

(1994) 12 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No's. 331 and 420 of 1994

Rajinder Singh Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-12-1994

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 105(5)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1995) 1 GLR 335

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.R. Bhattacharjee, P. Pathak, R. Baruah and P. Barman, for the Appellant; K.T.S. Tulsi, Addl. Solicitor General of India, K.N. Choudhury, Sr. CGSC and M. Chibber, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—In these two writ petitions, the Petitioner has challenged the promotions of the private Respondents to the rank of Additional Deputy inspector General of Police (for short "Additional DIG") in the Central Reserve Police Force (hereinafter referred to as "the CRPF") and has prayed for a direction on the official Respondents to consider the case of the Petitioner for promotion to the rank of Additional DIG with effect from the dates on which his immediate juniors were promoted to such rank.

2. The brief facts of the case as stated in the two writ petitions are that the post of additional DIG was not originally contemplated by the Central Reserve Police Force Rules, 1955. But by order dated 16.7.83 of the Government of India, Ministry of Home Affairs, New Delhi, (Annexure-C), some posts of Commandants in the CRPF were upgraded to the level of Additional DIG and the officers of the CRPF who had served as Commandant for a minimum period of six years and had also 18 years of gazetted service were declared to be eligible for promotion to the said newly created posts of Additional DIG. Thereafter, the eligibility

conditions for promotion to the post of Additional DIG were altered by the letter dated 29.10.87 of the Government of India, Ministry of Home Affairs, New Delhi. As per the eligibility condition fixed by the said letter dated 29.10.87, for promotion to the post of Additional DIG, an Officer has to be a Commandant in the selection grade for 2 years and must have completed 18 years in Group "A" service. The Petitioner completed 18 years of Group "A" service and 2 years in the rank of Commandant (Selection Grade) and was thus eligible for appointment to the post of Additional DIG when the Departmental Promotion Committee (for short "DPC") met on 17.6.93 and had an unblemished and meritorious service record. But strangely enough, although the Petitioner was not recommended for promotion to the rank of Additional DIG, the Respondent Nos. 7, 8 and 9 in Civil Rule No. 331/94 were recommended for promotion to the said rank despite the fact that they were junior to the Petitioner in the gradation list of candidates in selection grade as on 1.10.93 (Annexure-F) and the Respondent NO. 8 had incurred the displeasure of the Director General, CRPF. The Petitioner promptly submitted a representation dated 15.1.94 (Annexure-D) before the Director General, CRPF (Respondent No. 2) but to no avail, and the Respondent Nos. 7 to 9 in Civil Rule No. 331/94 were promoted to the rank of Additional DIG by the impugned signal dated 19.1.94 (Annexure-A). On 19.1.94, a review DPC and a fresh DPC were held but the said review DPC and fresh DPC did not recommend the case of the Petitioner for promotion to the rank of Additional DIG. On the contrary, the fresh DPC held on 19.1.94 recommended the case of the Respondent Nos. 7 to 17 in Civil Rule No. 420/94 for promotion and on the said recommendation the said Respondents were promoted to the rank of additional DIG by the impugned signal dated 27.1.94. It is on these facts that the Petitioner has in Civil Rule No. 331/94 prayed for quashing the impugned signal dated 19.1.94 promoting three (3) officers, Respondent Nos. 7 to 9, and in Civil Rule No. 420/94, for quashing the impugned signal dated 21.1.94 promoting 11 oilier officers, Respondent Nos. 7 to 17, to the rank of Additional DIG in the CRPB on, the ground that the promotions are vitiated by malafides and are arbitrary and violative of the statutory rules, guidelines and Articles 14 and 16 of the Constitution.

3. In the affidavit-in-opposition filed by the official Respondents No. 1 to 6, it is stated that in the DPC held on 17.6.93 for promotion to 4 vacancies in the rank of Additional DIG, while Respondent Nos. 7 to 9 in Civil Rule No. 331/94 earned the requisite bench mark of "very good", the Petitioner could not secure the aforesaid, grade of "very good" prescribed for promotion to the rank of Additional DIG by DO letters dated 25.11.88, 8.5.90 and 6.2.91 of the Government of India, Ministry of Home Affairs, New Delhi, to the DG. CRPF (Annexure-R/A, R/B and R/C). It is also stated that a review DPC was held in respect of the DPC held on 17.6.93 to consider the case of the Petitioner but the review DPC also did not recommend the case of the Petitioner for promotion to the rank of Additional DIG; It is further stated that in the fresh DPC held on 19.1.94 for promotion to 11 more vacancies in the rank of Additional DIG the Petitioner could not make

the bench mark of, "very good" and the Respondent Nos. 7 to 17 in Civil Rule No. 420/94 attained the requisite bench mark of "very, good". Regarding the displeasure of the Director General, CRPF. incurred by the Respondent No. 8, it is further stated that the said displeasure was for the period prior to the normal period of service, under consideration by the DPC and did not involve any malafide, dishonesty, pecuniary gain or moral turpitude and had to be ignored as per the letter dated June, 1989 of the Government of India, Ministry of Home Affairs. Thus, the private Respondents were promoted as Additional DIG while the Petitioner could not be promoted. All allegations of arbitrariness and malafides made against the official Respondents in promoting the private Respondents and in not promoting the Petitioner have been denied in the affidavits-in-opposition of the Respondent Nos. 1 to 6.

4. In the reply affidavit the Petitioner has reiterated the averments made in the writ petition and has stated that he had an unblemished record of service and has been awarded several awards including President's Police Medal for meritorious service in the year, 1991 and it was really astounding as to how the Petitioner could not make the bench mark of "very good" and was not recommended for promotion by the DPC. At the hearing of the case, the official Respondents produced the records relating to the DPC held on 17.6.93, review DPC held on 19.1.94 and the fresh DPC held on 19.1.94 as well as the ACRs of the Petitioner.

5. At the time of hearing the writ petition, Mr. A.K. Bhattacharjee, learned Counsel for the Petitioner submitted that Rule 105(5) of the Central Reserve Police Force Rules, 1955, provides that all promotions shall be made on the basis of merit with due regard to seniority ". He cited decision of the Supreme Court in the case of Sant Ram Sharma Vs. State of Rajasthan and Another, in support of his submissions that not only merit but also seniority should be taken into consideration while making promotion to the post of Additional DIG in the CRPF, Mr. Tulsi, learned Additional Solicitor General of India, on the other hand, submitted that the aforesaid Rule 105(5) itself indicates that the promotion are to be based on merit. He relied on the decision of the Supreme Court in the case of State Bank of India and others Vs. Mohd. Mynuddin, wherein Venkataramaiah J. has held that whenever promotions to higher post is to be made on the basis of merit, an officer can claim promotion to the higher post as a matter of right by virtue of seniority alone. In my opinion, the aforesaid submission of Mr. Tulsi has a lot of force. In fact, Sub-rule (5) of Rule 105 of the Central Reserve Police Force Rules, 1955, makes it abundantly clear that promotions have to be made on the basis of merit with due regard to seniority. This would mean that the senior persons will have to be considered first for promotion, but in case he is not found suitable on the basis of merit, he cannot be promoted merely because he is senior.

6. Mr. Bhattacharjee, learned Counsel for the Petitioner, then submitted that it appears that the Petitioner has not been recommended for promotion by the DPC

held on 17.6.93, review DPC held on 19.1.94 and the fresh DPC held on 19.1.94 because the Petitioner did not make the bench mark of "very good" prescribed by the DO letter dated 8.5.90 (Annexure-R/B). He contended that by the said DO dated 8.5.90 (Annexure-R/B), new sub-paragraphs 4.1 and 4.2 were substituted in the guidelines for promotion of officers in para-military forces prescribed by the DO letter dated 25.11.88 (Annexure-R/A). The said substituted sub-paragraph 4.1 is extracted herein below:

4.1 For promotion to the level of Second-in-Command and above, (excepting Commandant (Selection Grade), the bench mark shall be "Very Good" and officers recommended for promotion should have earned an overall grading of "Very Good" or above, Promotions to the rank of Commandant (Selection Grade) shall be made by screening method as given in para 4.2(d) below.

According to Mr. Bhattacharjee, the aforesaid sub-paragraph 4.1 prescribing that an officer should earn an overall grading of "very good" or above for promotion, does not apply to promotions to the level of Additional DIG and this is confirmed by the fact that Commandant (Selection Grade), which is lower than the level of Additional DIG, has been excluded from the purview of sub-paragraph 4.1 as indicated in the said sub-paragraph itself. This interpretation of sub-paragraph 4.1 graph 4.1 because a different method namely the (sic) method, had been prescribed for promotion to the rank of Commandant (Selection Grade). In my view, Mr. Bhattacharjee's argument on this point has no merit at all. The opening words of sub paragraph. 4.1, quoted above clearly indicates that the sub-paragraph applies to promotion the level of Second-in-Command and above and since the level of Additional DIG is above the level pf Second-in-Command, promotions to the level of Additional DIG are covered by the said sub-paragraph 4.1, Promotions to the level of Commandant (Selection Grade), however, have been excluded from the said sub-paragraph 4.1 because a different method, namely the screening rmethod, prescribed in sub-paragraph 4.2(d) is applicable to such promotions.

7. Mr. Bhattacharjee, learned Counsel for the Petitioner, further submitted that Sub-paragraph 2(a) of the guidelines for promotion of officers in para-military forces prescribed by the DO letter dated 25.11.88 (Annexure R/A) provide that in cases where the required qualifyings service for promotion to a certain grade is more than 5 years, the number of CRs to be considered should be equal to the prescribed number of years of qualifying service and in the case of promotions to the level of Additional DIG. the letter dated 29.10.87 of the Government of India, Ministry of Home Affairs, New Delhi, indicates that the qualifying service for promotion to the grade of Additional DIG is 18 years of Group "A" service and accordingly, the CRs for all the 18 years should have been taken into consideration by the DPC, but admittedly, only 5 years CRs of the officers including that of the Petitioner have been considered by the DPC, review DPC and fresh DPC. Ms. M Chibber, learned Counsel for the Respondents, in reply, submitted that the qualifying service for promotion to the grade of Additional DIG

is 2 years of service in the rank of Commandant (Selection Grade) and since this ,was less then 5 years, the provision in sub-paragraph 2(a) relied on by Mr. Bhattacharjee, learned Counsel for the Petitioner, did not apply and as per sub-paragraph 2(b) of the guidelines, the DPC considered CRs of the officers of the 5 preceding years as is ordinarity, done, I find full force in the aforesaid submission of Ms; Chibbr learned Counsel for the Respondents, Sub-paragraphs 2(a) and 2(b) of the guidelines for promotion of officers in para-military forces annexed to the DO letter dated 25.11.88 of the Government of India, Ministry of Home Affairs New Delhi (Annexure-R/A) are extracted herein below:

2(a) In cases where the required qualifying service for promotion to a certain grade is more than 5 years, the number of CRs to be considered should be equal to the prescribed number of years of qualifying service.

(b) As per existing procedure, the DPCs should consider CRs for equal number of years in respect of all officers considered for promotion. Where such a requirement does not exist ordinarily CRs for the 5 preceding years, including the up-to date CR, should be considered.

The expression "qualifying service" has not been defined in the aforesaid guidelines prescribed by the DO letter dated 25.11.88 (Annexure-R/A). But sub-paragraph 2(a) of the guidelines quoted above cannot be possibly refer to both the periods of 18 years in group "A" service and 2 years in Commandant (Selection grade) which have to be put in by officers to be eligible for promotion to the level of Additional DIG but can refer to either of the aforesaid period for Which ACRs have to be considered by the DPC. As to which of these two periods it refers can, be resolved from a bare perusal of paragraph 3 of the letter dated 29.10.87 of the Government of India, Ministry of Home Affairs, New Delhi, in which conditions of eligibility for promotion to different grades in the CRPF have been prescribed extracted herein below:

3. As already conveyed to you earlier, the Government have since approved that 20% posts of Inspector General would be filled by promotion of cadre officers, who have put in 26 years of Gazetted service and have a minimum qualifying service of 6 years experience as DIG. Action to incorporate this provision in the rules may please be taken very early.

(emphasis supplied)

The aforesaid paragraph 3 of the letter dated 29.10.87, of the Government of India, Ministry of Home Affairs, New Delhi, makes it clear that for promotion to pie post of inspector General of Police, a total experience of 26 years of gazetted Service may be required but the "qualifying service" is really six years experience as DIG. Since the author of both the letters dated 29.10.87 prescribing the conditions for promotion of Group "A" officers to various ranks in the CRPF and the letter dated 25.11.88 prescribing the guidelines for promotion of officers to para-military forces is one and the same, namely the Government of India, Ministry of Home Affairs, New Delhi, I am inclined to hold that the expression

"qualifying service" in sub-paragraph 2(a) of the guidelines of promotions of officers in para-military forces (Annexure-R/A.) would mean, in the case of promotions to the grade of Additional DIG, 2 years of service as Commandant (Selection Grade). I am further of the view that since the qualifying service for promotions to Additional DIG is not more than 5 years, sub-paragraph 2(a) of the guidelines for promotion of officers in para-military forces quoted above was not applicable to such promotion and as per sub-paragraph 2(b) of the aforesaid guidelines, DPC was required to consider CRs for the 5 preceding years and not the CRs for 18 years as submitted by Mr. Bhattacharjee, learned Counsel for the Petitioner.

8. Mr. Bhattacharjee, then vehemently argued that in the case of Shri M.N. Prasad, Respondent No. 8, in Civil Rule No. 331/94, a different yardstick was adopted by the DPC altogether inasmuch as Shri Prasad had incurred the displeasure of the Director General, CRPF, for having caused pecuniary loss to the Government and yet the DPC recommended him for promotion and he was promoted to the rank of Additional DIG by the impugned signal dated 19.1.94 (Annexure-A). Mr. Tulsi, learned Additional Solicitor General of India, on the other hand, submitted by a Director General, CRPF, for having caused pecuniary loss to the Government and yet the DPC recommended him for promotion and he was promoted to the rank of Additional DIG by the impugned signal dated 19.1.94 (Annexure-A). Mr. Tulsi learned Additional Solicitor General of India, on the other hand, submitted by reference to the affidavit in-opposition of the official Respondents No. 1 to 6 that the letter dated June, 1988 of the Government of India, Ministry of Home Affairs (Annexure-R/D) made it clear that in case the displeasure has been recorded in the CR for the period prior to the normal period of consideration of CRs of the DPC it should be ignored and in the case of Respondent No. 8 the displeasure related in an incident of the year 1984-85 when he was working as Assistant Director (Admn) in the Directorate General, CRPF, New Delhi and did not involve any malafides element of dishonesty, pecuniary gains, abuse of power or morel turpitude. In view of the aforesaid submissions made by the counsel for the parties, I perused the records of the DPC held on 17.6.93 and I find from Annexure-A to the minutes of the DPC that the Director General's displeasure in respect of Respondent No. 8 on 22.4.92 has been considered by the DPC and yet the CPC has given an over-all grading of "very good" to the Respondent No. 8 and recommended him for promotion. Thereafter, although there was some correspondence between the Ministry of Home Affairs and the Director General, CRPF, with regard to displeasure of the Director General incurred by the Respondent No. 8 and the effect of such displeasure on promotion, finally the Ministry of Home Affairs conveyed the approval of the competent authority for promotion of Respondent No. 8 to the rank of Additional DIG, CRPF, as recommended by the DPC by a confidential letter dated 18.1.94. On the basis of materials placed before me, I am of the view that both the DPC as well as the competent authority have fully considered this aspect of the matter and yet have decided to promote the Respondent No. 8

and it is difficult for this Court to hold that the promotion of the Respondent No. 8 Was arbitrary or violative of Article 14 of the Constitution or in any way illegal particularly when the displeasure related to a period prior to the period of 5 years from 1988-89 to 1992-93 under consideration before the DPC and the displeasure had to be ignored as per the instructions in Sub-paragraph 3(ii) of the letter dated June, 1989 of the Government of India, Ministry of Home Affairs (Annexure - R/D in Civil Rule No 331/94.)

9. Mr. Bhattacharjee, learned Counsel for the Petitioner, then forcefully argued that the DPC has not taken into consideration all relevant factors and has taken into consideration irrelevant factors while assessing the merit of the Petitioner and accordingly, the proceedings of the DPC are vitiated by legal malafides if not by actual malafides. He also submitted that the fundamental rights of the Petitioner under Articles 14 and 16 of the Constitution warrant a fair and over-all consideration of the service records of the Petitioner and since the Petitioner has a very good over-all record of service, on such a fair consideration of the ACRs he ought to have been recommended for promotion. Mr. Bhattacharjee clarified that the decision making process of the DPC can be a matter of judicial review though the decision of the DPC made in accordance with fair and proper procedure cannot be interfered with under Article 226 of the Constitution. In support of his submission, Mr. Bhattacharjee relied on the decision of Apex Court in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, and Baldev Raj Chadha Vs. Union of India (UOI) and Others, wherein the Supreme Court has held that where reasons were disclosed by an administrative authority for particular decision and it is found from the said reasons that relevant matters have not been taken into consideration or that (sic) matters have been taken into consideration the court can interfere with matter under Article 226 of the Constitution of India and quash the decision, Mr. Bhattacharjee also cited the decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, In paragraph 60 of the said judgment, Justice MN Venkatachaliah, as he then was held:

However, Judicial review under Article 226 cannot be converted into an appeal Judicial review is directed, not, against the decision but is confined to the examination of the decision-making process. In Chief Constable of the North Walce policey. EVANS refers to the merits-legality distinction in judicial review. Lord Hailsham said:

The purpose of judicial review is to ensure that the individual receives fair (sic) not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.

In paragraph 62 of the judgement, he has further observed:

When the issue raised in judicial review is whether a decision is, vitiated by taking into account irrelevant, or neglecting to take into account of relevant

factors or is so manifestly unreasonable that no reasonable, authority, entrusted with the (sic) in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the (sic) of the factors.

10. Mr. Tulsi, learned Additional Solicitor General of India, on the other hand, submitted that it is now settled by the Supreme Court in a number of cases that it for the DPC to assess the merit of an officer for the purpose of promotion to a election post and the Court can not substitute its own opinion for the DPC and direct promotion on the basis of its own evaluation of the merit of the officer. In support of this submission Mr. Tulsi cited the decision of the Supreme Court in the case of State Bank of India and others Vs. Mohd. Mynuddin, Union Public service Commission v. Hiranyalal Dev (1988) 2 SCC 242 and State of Madhya Pradesh Vs. Srikant Chaphekar, Mr. K.N. Choudhury Sr. CGSC, also cited before me the decision of the Apex Court in the case of Indian (1993) Supp 4 SCC 441, in which the Supreme Court has held that neither High Court nor the Supreme Court can moderate or upgrade the grading given to an officer. The observations of the Supreme Court in the case of Union Public Service Commission v. Hiranyalai Dev (1988) 2 SCC 242 which are relevant for this case are quoted herein below:

The jurisdiction to make the selection is vested in the Selection Committee The Selection Committee had to make the selection by applying the same yardstick and norms as regard the rating to be given to the officials as "outstanding" "very good", etc. This function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee has to play.

11. Having applied my mind to the aforesaid decisions cited by the learned Counsel for the Petitioner Mr. A.K. Bhattacharjee, Mr. Tulsi, learned Additional Solicitor General of India and Mr. K.N. Choudhury, Sr. CGSC, I am of the considered opinion that under Article 226 of the Constitution, the Court cannot sit in appeal over the decision of the DPC with regard to the merit of an officer considered for promotion and evaluate his ACRs and substitute its own opinion with that of the DPC and its limited jurisdiction is only to ensure that the Petitioner has received a fair treatment and his rights to equality guaranteed by Article 14 and 16 of the Constitution have not been affected. One way to find out whether such fair treatment has been accorded to the Petitioner is to find out whether the guidelines prescribed either by the DPC or by the Government for the uniform assessment of the merit of officers being considered for promotion have been duly followed. Another way is to find out whether matters relevant for a fair consideration of the case of the Petitioner have been ignored by the DPC or irrelevant matters have been taken into account by the DPC resulting in an unfair

treatment of the Petitioner. In case the Court is satisfied that the Petitioner has received a fair treatment by the DPC, the Court will not go any further and decide upon the correctness of the decision of the DPC. In case, however, the Court comes to the conclusion that the Petitioner has not received fair treatment by the DPC, the Court can direct the DPC to reconsider the case of the Petitioner fairly in accordance with the guidelines prescribed for consideration but cannot come to its own conclusion that the Petitioner was suitable for promotion and direct promotion.

12. Coming back to the facts of the present case it appears that prior to the DO letter dated 25.11.88 (Annexure-R/A), procedures followed by DPCs for selection of officers" for promotion in different para-military forces were uniform and by DO letter dated 25.11.88 some common guidelines were communicated by the Government of India, Ministry of Home Affairs, to the Director General, CRPF, to be followed by the DPCs for assessing the ACRs of officers being considered for promotion. The said guidelines were thereafter modified by DO letter dated 8.5.90 of the Government of India, Ministry of Home Affairs, to the Director General, CRPF, and the DO letter dated 6.2.91 of the Government of India, Ministry of Home Affairs, to the Director General, CRPF, (Annexures-R/B and R/C). As per the said guidelines, the DPC has to go through the service records of each of the officers being considered for promotion and give over-all grading to the officers, namely "outstanding", "very good", "good", "average" and "not fit" and for promotion to the level of Additional DIG the DPC would recommend only those officers who have earned over-all grading of "very good" or above. Since in the present case the case of the official Respondents is that the Petitioner did not earn the over-all grading of "very good", we are concerned with only the guidelines for grading an officer as "very good". Paragraph 3(b) of the guidelines as substituted by the DO letter dated 6.2.91 of the Government of India, Ministry of Home Affairs, to the Director General, CRPF (Annexure-R/C) which prescribes the guidelines for grading an officer as "very good" is quoted herein below:

An officer may be graded as "Very Good" if in the opinion of the Selection Committee his over-all service record reflects that the officer has done highly meritorious work and possesses positive attributes and these characteristics are reflected in atleast 3 of the last 5 ACRs. Further, in the opinion of the Selection Committee, the remaining ACRs under consideration of then Committee should {reflect that the officer's performance is generally good during the period of report. "There should be no adverse entry in any of the ACRs under consideration of the Selection Committee.

The guidelines quoted above would make it clear beyond doubt that if in the opinion of the selection committee, the over-all service record of an officer reflects "that he has done highly meritorious work and possess positive attributes and these characteristics reflect in atleast 3 of the 5 ACRs and the remaining ACRs under consideration reflect that his performance is generally good during the period of the report and there is no adverse entry in any of the

ACRs under consideration he "may be graded as "very good".

It further appears that until the office Memorandum dated 10.3.89, a copy of which has been produced before me by Mr. Tulsi, learned Additional Solicitor General of India, the DPCs enjoyed full discretion to devise their own methods and, procedure for assessing the suitability of the candidates for promotion but in order to having uniform procedures for assessment by the DPCs fresh guidelines were issued by the said Office Memorandum dated 10.3.89 of the Government of India, Department of Personnel and Training . Paragraph 2.2.1 (e) and (f) of the said guidelines which are relevant for the purpose of the present case are quoted herein below:

2.2.1 (e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

2.2.1 (f) If the Reviewing Authority or the Accepting Authority as the case may be has over-ruled the Reporting Officer or the Reviewing authority as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due applieslion of mind. If the remarks of the Reporting Officer, Reviewing Authority and Accepting Authority are complementary to each other and one docs not have the effect of over-ruling the other, then the remarks should be read together and the final assessment made by the DPC.

One has to examine, therefore, as to whether the Petitioner has been accorded a fair treatment by the DPC held on 17.6.93 and by the review DPC and by the fresh DPC Hold on 19.1.94 and as to whether the aforesaid guidelines with regard to the over-all grading of an officer as "very good" and with regard to the objective and uniform assessment of ACRs have been followed by the DPC in their meeting on 17.6.03 and 19.1.94.

13. So far as the DPC held on 17.6.93 is concerned, from the minutes of the DPC and notes appended thereto produced before me it appears that ACRs for the years 1988-89 to 1992-93 were under consideration by the DPC and the DPC gave the following reasons for grading the Petitioner as "good":

On going through the ACRs of last 5 years, it was seen that out of 5, Shri R.S. Yadav has 3 Very Good, 1 Average, and 1 Good. The 3 Very Good ACRs have boon given by one Reporting Officer under whom he is serving as Staff Officer. The DPC. therefore, went through his entire CR Dossier and found that his overall assessment, is generally "GOOD". The DPC has, thus, graded him as "GOOD".

Mr. Tulsi, learned Additional Solicitor General of India, supported the aforesaid reasons of the DPC for grading the Petitioner as "good" instead of "very good" by

submitting that in the guidelines prescribed by the letter dated 25.11.88 (Annexure-R/A), it has been stated in paragraph 1(a) that undue importance, for and against, should not be given to more than 2/3 reports of the same reporting officer and it is for this reason the DPC did not give undue importance to the three (3) "very good" ACRs for the years, 1990-91, 1991-92 and 1992-93. It is evident from the ACR for the period from 1.4.90 to 16.7.90 that the reporting officer who has assessed the Petitioner as "very good" is Mr. B.J.S. Sial, the then IGP (HQRs) and the reviewing officer who has also graded him as "very good" is Shri KPS Gill, Director General, CRPF. It is also evident from the ACR for the period from 22.8.90 to 31.4.91 that the reporting officer who has graded the over-all performance of the Petitioner as "very good" is Shri M.P. Singh, IGP, NES, and the reviewing officer who has graded the Petitioner as "very good" is Shri KPS Gill, Director General, CRPF. It is further evident from the ACRs for the period from 1.4.91 to 31.3.92 that the reporting officer of the Petitioner is Shri M.P. Singh, IGP, NES and the reviewing officer is Sri DPN Singh, Director General, CRPF, who has remarked that he has not seen the work and conduct of the officer for at least three (3) months and hence he has no comment to make and from the ACR for the period from 1.4.92 to 31.3.93, it is evident that the reporting officer who has graded the Petitioner as "very good" is Shri M.P. Singh, IGP, NES, and the reviewing officer who has graded the Petitioner as "very good" is Mr. DPN Singh, Director General, CRPF. Thus the DPC which met on 17.6.93 did not take into consideration the fact that two reporting officers and two reviewing officers of the rank of Director General, CRPF, have assessed the Petitioner's work during the years 1990-91, 1991-92 and 1992-93 as "very good" and this was a relevant fact for fair consideration of the case of the Petitioner for promotion to the rank of Additional DIG. That apart, it was no fault of the Petitioner to have been posted under the same reporting officer for several years and the "very good" ACRs given by the same reporting officer could not have been ignored on the ground that they were written by the officer under whom Shri Yadav had served as staff officer and this view has been taken in the letter dated 22.10.93 of the Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi, to the Director General, CRPF, which finds place in the records of the DPC held on 17.6.93 produced before me and the competent authority directed a review DPC for the Petitioner as regards the DPC held on 17.6.93 by letter dated 18.1.94 of the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

14. Pursuant to the said direction, the review DPC was held on 19.1.94 but the members of the said review DPC again graded the Petitioner as "good". The minutes of the review DPC produced before me do not disclose any reason as to why the Petitioner was not graded as "very good". But it appears that the members of the review DPC dated 19.1.94 and the members of the fresh DPC convened on 19.1.94 are one and the same, namely Shri Anurag Goel, Joint Secretary (Police) MHA, Shri RK Sharma, IGP (OPS), Punjab & Chg, Shri SC Choube. IGP, Central Sector, CRPF and Sri SVM Tripathy, DG, CRPF, and the said

fresh DPC has also graded the Petitioner as "good" and ACRs for the same period from 1988-89 to 1992-93 were considered. Hence, it can safely be presumed that the reasons, which weighed with the review DPC dated 19.1.94 and the fresh DPC on 19.1.94 for grading the Petitioner as "good" instead of "very good" are one and the same.

15. From the paragraph 2 of the minutes of fresh DPC held on 19.1.94 it is clear that while considering cases of the 26 officers including the Petitioner, the DPC was influenced by the particulars of the officers given in Annexure-A to the minutes. In Annexure-A to the minutes of the fresh DPC held on 19.1.94 the following particulars relating to the Petitioner have been recorded against Columns 6 and 7:

Grading	Remarks
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6	7
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year	Reporting Officer	Reviewing Officer	OPS,	reporting/	reviewing officer	OPS
superior	reviewing officer	Superior	reviewing officer			

1	2	3	4	5	6
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1.4.88 to 12.12.88	G	G	-	-	-
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13.12.88 to 31.3.89	NC	G	AV	AV	AV
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16.5.89 to 17.8.89	AV	AV	-	-	-
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1.9.89 to 31.3.90	G	G	-	-	G Good
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1.4.90 to 16.7.90	VG	-	-	-	-
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22.8.90 to 31.3.91	VG	VG	-	-	-
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91-92	VG	NC	-	-	-
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92-93	VG	VG	-	-	-
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The aforesaid extract from Annexure-A (Columns 6 and 7) would show that the DPC had graded the Petitioner as "good" on the basis of over-all grading given by the reporting officer, reviewing officer and the superior Reviewing officer for the periods 1988-89 and 1989-90. This in my opinion, is contrary to the guidelines given in paragraph 2.2.1.(e) of the office Memorandum dated 10.3.89 of the Government of India, Department of Personnel & Training quoted above which clearly states that the DPC should not be guided merely by the over-all grading, if any, that may be recorded in the CRs, but it should make its own assessment on the basis of entries made in the CRs because it has been noticed that sometimes the over-all grading in the CRs is not consistent with the grading under various parameters and attributes. In fact, on a bare look at the ACRs for 1988-89 and 1989-90, it would be evident that various parameters and attributes of an officer are sought to be assessed such as appearance and

bearing, state of health, loyalty, integrity, courage(Physical and Moral) power of verbal expression, power of "written expression, sobriety and maturity, initiative, drive and determination, work attitude, professional knowledge, ability to work in a team, ability to train, ability to lead, administrative and organising ability, intelligence to assess situations and response to them, relations with the superior, relations with the subordinate, relations with the public. etc. Hence the assessment of the reporting officer and the reviewing officer in respect of all these attributes have to be taken into consideration as per the aforesaid guidelines in paragraphs 2.2.1 (e) and 2.2.1 (f) of the letter dated 10.3.89 of the Government of India, Department of Personnel and Training, quoted above.

16. It was submitted by Mr. Tulsi at the hearing that since as per the guidelines an officer can be graded as "very good" if at least three(3) of the last 5 ACRs should reflect that the officer was good and the remaining ACRs under consideration should reflect that the officer was "good". Although the Petitioner had "very good" ACRs for the three (3) years, 1990-91, 1991-92 and 1992-93 and had good ACRs for the periods from 1.4.88 to 12.12.88 and from the period from 1.9.89 to 31.3.90, the had average ACRs for the periods from 13.12.88 to 31.3.89 and from 16.5.89 to 17.8.89 and it appears that for this reason, the DPC on a consideration of the remaining ACRs from 1.4.88 to 31.3.90 took the view that the Petitioner should be graded as "good". On a perusal of the ACRs of the Petitioner for the period from 13.12.88 to 31.3.89, I find that the reporting officer has not offered any comment as he has not seen the Petitioner's performance for more than three (3) months. The reviewing officer has endorsed the remarks as he has endorsed for the ACRs ending 12.12.88 and for the period ending 12.12.89 the reviewing officer has remarked that he has agreed with the assessment of the reporting officer and on the whole the Petitioner is a good officer and his grading would be good. The assessment of the reporting officer with regard to the various parameters and attributes indicated above is good. Thus, according to the reviewing officer, the Petitioner appears to be good in respect of the various attributes and parameters indicated in the ACRs. The Superior reviewing officer, DG. CRPF, however, has remarked that the Petitioner has been over assessed and he will grade him only as average. Mr. Tulsi, contended that since the reviewing officer has graded the Petitioner as "average" for the aforesaid period 13.12.88 to 31.3.89, the remarks of the superior officer will override that of the reviewing officer. In my opinion such a contention overlooks the guidelines given in paragraphs 2.2.1 (1) of the office Memorandum dated 10.3.89 of the Government of India, Department of Personnel and Training, quoted above, that the remarks of reviewing authority or the accepting authority over-ruling the remarks of the reporting officer or reviewing authority shall be taken as final for the purpose of assessment provided that it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after application of mind, Mr. Tulsi then contended that it will be apparent from the relevant entries that the superior officer has given his own assessment of the Petitioner as "average,"⁵ consciously after due

application of mind.

17. In my opinion, as to whether the remarks of reviewing officer or that of the superior reviewing officer is to be taken into account with regard to the ACR of the Petitioner for the period from 13.12.88 to 31.3.89 can only be decided by the DPC and not by the Court keeping in mind the aforesaid guidelines indicated in the Office Memorandum dated 10.3.89. But the minutes of the DPC held on 17.6.93 and the minutes of the DPC held on 19.1.94, Annexure-A to the said minutes which contain the particulars and over-all grading of the officers and the notes appended to the said DPC held on 17.6.93 and 19.1.94 which indicate the parameters adopted by the DPCs for assessing the performance of the officers under consideration for promotion to the rank of Additional DIG, CRPF, do not disclose that the aforesaid guidelines contained in the Office Memorandum dated 10.3.89 of the Government of India, Department of Personnel and Training for making the assessment of ACRs for the purpose of giving over-all grading to the Petitioner were followed, I also find that although the aforesaid Office Memorandum dated 10.3.89 was part of the bunch of papers in the folder containing the records of fresh DPC held on 19.1.94 the note dated 19.1.94 prepared by the Assistant Director General (Establishment-I and placed before the DPC makes reference to the guidelines in the letter dated 25.11.88, 8.5.90 and 6/8.2.91 and the Office Memorandum dated 12.10.90, but makes no reference to me said Office Memorandum dated 10.3.89 in which the aforesaid guidelines for objective assessment of the suitability of the candidates or the basis of CRs have been indicated.

18. For the reasons stated above, I direct that the Petitioner's case for promotion shall be reconsidered by the DPC fairly and in accordance with the guidelines issued in the Office Memorandum dated 10.3.89 of the Government of India Department of Personnel & Training and the guidelines in the DO letters dated 25.11.88, 8.5.90 and 6.2.91 of the Government of India, Ministry of Home, Affairs (Annexures-R/A, R/B and R/C). I further find from the minutes of the DPC held on 17.6.93 and 19.1.94 that no officer has been graded as "outstanding" and all the officers who have been recommended for promotion have been graded as "very good" by the two DPCs. Thus, in case, on such reconsideration, the DPC grades the Petitioner as "very good" and recommends his promotion and the competent authority accepts the said recommendation and promotes the Petitioner, he shall also be placed above the Respondent Nos. 7 to 9 in Civil Rule No. 331/94 and Respondent Nos. 7 to 17 in Civil Rule No. 420/94 who have been admittedly Junior to the Petitioner in the rank of Commandant, Selection Grade. The official Respondents shall complete the consideration as directed above within a period of 2 months from today. While parting, I must place on record my appreciation for the fairness with which the official Respondents and their learned Counsels produced before me the records of the DPCs and the ACRs for my examination.

19. In the result, writ petition is allowed. There shall be no order as to costs.