officers have been perused. We are concerned only with the writ petitioner. It is not stated in the counter that the complaint file with reference to the petitioner was perused by the 4 member committee. Assuming it to be so, we have to see whether there is anything to form an opinion about the petitioner. I sent for the compliant file and personal files. I have not been able to see anything in the personal files which could warrant any action against the petitioner. As a matter of fact, no action was ever contemplated against the petitioner. Therefore, reference to personal files, so far as the writ petitioner is concerned, would not help in resolving the point. In the complaint file also, there is nothing against the petitioner. As the Supreme Court had considered in all the cases referred to in detail the facets, I am of the view that the contents of the complaint file also have to be scanned. That shows, as pointed out by the Supreme Court in several cases, how frivolous complaints are made against judicial officers by disgruntled litigants and lawyers. In the year 1989 two constables, against whom action was initiated by the petitioner, made a complaint. An enquiry was conducted by an Addl. District & Sessions Judge. The learned Addl. District & Sessions Judge reported that the complaint was baseless. The High Court closed the file stating :-

"Spoken. Sh. D.C. Aggarwal, Addl. Distt. & Sessions Judge, finds this complaint against Sh. P.D. Gupta M.M. to be a motivated one as is clear from his enquiry report. Moreover, the complaints have expressed regrets to Sh. Gupta in writing which is available on this file. No useful purpose will be served by proceedings further and the complaint may kindly be ordered to be filed."

In 1992 again, on some complaint, enquiry was conducted. The Hon''ble Chief Justice by order dated 15.4.1982 passed the following order directing an enquiry to be conducted by the Hon''ble Ms. Justice Leila Seth:-

"Hon''ble Ms. Justice Leila Seth may kindly inspect the Children''s Court presided over by Shri P.D. Gupta and Smt. Mamta Sehgal. This is a special inspection, specially in the context of the enclosed complaint.

The Hon''ble Judge may fix any test date and call for the files of the two officers for that date. What is to be seen is whether proceedings are conducted properly keeping in view the special laws with regard to juvenile delinquency. The devotion and dedication of the officers is also to be seen and specially whether they work full time and come to court at proper time. Their conduct of the proceedings may also be seen and commented upon. Their orders and judgments may be examined from the point of view of competency, capability and fairness. The Hon''ble Judge may also make her observations with regard to the allegations made in the attached complaint. It may be desirable to inspect the courts on April 20, 1982.

The inspection, report along with the complaint may kindly be returned to me after the inspection is over.

The form which is required to be filled in an be obtained from the Registrar."

On 20.5.1982 Leila Seth, J. (as she then was) after enquiring into the matter said :-

"My dear Chief Justice,

In response to your note dated 15th April, 1982 I inspected the Children''s Court presided over by Mrs. Mamta Sehgal and Mr. P.D. Gupta, Metropolitan Magistrate on 4th May, 1982.

I found both the Officers carrying out their work competently and with speed. The proceedings were being conducted in a cordial atmosphere. I have also seen some of their judgments and orders which appears to be fair and clear.

However, I would like to point out that the conditions prevailing in the court are not very satisfactory. The building is old and in a dilapidated condition and I was informed that it has been declared "dangerous" by the Public Works Department. There is no telephone or separate chamber and/or toilet facilities.

There are hardly any benches or sitting arrangements for either the witnesses, the delinquents, their family members or the public. People are sitting and waiting all along the corridors and squatting around the court room.

There is no stamp vendor at the spot and this causes a great deal of inconvenience. Further, the witnesses who attend the Children''s Court have to collect their payment from the Tis Hazari Courts, as there is no arrangement for this purpose at the Children''s Court. This leads to unnecessary delay and

harassment.

The Officers are also handicapped as there is no special police cell dealing with the matters that come before them. As a result the police is dilatory with regard to the filing of challans and does not take adequate interest in the matter.

Further, in a number of cases which are outstanding for some time, it was noticed that there is lack of coordination between the regular courts and the Children's Court. Where the offence of the child offender is connected with an adult offender, who is being tried by a regular court, the relevant files and papers are not sent to the Children's Court in time or on the date requested.

The petty fines register is not well maintained; I was informed that this was due to lack of proper dealing staff. Perhaps some of the above matter could be looked into and remedied.

With regard to the complaint made by Mr. Sohan Pal Singh regarding these two judicial officers, I would like to mention the following facts.

A letter dated 19th April, 1982 was addressed to Mr. Sohan Pal Singh at the address given by him and sent hand-delivery by special messenger requesting him to come to the High Court in order to discuss his complaint. (Copy of the letter is on the file). On 19th April, 1982 the messenger went with the letter and could not trace the place. He again went on 20th and met one Kumar Pal Singh at the said address. The said Mr. Kumar Pal Singh has stated in writing that nobody by the name of Sohan Pal Singh resides there; further that he, Mr. Kumar Pal Singh, has not addressed any complaint and/or application to the High Court in the last year.

However, on 21st April, 1982 a telephonic call was received by Mr. B.R. Ahuja from a person calling himself Sohan Pal Singh. The said gentleman enquired about his complaint. He was requested to come to the High Court. He undertook to come to the High Court on 26th April, 1982 at 4.30 p.m. On 26th April, 1982 another telephone call was received. The caller said he would not be able to come to the High Court on 26th April, 1982 and would come on 28th April, 1982 at 4.00 p.m. Despite waiting for him for over an hour no such person turned up. There has been no communication from him thereafter.

In these circumstances, it would appear to me that the complaint is a pseudonymous complaint and no credence can be attached to it. As such, I feel no further enquiry is necessary.

I had called for a summary of the work done in the Children's Court on 20th April, 1982 as also copies of some judgments given by the said court. The amount of work done appears to be satisfactory. I am placing these on the file. I am enclosing my assessment of the Officers above-mentioned. I am also returning the complaint and the papers as indicated above."

Leila Seth, J (as then she was gave a Special Report dated 20.5.1982 the ACR,

which is extracted above.

75. On 21.5.1982 the Hon''ble Chief Justice directed that in view of the report of L. Seth J. the complaint be filed.

76. On 1.12.1986 a litigant sent a communication to the Hon''ble Chief Justice complaining against the petitioner. An Explanation was asked for from the petitioner. On being satisfied about the Explanation ,the Hon''ble Chief Justice directed he filed to be closed.

77. In the year 1987 there was a complaint by a lawyer and that was closed by this Court on 20.5.1987.

78. In the year 1993 there was a complaint by litigant about the hearing of his case. That was enquired into and on 27.9.1993 the High Court said "no action is called for".

79. There is no other material from which it could be said that the petitioner could be held to have committed by misconduct. Therefore, under these circumstances, reference made by the Committee to the complaint filed, insofar as the petitioner is concerned, could be said to be only casual. The fact that the petitioner was given Selection Grade in 1991, that he was assigned the work of functioning as Addl. Rent Controller, the petitioner having been invested with powers of Drawing & Disbursing Officer, that he was invested with appellate power and that he was also sent to attend the Advance Course in Criminology conducted by the Ministry of Home Affairs, on a consideration of his case, cannot be brushed aside as being not eventful in his career so far as he is concerned.

80. Reverting to Sood''s case, (supra), the Supreme Court commented on the report of the Committee as it could be seen that that was a case where there were no materials referred to by the Committee and the approach made by the Committee was considered to be not correct. The Supreme Court observed:-

"Apart from the non-judicious manner in which the Three Judge Committee conducted the enquiry the sequence of events, which bears `repetition, shows that being piqued with this Court''s judgment quashing the first department enquiry the High Court, with a few functionaries playing in active role, left no stone unturned with a view to victimise the petitioner. On 21st October, 1994 the High Court suspended the petitioner and decided to hold the first departmental enquiry. On 24th October, 1994 this suspension was challenged by way of a writ petition in this Court in which this Court on 7th November, 1994 issued show cause notice to the High Court. Suddenly we find on the High Court record Justice Kokje''s letter dated 27th October, 1994 forwarding on then Chief Justice the old complaint to Vijay Singh. The Chief Justice makes an endorsement on this letter on the same date thereby showing the sense of urgency. First office note is written only on 9th November, 1994, after issuance of notice by this Court in the writ petition filed by the petitioner. The fact that it is only on 30th November, 1994, after the decision of this Court on 22nd November, 1994, that

the Full Court fixed up the matter lends credence to the petitioner's submission that the dates which appears on record may not be real. This is more so when we find that none of the documents in the form of complaints allegedly received by the Judges bear any endorsement as to the date of receipt of the same. To crown it all the second round started on a complaint of Vijay Singh stated to have been received by Justice Kokje on or before 27th October, 1994. This complaint had been circulated on September, 1993 amongst all the then Judges of the High Court and in respect of which order was passed by the then Chief Justice and the matter was closed on 31st January, 1994. Respondent's counsel could give no explain corporation as to how Justice Kokje got this complaint against the petitioner some time before 27th October, 1994 when he was transferred to the Rajasthan High Court only on 28th April, 1994. At that time the petitioner had ceased to be the Registrar of the High Court with effect from 1st February, 1994. It is obvious that a copy of this complaint was handed over to Justice Kokje by some one who was interested in harming the petitioner and thereupon the second round of action against the petitioner commenced with Justice Kokje being made one of the members of the Three Judge Committee."

81. Adverse remarks were recorded against the petitioner on 18.5.1996. at was communicated to him on 27.5.1996. He made a representation which as rejected. The Full Court constituted a committee. In the report of the committee it is observed some discrete enquires were made". The Committee has not been able to place on record what was the nature of discrete enquiries and whether enquiries were discrete or discreet. The petitioner was not furnished with any information to explain. There is nothing on record to show when such a discrete or discreet was made and who were the persons who could give an account of the petitioner's conduct. The record does not give any indication about the persons who were enquired in this behalf. If there is any material on record, those things could have been mentioned in the counter. Except the remarks "C integrity doubtful", there is nothing on record having a logical connection with the point at issue. If an authority is to decide on facts placed before it, the law obliges that authority to say that it is satisfied about the ultimate conclusion after considering the materials made available. A word of that kind is not breathed anywhere.

82. The principle is that on a perusal of the records one is not able to get a calculus, as it were, to determine the validity of the reasoning then the decision becomes wholly unsustainable in law. In United States of America this principle is brought under the rubric of residuum Rule and that is, even though an administrative authority is not bound by the rules of evidence applicable in courts and it may have discretion to accept any evidence that is offered still in the end, there must be a residuum of legal evidence to support the opinion arrived at. The statement of law in American jurisprudence 2nd Edition Vol. 2 at page 193 is instructive. It reads as under :-

"It is generally recognised, however, that while an administrative agency my take

notice of facts known to it such acts must be made to appear in the record in order to support the decision i.e. administrative agencies should make no use of their personal knowledge or of data accumulated by them unless the matter is disclosed and put up upon the record so that the supposed facts may be supplemented, explained or refuted by contrary evidence. And so that a court or judicial review may be informed on what facts the agencies had utilised as to determine the existence of evidence in support of the determination."

83. The decision of the Supreme Court in 265 US 274 U.S. Vs. ABLIENCE & SR O is referred to in support of the proposition. The statement of law further stated is:-

"It is a denial of due process for a commission to rest on conclusion upon facts of which he takes judicial notice, where the facts are unknown and there is no way to find them out such facts being withheld from the record".

In support of this position of law, reference is made to OHIO BELL TEL CO. Vs. PUBLIC UTILITIES COMM 301 US 292.

84. The principle discernible from the decision of the United States of America in 221 US 510 :-

"That the authority exercising quasi judicial power is under an imperative constitutional obligation with a sense of official responsibility for impartial with objective consideration of materials available on record."

85. The statement of law in DESMITH, WOOLF and JOWELL, Judicial Review of Administrative Action, 5th Edition, 1995 the learned Authors succinctly posit the principle of law:

"If the exercise of a discretionary powers has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account, a Court will normally hold that the power has not been validly exercised."

The learned Authors had culled the lucid exposition of law by Lord Keith who said:

"Where reasons for a decision were absent "and if other known facts and circumstances appear to point overwhelmingly in favor of a different decision , the decision-maker... cannot complain if the Court draws the inference that he had no rational reason for his decision".

And in support of this statement, the following decisions are referred to:

"Lonrho plc Vs. Secretary of State for trade and Industry [1989] 1 W.L.R. 525, See also R. Vs. Civil Service Appeal Board, ex. p. Cunningham [1991] 4 All E.R. 310 (where there was an absence of reasons for law compensation award and no reason given inference made that decision irrational). See also Padfield Vs. Minister of Agriculture, Fisheries and Food 1968] A.C. 997 (per Lords Reid, Hodson, Pearce and Upjohn)"

The statement of law in Halsbury's Laws of England 4th Edn. Vol. 1 at page 160 is also equally interesting. It is as under:-

"Prima facie, moreover, a duty to act in accordance with natural justice will arise in exercise of a power to deprive a person of his livelihood or of his legal status where the status is not merely terminable at pleasure".

86. All authorities have to act in accordance with the provisions of the constitution and act following the law laid down by the Supreme Court. Time was when Rex was Lex. It is now firmly established that Lex is Rex and, Therefore, it is wholly unnecessary to expatiate on basic principles. In my view, when there is no scintilla of materials warranting even a remote chance of inference of any kind of omission or commission on the part of the petitioner justifying the adverse remarks. It is in this back drop, as it were, the observation of the Supreme Court would become apposite:-

"Normally enquiry committees are set up in order to ascertain correct facts. Here, however we have a situation where a committee consisting of a local Judge and two transferred Judges was set up with the local Judge sitting alone and collecting a menagerie of witnesses who had a grudge against the petitioner and were thus sure to depose against him. Some of these witnesses were those who had not sent any complaint against the petitioner prior to 30th November, 1994 and it is only the local Judge who, wanting together statements against the petitioner, could have known whom to approach and call for evidence. Of the two transferred Judges who were members of the Committee, one never took part in any proceeding when evidence was recorded between 20th February and 2nd January, 1995. Yet he signs the report dated 4th January, 1995. The other transferee judge is the person who set the ball rolling with his conjuring up Vijay Singh's complaint which had originally been circulated long before the Judge's transfer to Rajasthan. The respondent's counsel was unable to explain as to how this complaint was conveniently placed in this Judge's hand. It is evident that there was a deliberate design to bring to a premature end the judicial career of the petitioner, whose name, at that time, was being actively considered for elevation as High Court Judge. This is apparent from the fact that in the resolutions dated 30th November, 1994 and 5th January, 1995 it was resolved by the Full Court that the President of India and the Chief Justice of India should be informed about the holding of the departmental enquiry against the petitioner. Acting on the basis of the Committee's biased report the Full Court, we are sad to note, continued in similar vein and proceeded to nail the petitioner by taking a decision which lacked objectivity. Apparently stung by the judgment dated 22nd November, 1994 of this Court it retaliated by launching a fresh set of charges against the petitioner clearly with a view to ruin his judicial career. We have no doubt that the action taken by the court was not bona fide and amounts to victimisation. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its, judicial functions."

The Supreme Court thoroughly analysing the facts observed:-

"The proceedings of the meeting of the Full Court are normally supposed to be confidential. How is it then that a number of complaints were received against the petitioner at about that time, i.e. 30th November, 1994. Some of the complaints on the file of the Three Judge Committee are undated and it is not known when they were received. On two complaints the date is 26th November, 1994, but they do not have supporting affidavits. It is, Therefore, possible that these complaints may have been ante dated specially when none of these complaints bear an endorsement signifying the date of their receipt. The complaint of Mitruka is dated 30th November, 1994 but the affidavit supporting is dated 1st December, 1994. The fact that an enquiry was going to be conducted against the petitioner was not publicly advertised which could have resulted in complaints being filed, how is it then that after the judgment of this Court on 22nd November, 1994 and about the time the resolution dated 30th November, 1994 was passed, unsolicited complaints started coming in. We have no doubt that all these complaints were procured solely with a view to show that apart from the original complaint of Vijay Singh there were other complaints against the petitioner which represented new material justifying a fresh enquiry. These complaints, some of them being made by discredited persons containing vague and general allegations could not, in our view, be regarded as fresh material which required disciplinary proceedings being initiated. The said complaints did not merit any serious considerations and reference to them by the High Court was uncalled for. In this connection we reiterate the sentiments expressed by this Court while allowing the petitioner's writ petition on the earlier occasion when at page 7165 of the report it was observed as follows:

"This case leaves us very sad. Entrustment of the 'control' of the subordinate judicial to the High Courts by enactment of the relevant provisions in the Constitution of India, particularly Article 235 therein is for the purpose of ensuring their independence and protection from executive interference. At a time when fairness and non-arbitrariness are the essential requirements of every administrative State action, it is more so for any administrative act of the Judges. It is necessary that members of the subordinate judiciary get no occasion to think otherwise. We are afraid, this incident appears to shake this faith. We do hope it is an inadvertent exception."

"We are sorry to note that the said hope stands belied notwithstanding the aforesaid observations the High Court acted in the manner which can only be termed as arbitrary and unwarranted, to say the least."

87. In *M.S. Bindra Vs. Union of India and Others*, the Supreme Court had to consider the conclusion of the Committee in that case and making adverse remarks "Doubtful Integrity" about the appellant before the Supreme Court. The appellant before the Supreme Court was working in Indian Revenue Service. The appeal before the Supreme Court arose in the following circumstances:-

"Appellant joined Indian Revenue Service in the year 1958 and was absorbed in the Excise Department. He had a quick rise in the ladder which in 1980 reached him to the level of Director Enforcement and in 1983 as Appellant Collector of Customs and Excise since he earned a high standard of reputation by then as "a very good officer all round". As he proved to be efficient and trustworthy he was entrusted with the High sensitive post of Director of Anti Evasion Wing in 1984 which post he held till June 1985. During the said period a series of raids was conducted by Anti Evasion Squad headed by the appellant and a whopping sum of escaped excise duty was unearthed through such raids. This became the subject matter of extensive media coverage and praises were showered on the department for carrying out such daring operation in big business houses and hoarding places. But the above raids became the commencement of a volte face in the official career of the appellant."

The Committee was appointed to consider the allegations against the officers of the Revenue Department. The Committee called Screening Committee expressed the view that some officers including the appellant should be weeded out and the Committee dealt with three specific instance which are as follows:-

"(1) Pursuant to search made in the premises of M/s. Orkay Silk Mills Ltd. adjudication proceedings were initiated and in the end a penalty and fine of Rs. 10 crores have been imposed on the said Mills. But certain derelictions were noted as against the appellant in the above operations. They are:

(a) The order of adjudication ran into nearly 100 pages and it was passed on the day following the last day of the hearing. It indicated that the order must have already been got ready even before the hearing was complete.

(b) A penalty of Rs. 50 lakhs was imposed on the proprietor of the Mills without issuing a show cause notice on him.

(c) Huge sums of duty have been demanded in respect of unaccounted production in the factory without fully going through the claims of the party that those accounts were wastage claimed by him.

(2) Important cases relating to M/s. Golden Tobacco Co. were lying unattended for a very long time and instructions were issued by the Deputy Director Shri Bhattacharjee to the units under him to keep further investigation in abeyance. The Screening Committee held that Shri Bhattacharjee would have given such instructions at the behest of the Director.

(3) One Ashok Jain and his brother imported components of Honda cars from abroad and assembled them in India in violation of Central Excise Laws. On 1-12-1983, officers of the Anti Evasion Wing raided the premises where those cars were garaged and the Jain Brothers were subject to interrogation. They were arrested and produced before the court. When they were released on bail the appellant persisted with the steps and moved for cancellation of their bail order. In this operation what was viewed against the appellant was that he had

demanded Rs.10 lakhs from Jain Brothers and when it was not paid he invigorated the steps against those two brothers."

The Screening Committee came to the following conclusion:-

"On the basis of the specific cases and other material at Annexure IV hereto, he is found to be of unreliable integrity and unfit to be entrusted with any position of responsibility in the Government service" as he has widely and systematically indulged in extortion of money from the parties and adopted methods which have the effect of bringing down the esteem of the Government in the public eye."

88. The Review Committee who was to take a final decision in the matter read with the view expressed by the Screening Committee. On the basis hereof, the Govt. of India passed the order prematurely retiring the appellant. The Appellant challenged the order on the following grounds:-

"(1) The big business houses whose premises were subject to series of raids were so influenced as to spread canards about the appellant as part of a retaliatory measure against him.

(2) The Screening Committee was actuated by mala fides as one of its members (Shri M.L. Wadhawan) who was a member of Central Board of Excise and Customs has been inimical to him on account of serious difference which can be discerned from a file (number of which appellant has cited in the Special Leave Petition).

(3) The conclusion made against the appellant by the Screening Committee is perverse in the sense that the material on which that conclusion was reached could never have afforded scope to reach such conclusion to any reasonable person. In other words, there was utter dearth of evidence for the Screening Committee to conclude that appellant was a case of doubtful or unreliable integrity."

The Supreme Court while considering these points has referred to the principles to be applied:-

"A two Judge Bench of this Court has held in Union of India (UOI) Vs. Col. J.N. Sinha and Another, that "if the appropriate authority forms the requisite opinion bona fide its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision."

Approving the above principle, a three Judge Bench of this Court has laid down in Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, that five principles should be borne in mind while considering a case of compulsory premature retirement. It is not necessary to extract all the five principles here except No. (iii) which reads thus:

"Principles of natural justice have no place in the context of an order of

compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter was an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order."

This was reiterated very soon by another three Judge Bench in Posts and Telegraphs Board and others Vs. C.S.N. Murthy, in which their Lordships further added thus:

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to be decided upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record."BLOCKQUOTE> To satisfy whether the conclusion of the Screening Committee was justified on facts, the Supreme Court critically examined the situation. The Supreme Court said:-

"Here, out of the three instances on which the Screening Committee relied to dub the officer as a case of "doubtful integrity" the first is his action against M/s. Orkay Silk Mills. The fact is that it was the appellant who headed the operation. A task which unearthed such a huge sum of concealed excise duty would normally evoke appreciation for his work. But what was noted against him in that affair is that he willfully created lacunas in the confiscation proceedings for providing an escape route to the defaulter. One is that the confiscation order contains nearly 100 pages and the period was too short for preparing such an order. What is the inference to be drawn? Normally it is an achievement that an order of 100 pages was made during such a short period. So what is then to be thought of against it? Is it that he would have taken too much pain to finish his work or is it that he would have caused it to be written by somebody else?

Is there not a clear possibility that the officer hearing the adjudication case for several days would have prepared its prefatory portion as well as statement of summary of evidence during the days when arguments were proceeding and before conclusion of the hearing, leaving out the crucial discussion, to be dictated after conclusion of the hearing? That is not an objectionable course. If so, the achievement in preparing an order of confiscation within such a short span should not have been frowned at, instead there is scope to pay admiration for its promptitude.

Another lacuna is that he imposed a huge penalty and fine without issuing a

show cause notice. To say that he did it for helping the defaulter is too far-fetched. The appellate authority which may be persuaded to set aside such an order on that ground could as well direct the authority to pass afresh order after issuing the show cause notice. So it is unreasonable to conclude that the imposition of penalty was made calculatedly to have it upset by the superior authority.

We feel that the two lacunas ferreted out from the proceedings relating to M/s. Orkay Silk Mills are grossly insufficient to reach a conclusion that the delinquent officer was trying to help the defaulting manufacturer.

In the second instance concerning the file of M/s. Indian Tobacco Company the inference made against the defaulter is too tenuous. The minimum thing which should have been done was to ascertain from Shri Bhattacharjee, the Deputy Director, the circumstances under which instructions were issued by him to keep the investigation in abeyance. Attributing a sinister motive to the appealant from what Shri Bhattacharjee had done was seemingly unfair, without adopting such a minimum precaution.

The third is the case relating to import of spare parts which the Jain Brothers assembled for making Honda cars. In that case the ostensible role of the appellant was to detect the offence through investigation and then to follow it up seriously. When the defaulters were granted bail the appellant moved for cancellation of the bail it is prima facie a point in favor of the appellant's tenacity to pursue the steps adopted. Thus far the role played by the appellant was that of a dutiful and efficient officer of the department. But the reason for the Screening Committee to doubt the integrity of the appellant in the afore said case is that the Jain Brothers have alleged that one Mr. Kapoor told them that appellant was to be paid Rs.10 lakhs to save them from the proceedings."

The Supreme Court went further in considering the statement of Jains out whom reference has been made by the Screening Committee. The Supreme Court observed:-

"They never said that appellant made the above demand to them at any time. The only material before the Screening Committee was that the two accused had stated that Kapoor gave them such an impression. It must be noted that nobody had checked up the truth of it with the person to whom it was attributed. The most unfortunate feature is that nobody was checked it up even with Mr. Kapoor who is alleged to have told like that to the Jain Brothrs. If integrity of senior officers, who established unblemished reputation and earned encomiums from all concerned till then, is proclaimed as doubtful merely on the strength of statements of persons prosecuted by such officers, what is the safety of such icers more so when they have to embark on hazardous operations risking their lives against big business houses."

It was sought to be contended before the Supreme Court that the members of the Screening Committee are reputed persons and, Therefore, their conclusions

must be given its full weight. The Supreme Court answered it by saying:-

"It is not a question of doubting the caliber of the members of the Screening Committee. While declining to agree with their conclusion no particle of mud is slung on any member of the Screening Committee. Even if such a conclusion was made by a judicial personage the higher court which overrules it does not cast any stigma on the judicial officer concerned."

The Supreme Court held on the merits, having regard to the materials on record:-

"We have no doubt that there is utter dearth of evidence for the Screening Committee to conclude that appellant had doubtful integrity. Such a conclusion does not stand judicial scrutiny even within the limited permissible scope. We, Therefore, allow this appeal and set aside the order under attack including the order by which premature compulsory retirement was imposed on the appellant. The department concerned shall now work out the reifes to be granted to the appellant as sequel to this judgment."

While deciding these issue, the Supreme Court laid down the principle lating to the scope of judicial review in such matters. The Supreme Court said:-

"While viewing this case from the next angle for judicial scrutiny i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Fruit Repente Turpissimus" (no one becomes dishonest all on a sudden) is not exception all but still it is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle or "doubtful integrity "it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consocialy be entertainable by a reasonable man on the given mate rial. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity."

89. The principles laid down by the Supreme Court would, in my view, apply o the facts in this case. In the circumstances outlined by me I am not able to resist the conclusion that the petitioner had not had a fair crack of the whip. The ACRs recorded for the years 1994 and 1995 by the High Court cannot at all be sustained.

90. In Madan Mohan Choudhary Vs. The State of Bihar, the order of compulsory retirement passed by the State of Bihar was challenged on the ground that there

were no materials on record warranting the order. The Supreme Court set aside that order terming it as arbitrary. The appellant before the Supreme Court joined the judicial service, the State of Bihar on 15.5.1975 as temporary Munsif. He was coming up and in the year 1991 he was promoted and decided to officiate as Addl. District & Sessions Judge. While functioning as District & Sessions Judge, in charge he had granted anticipatory bail in a case u/s 307 IPC. That was challenged in the High Court. The learned Single Judge of the High Court directed the case of the appellant to be put up on the administrative side so that the conduct of the officer may be examined. That order was passed on 26.3.1996. Pursuant to the direction issued by the learned Single Judge, the office put up a note which was considered by the Standing Committee on 6.11.1996 and the following resolution was passed:-

"Agenda Decision To consider the Order Having considered dated 26.3.96 the office notes passed in Crl.Misc. concerning the officer Case No.18207/95 against the officer, the Sessions Judge I/C Madhubani, (XIX-32-96) It is resolved that shall put up necessary notes for the compulsory retirement of Sh. Madan Mohan Choudhary Addl. Sessions Judge, Madhubani, under Rule 74 of the Bihar Service Code."

Thereafter, the office put up a notice for compulsory retirement of the appellant under Rule 74 of the Bihar Service Code. That was considered by the Standing Committee on 21.11.1996. The following resolution was adopted:-

"Agenda Declaration To consider the Having considered desirability of taking the entire service action under Rule records of each of 74 of the Bihar Service the following 4 Code against a few officers: officers of the Subordinate Judiciary (XIX-31-96) 1. Sh. Madan Mohan Choudhary Addl. Distt. & Sess. Judge, Madhubani. 2 3 4 It is resolved that it is not in the public interest to retain their services any longer and they should, Therefore, be retired compulsorily from service under Rule 74(b)(ii) of the Bihar Service Code. The above decision be placed before the meeting of the Full Court, scheduled to be held on 30th November, 1996 as per Rule 3(n) of Chapter-I Part-I of the Rules of the High Court at Patna instead of getting it circulated." On 30.11.1996 the Full Court met. The Resolution of the Standing Committee was approved. The relevant extract of the minutes of the Full Court meeting is as under:-

"Item No. 7:- To consider the decision of the Standing Committee regarding compulsory retirement of Judicial Officers under Rule 74 of the Bihar Service Code, 1952.

The decision of the Standing Committee meeting dated 21.11.96 regarding compulsory retirement of the following Judicial Officers under Rule 74(b) of the Bihar Service Code, is considered by the Full Court and the same is approved.

1. Shri Madan Mohan Choudhary, Addl. Distt. & Sessions Judge, Madhubani.
2..... 3..... 4.....

The State Government may be requested to give three months pay in advance to the aforesaid officers recommended for compulsory retirement in lieu of three months notice to be given to them.

"It is further resolved that the District & Sessions Judges concerned be directed to relieve the aforesaid officers of all their Judicial works."

On 2.8.1997 on the strength of the recommendation by the High Court, the Government passed the order of compulsory retirement. The Supreme Court noted that for the years 1991-92, 1992-93 and 1993-94 there were no remarks in the ACRs given by the High Court. The adverse remarks were made for the three years at one time. On this the Supreme Court said:-

"The character roll entries, recorded by various District Judges, have already been reproduced by us in the earlier part of the Judgment. The remarks given by the High Court on various occasions have also been set out above. It has also been found that there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorised as "C" Grade Officer. The expression used by the High Court in the counter affidavit, filed in this Court, in relation to the entries for the aforesaid three years is that they were recorded "at one go". And, we may add, the officer was made to go! The date on which these entries were made is not indicated either in the original record or in the counter affidavit filed by the respondents. These were communicated to the appellant on 29.11.1996 and were considered by the Full Court on 30.11.1996 but it is clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the office, on 06.11.1996, to put up a note for compulsory retirement of the appellant. The High Court should have considered that all entries prior to his promotion to Superior Judicial Service were not bad and his integrity either as a member of the Inferior Judicial Service or Superior Judicial Service was never doubted. The grant of anticipatory bail in a case u/s 307 IPC particularly when there was a cross case could not have been legally made the basis of compulsory retirement in the particular circumstances of this case. Whatever might have been the feeling of the learned judge who entertained and ultimately allowed the petition for cancellation of bail granted by the appellant, the fact remains that it was an order passed on the judicial side in all bona fides. It may have been a wrong order but it was not a motivated order based on extraneous considerations. It was thus a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely in terms of Rule 74 of the Bihar Service Code.

About the disposal of the representation made by the appellant, the Supreme Court observed:-

"The entries recorded "at one go" for the three years, namely, 1991-92 1992-93

and 1993-94 could hardly have been taken into consideration. They were communicated to the appellant on 29.11.1996 and on the next day, namely, on 30.11.1996, the Full Court took the decision to retire him from service without giving any opportunity to him to make a representation which, however, he did make but had the mortification of seeing it rejected a year later in December, 1997."

It was contended on behalf of the respondent that the order cannot be called in question because the character roll entries which are not communicated can be taken into consideration for retiring a person compulsorily in public interest. Reliance was placed in this behalf on Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, . The Supreme Court has also noticed that that case had been followed by the Supreme Court in the following decisions:-

" Posts and Telegraphs Board and others Vs. C.S.N. Murthy, ; Secretary to the Government Harijan & Tribal Welfare Department Bhubaneswar Vs. Nityananda Pati JT 1992 (Supp) SC 728 and Union of India Vs. V.P. Seth and another, and considered by this Court in M.S. Bindra Vs. Union of India and Others, and again in the State of Gujarat & Anr. Vs. Suryakant Chunilal Shah. "

It may also be mentioned here that there are also other cases where the Supreme Court had taken similar view Gurdial Singh Fijji Vs. State of Punjab and Others, and J.D. Srivastava Vs. State of M.P. and Others, . Regarding the remarks made at one go the respondent High Court before the Supreme Court stated in his counter:-

"Thereafter, the petitioner was awarded Grade `C' in his C.R. for 3 years consecutively and the assessment of petitioner's C.R. for 3 years at one go is not a solitary case but the same practice was followed in the case of all the Judicial Officers. The placing of petitioner in Grade `C' category means below average which was communicated to him by the Registrar General by letter No.9560 dated 29.11.1996."

The submission on behalf of the appellant before the Supreme Court s:-

"Learned counsel for the appellant has contended that the appellant was an honest, hard-working and sincere officer who had not, at any time, been given any adverse remark and his integrity, at no stage, was ever doubted. It is contended that an order passed by him on the judicial side by which bail was granted to certain accused in a case u/s 307 IPC specially when there was a cross case also, could not be made the basis of an order of compulsory retirement. It is also contended that there was no material on the basis of which the High Court could recommend compulsory retirement. The whole decision making process, it is claimed, was conducted in an arbitrary manner."

The submission on behalf of the High Court was:-

"Learned counsel appearing on behalf of the High Court as also the state of Bihar

have vehemently contended that the High Court having resolved to compulsorily retire the appellant in public interest had taken a bona fide decision on an overall assessment of the work and conduct of the appellant and, Therefore, it was to open to judicial scrutiny."

91. By way of digression it is better to notice the submission of the learned counsel Mr. Sanjay Kaul on behalf of the High Court before me. The learned counsel submitted that the Full Court in its collective wisdom had decided and the stand taken in the counter is correct and that is not open to judicial review. The learned counsel submitted that with reference to the decision by the High Court general principles of Administrative Law would not apply. There lies the rub of the matter. Articles 14 and 16 of the Constitution are all pervasive and no authority can act beyond the power given to it and it is to act within the parameter of the Constitution. It is well settled that no authority acting under the provisions of the Constitution can take a decision involving civil consequences for the affected person and then to seek to support the action on some proposition not recognisable in the light of the provisions of the Constitution.

92. The fact that on 18.5.1996 the adverse remarks for the years 1994 and 1995 were made is not in dispute. The fact that those adverse remarks were communicated to the petitioner on 27.5.1996 is also not in dispute. Coming back to the Supreme Court decision the Supreme Court dealing with the adverse remarks by the High Court observed:-

"These observations indicate that the adverse remarks if recorded in an employee's character roll in the "normal course", ought to be communicated to him and if any representation is made against those remarks, the said representation should be disposed of in the "normal course" but with promptitude. It was further emphasised that the pendency of representation against the adverse remarks or non-disposal or that representation would, however, not prevent the action being taken for compulsory retirement of the employee even on the basis of that entry either under F.R. 56 (j) or any provision equivalent thereto."

Interpreting the scope of Articles 234 and 235 of the Constitution of India dealing with the control of the High Court on the District judiciary, the Supreme Court held:-

"The word "consult" in its ordinary meaning means "to ask advice" or "to take counsel". The Governor is thus a "counselor" and the High Court is the "consultee" which is treated as an expert body in all matters of service including appointments, disciplinary action, compulsory retirement etc. relating to State Judicial Services. Since the Governor cannot act on his own unless he has consulted the High Court, the Constitution has conferred upon the High Court a sacred and noble duty to give the best of advice or opinion to the Governor, an advice tendered after due deliberation and after taking into consideration all the relevant material and record relating to the problem on which consultation is

made or advice is sought by the Governor. It is, Therefore, essentially a matter of trust and confidence between the Governor and the High Court. The High Court cannot act arbitrarily in giving its opinion to the Governor or else it will be a betrayal of that Trust. If the advise record and is arbitrary in character, it may not have any binding value."

It is now necessary to note the prologue by the Supreme Court to the above judgment. The Supreme Court observed:-

"The recommendation of the High Court on the basis of which the appellant, who held the rank of Addl. District & Sessions Judge, was compulsorily retired from service, exhibits the tragic fact that the highest judicial body of the State which abhors anything done contrary to the rule of law or done in a whimsical manner or arbitrarily, can itself act in that manner on the administrative side. Still, the plea that High Court Judges suffer from "split personality" cannot be accepted for the pleasant fact that though on the administrative side they might have had acted as ordinary bureaucrat, once they don the robes they forget all their previous associations and connections. The transformation is so complete and real that even though they themselves were part of the decision making process, they quash their own administrative decisions in exercise of their power of judicial review and thus maintain the majesty and independence of the Indian judiciary in which the people have always reposed tremendous faith. In the instant case, however, the order of compulsory retirement dated 2.8.1997 passed by the State Government on the High Court's recommendation has been upheld and it has fallen to our lot, in this appeal, to scrutinise the validity of this order."

93. Therefore, in my view, the dictum by the Supreme Court is clear and pronounced and the relevant position is that if the opinion has to be formed that should be on the strength of materials on record.

94. In the light of the facts and the principles laid down by the Supreme Court, the High Court ought to have considered the case of the petitioner on 18.5.1996. There were no materials at all on record to form any opinion against the petitioner. The learned Inspecting Judge for the year 1994 on 2.2.1996 had given the grading B+ and the learned Judge had not made any remark against the petitioner. The learned Inspecting Judge for the year 1995 had certified the petitioner being good but with reference to columns 6 and 7 in the form referred it to the Full Court to fill up. The learned Inspecting Judge had not referred to any materials on record and nothing has been produced before me as to how the Full Court formed the view that the petitioner's integrity was doubtful. The High Court ought to have followed the principles laid down by the Supreme Court. The Full Court had not recorded any reasons and it is not stated in the counter as to how the learned Inspecting Judge for the year 1994 went wrong in giving the grading B+.

95. The learned senior counsel for the petitioner Mr. Bachawat referred to the

judgment of a Division Bench of the High Court of Madhya Pradesh reported in High Court of M.P. Vs. R.C. Chandel. 1997 (2) labLJ 379. In view of the pronouncements by the Supreme Court. I don't think it necessary to pass on.

96. Under the circumstances, I am clear of the view - in the absence of any material to peg its view - that the ACRs for the years 1994 and 1995, recorded by the High Court, have to be set aside. Accordingly, they are quashed.

97. This takes me to the question what are the grades to be given to the petitioner for the years 1994 and 1995.

98. While granting the relief the Court has to consider the facts and circumstances of a given case. In the instant case, the petitioner right from 1987 had been given the grading B+. In 1994 the learned Inspecting Judge had granting B+. In the absence of any materials sustaining the view taken by the High Court, the petitioner is entitled to the grading B+. In this behalf it is necessary to notice the principles adumbrated of the judgment of the Supreme Court in U.P. Jal Nigam Vs. S.C. Atri and Another, . Therefore, it is hereby declared that the petitioner is deemed to have been graded B+ for the years 1994 and 1995.

99. This would take me to the next question with respect to the claim for promotion by the petitioner to the Delhi Higher Judicial Service. On 18.5.1996 the Full Court had considered the case for promotion of officers. Those who have been graded B+ and above have been promoted and on the basis of the gradings alone the promotions have been granted. On 18.5.1996 the Full Court had selected the following for promotion:-

1. G.P. Mittal 2. M.L. Mehta 3. Rakesh Kapoor 4. Gurdeep Kumar The gradings of those officers are as follows:-

1987	1988	1989	1990	1991	1992	1993	1994	1995	1.G.P. Mittal	B+	B+	B+	B+
B+	B+	B+	B+	B+	2.M.L. Mehta	A	A	A	A	A	A	A	A
A	A	A	A	A	3.Rakesh Kapoor	A	A	A	A	A	A	A	A
A	A	A	A	A	4.Gurdeep Kumar	A	A	A	B+	A	A	A	A

100. It may be mentioned here that on 18.5.1996 the Full Court recorded the Annual Confidential Remarks of 23 officers in Delhi Judicial Service. It may be seen that Mr. G.P. Mittal who had been given grading B+, is senior to the petitioner, had also been selected. It may be noted that Mr. Mahavir Singal, who had been graded as "B" for the years 1987 to 1991, B+ for the years 1992, 1993 and 1994, "B" for the years 1995 and 1996, had been selected and promoted. On 22.5.1996 the Full Court selected the following officers for promotion to Delhi Higher Judicial Service. Their names and gradings are as under:-

1987	1988	1989	1990	1991	1992	1993	1994	1995	1.R.K. Yadav	B+	B+	B+	B+
B+	B+	A	A	A	2.Ms. Bimla Makin	B+	B+	B+	B+	B+	B+	B+	B+
B+	B+	A	A	A	3.D.S. Paweria (S.C.)	A	A	A	A	A	A	A	A
A	A	A	A	A	4.N.K. Goel	B+	B+	B+	B+	B+	B+	B+	B+
B+	B+	B+	B+	B+	5.Naipal Singh (S.C.)	B+	B+	B+	B+	B+	B+	B+	B+
B+	B+	B+	B+	B+	6.Pratibha Rani (S.C.)	B+	B+	B+	B+	B+	B+	B+	B+

The Supreme Court explained the scope of the provision:-

"This regulation provides that the inter se seniority of persons promoted to the post of Superintending Engineer shall be the same as in the substantive post held by them at the time of promotion. The only exception is contained in the proviso to this regulation which says that if any person senior to others was not promoted on account of unsuitability and is promoted subsequently, he would be treated as junior to persons already promoted."

By order dated 9.10.1991 the High Court allowed the writ petition filed by the respondent and directed the respondent to reckon the respondent's seniority in accordance with the Regulation and treat him to be promoted on the post of Superintending Engineer with effect from the date on which his juniors were promoted. The Supreme Court held:-

"The effect of the order allowing the expunction of the adverse entry would be that on the date on which he was considered for promotion to the post of Superintending Engineer, there existed no adverse entry in his character roll. Subsequently, it cannot be said that the respondent was not promoted on account of his unsuitability. That being so, the High Court was justified in ordering that the respondent on being promoted, thought subsequently, shall be entitled to reckon his seniority with effect from the date on which a person junior to him was promoted to the post of Superintending Engineer."

103. In High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, the judgment was rendered on 26.4.1999. The respondent before the Supreme Court was granted relief by the Supreme Court in 1988 and the judgment of the Supreme Court Ishwar Chand Jain Vs. High Court of Punjab and Haryana and Another, . The respondent was again proceeded against and was prematurely retired by the first respondent and that was challenged before the Punjab and Haryana High Court. A Division Bench of that High Court by judgment dated 22.5.1998 allowed the writ petition filed by the first respondent. The High court of Punjab and Haryana took up the matter in appeal to the Supreme Court. It is not necessary to discuss the facts of that case in detail. Reiterating the principles in Registrar, High Court of Madras Vs. R. Rajiah, the Supreme Court observed:-

"Keeping in view the aforesaid principles we may examine the background under which the order compulsorily retiring Jain came to be passed. In December, 1995 Judges Comprising the Full Court were not the same as that in the year 1985 when probation of Jain was terminated. There were new appointments of judges and there were judges, who had come on transfer from other High Courts. They could not be aware of the circumstances leading to termination of the probation of Jain and ACR given to him for the year 1984-85 was shown as "C-Below Average." The inspecting Judge for the year 1984-85 had granted the office as "B+ Good" but the Full Court modified the same to "C- Below Average". This Court in earlier appeal filed by Jain against termination of his probation held that

the modification of the entry by the High Court was without any material and was not sustainable in law. It meant that the Supreme Court restored grading of Jain in his ACR for the year 1984-85 as "B+ Good". There is no indication of this in the precis prepared by the Registry which certainly would have misled many of the judges of the Full Court. There is no ACR recorded for the years 1992-93, 1993-94, 1994-95 and for nine months of 1995-96 when the Full Court met on December 12, 1995. In its earlier meeting on September 22, 1995 it recorded ACR for the year 1991-92 grading Jain as "C- integrity doubtful". In coming to this conclusion Full Court relied on the inspection report prepared by the inspection judge on February 22, 1992 where he graded Jain as "integrity doubtful" and gave his note which we have quoted above. There is no material forthcoming as to why the inspection report of February 1992 came to be considered by the Full Court in September, 1995 and why there could be no inspection from that year till holding of the Full Court meeting. Inspection note by the inspecting judge gives an impression that he inspected the Court of Jain and visited the bar room before he gave his report. Fact, however, remains that the inspecting judge inspected the Court of Jain only in March, 1992. Inspecting Judge also noted that there were some complaints which formed the subject-matter of the disciplinary proceedings against him. This also does not appear to be correct inasmuch as on the date of the inspection report no disciplinary proceedings were pending against Jain. There were also no particulars of the complaints whether these were in writing or oral and if these were in writing or oral and if these related to the judicial work performed by the officer. At least some of the cases in which Jain was found to have acted improperly could have been mentioned when there were many complaints from the members of the Bar. The inspection note is certainly flawed and could not have formed the basis by the Full Court to record that integrity of the officer was doubtful and to grade him "C".

Emphasising the need for a careful approach by the High Courts, the Supreme Court observed:-

"Since late this Court is watching the specter of either judicial officers or the High Courts coming to this Court when there is an order pre-maturely retiring a judicial officer. Under Article 235 of the Constitution High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which High Court performs for control over the subordinate Courts. Object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capability, integrity and competency. Since judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring subordinate judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and manage the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of

Courts at grass root level. Remarks recorded by the inspection judge are normally endorsed by the Full Court and become part of the Annual Confidential Reports and are foundations on which the career of a judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman like. Inspection of subordinate courts is not a none day or an hour or few minutes affair. It has to go on all the year round by monitoring the work of the court by the inspection Judge. The Casual inspection can hardly be beneficial to a judicial system. It does more harms than good. As noticed in the case of Registrar, High Court of Madras Vs. R. Rajiah, there could be ill conceived or motivated complaints. Rumour mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts."

104. When his junior was promoted on that date. It cannot be contended by he second respondent that there was anything against the petitioner disentitling him for being considered for promotion. The second respondent had taken into account the grading of the officers and all those who had been graded B+ had been promoted. Therefore, in the normal course of events if the High Court had not given the adverse remarks on 18.5.1996 for the years 1994-95 at one go, the petitioner also would have been promoted. The petitioner has been superseded unjustifiably contrary to the principles laid down by the Supreme Court and, Therefore, under the facts and circumstances of this case the petitioner is entitled to the declaration that he is deemed to have been promoted to Delhi Higher Judicial Service as on 18.5.1996. The Respondents 2 and 3 shall pass the appropriate orders in this behalf as expeditiously as possible and the petitioner shall be granted all consequential benefits including seniority in the Delhi Higher Judicial Service reckoning the date of his appointment as 18.5.1996.

105. Accordingly, the ACRs recorded by the High Court for the years 1994, 1995 on 18.5.1996 stands quashed and the petitioner is declared to have been graded B+ for the years 1994 and 1995. The petitioner is further declared to have been promoted to Delhi Higher Judicial Service as on 18.5.1996 and there is further declared to have been promoted to Delhi Higher Judicial Service as on 18.5.1996 and the petitioner shall be entitled to his due seniority and shall be entitled to all consequential bene-fits. The writ petition stands allowed. There shall be no order as to costs.