

(2006) 07 GAU CK 0062
In the Gauhati High Court

W. Kumar Singh

APPELLANT

Vs

Commissioner/Secretary (Cada) Govt. of Manipur and Others

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 1 GLT 66

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Judgement

T.N.K. Singh, J.—Subject matter in issue in the present writ petition is appointment by promotion to one vacancy in the post of Superintending Engineer, Command Area Development Authority, (for short CADA) arose on 01.03.2003. Admittedly, the post of Superintending Engineer (CADA) is a selection post for which writ petitioner and the private respondent No. 4, Shri K. Manoranjan Singh are eligible for appointment by promotion. Under the relevant recruitment rules for the post of Superintending Engineer (CADA), the Executive Engineers in the CADA possessing degree in Agri. Engineering or its equivalent from a recognized institute with six years" regular service in the grade are eligible for consideration for promotion.

2. DPC associated with the Manipur Public Service Commission (for short MPSC) held its meeting on 15.12.2003 and considered the cases of 5 (five) eligible officers including the writ petitioner and the private respondent No. 4, Shri K. Manoranjan Singh for promotion to the said one vacancy in the post of Superintending Engineer (CADA) by preparing the overall grading of those eligible officers. But the findings of the said DPC were kept in the sealed cover till the completion of the disciplinary proceedings/case against the private respondent No. 4, Shri K. Manoranjan Singh.

3. As ordered by this Court, Mr. H.N.K. Singh, learned Sr. counsel assisted by Mr. Kh. Babulindro Singh, learned Counsel appearing on behalf of the respondent No. 3, MPSC placed the proceedings of the said DPC held on 15.12.2003 and

assessment chart prepared by the DPC held on 15.12.2003 in sealed cover before this Court. Keeping in view of the decision of the Apex Court in Jai Narain Ram Vs. State of U.P. and others, and also for just determination of this case the sealed envelope containing the chart prepared by the DPC in its meeting held on 15.12.2003 is opened and a copy of it is annexed as a part judgment and order of this Court.*

4. The writ petitioner was appointed as Executive Engineer regularly on promotion on the basis of the recommendation of the DPC associated with the MPSC w.e.f. 06.04.1992 vide Govt. order No. 23-A/21/87-Agri (Pt) dated 29.4.1992 published in the Manipur Gazette Extraordinary No. 42 dated 02.05.1992. By an order of the Govt., of Manipur dated 22.12.1999 the service of the petitioner as Executive Engineer in CADA was regularized retrospectively from the date of his initial officiating appointment, i.e. from 06.07.1988.

5. Admitted inter se seniority list of the eligible Executive Engineers for appointment by promotion to the post of Superintending Engineer (CADA) reads as follows:

SI. No. Name Date of regular apptt. As EE 1. K. Manoranjan Singh - 16.07.1990 (Respondent no. 4) 2. W.Kumar Singh - 06.04.1992 (Writ petitioner) 3. O. Ibochouba Singh - 28.12.1996 4. Th. Ibomcha Singh - 28.12.1996 5. Th. Kesho Singh - 28.12.1996 6. I. Brajabihari Singh - 28.12.1996 ASSESSMENT CHART

Name of post & Department: Superintending Engineer in the Department of CADA, Manipur

Number of vacancy : 1 (one) post in 2002-03

	Name of Officer	Qualification	Date of Length of ASSESSMENT YEAR	GRADINGS	regular Apptt	continous in the grade		
			service in 97-98	98-99	99-2000	2000-01	2001-02	the grade.

	1. K. Manoranjan Singh	16.7.1990	OS	OS	OS	OS	OS	2.
	W. Kumar Singh	06-04-1992	OS	OS	OS	OS	OS	3.
	O. Ibochouba Singh	28.12.1996	VG	VG	OS	OS	OS	4.
	Th. Ibomcha Singh	28.12.1996	VG	VG	VG	VG	VG	5.
	Th. Kesho Singh	28.12.1996	VG	VG	VG	VG	VG	6.
	I. Brajabihari Singh	28.12.1996						

6. A departmental enquiry was initiated against the private respondent No. 4, Shri K. Manoranjan Singh, Executive Engineer vide Govt. of Manipur Secretariat, CAD Deptt. Memo No. 23-A/21/87-CAD dated 15.9.2001 and said departmental enquiry was pending at the time of holding the said DPC associated with the MPSC on 15.12.2003.

7. The Govt. of Manipur vide office memorandum No. 1/5/92-DP Imphal the 24th November, 1992 adopted the Govt. of India, Department of Personnel & Training's office memorandum No. 22011/ 4/91-Estt(A) dated 14.9.1992. The

said office memorandum dated 14.9.1992 of the Govt. of India dealt with the promotion of government servants against whom disciplinary/court proceedings are pending and whose conduct is under investigation and procedures to be followed by the departmental promotion committee. Paras 2.1,2.2,3 and 3.1 of the said office memorandum of the Govt. of India dated 14.9.1992 are quoted hereunder:

2.1. The Departmental Promotion Committee shall assess the suitability of the Government Servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case, criminal prosecution pending. The assessment of the DPC, including "Unfit for Promotion" and the grading awarded by it will be kept in salted cover. The cover will be superscribed "Findings regarding suitability for promotion to the grade/post of...in respect of Shri...(name of the Govt. servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri.... The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover". The authority competent to fill the vacancy in the higher grade only in an officiating when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2. The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committee, convened till the disciplinary case/criminal prosecution against the Govt. servant concerned is concluded.

3. On the conclusion of the disciplinary case/ criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Govt. servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Govt. servant may be promoted if necessary by reverting the junior most officiating persons. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion proceeding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether, disciplinary or criminal are, for example delayed at the instance of the employee of the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can

be justified. 3.1. If any penalty is imposed on the Govt servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

7.1 The Govt. of Manipur under office memorandum being No. 17/2/80-DP Imphal the 29th April 1999 published in the Manipur Extraordinary Gazette No. 137, Imphal, Wednesday, June 9, 1999 (Jaistha 19, 1921) issued the guidelines to be followed by all the departmental promotion committees of all the departments in the Govt. of Manipur. Para 5.3.1 of the said office memorandum dated 29.4.1999 deals with the procedures to be observed and preparation of the panel. For easy reference, para-5.3.1 is quoted hereunder:

Principles to be observed and preparation of panel:

5.3.1. The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel.

(a) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of the duties attached to the posts, a bench-mark grade would be determined for each category of posts for which promotion are to be made by selection method. For promotion to all classes III and 11 posts/services, the bench-mark would be "Good". All Officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arraigned in order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of "Good". Wherever promotions are made for induction to Class-I posts or services from Lower Groups and promotion within Class-1 posts/services carrying pay scale less than Rs. 3700-5000/- (pre-revised), the bench-mark would continue to be "Good". However, Officers graded as "Outstanding" would rank en-block senior to those who are graded as "Very Good" and Officers graded as "Very Good" would rank enblock senior to those who are graded as "Good" and placed in the select panel accordingly up to the number of vacancies, Officers with same grading maintaining their inter se seniority in the feeder post.

(b) In respect of all posts which are in the level of Rs. 3700-5000/- (Pre-revised) and above, the bench-mark grade should be "Very Good". However, officers who are graded as "outstanding" would rank enblock senior to those who are graded as "Very Good" and placed in the select panel accordingly up to the number of vacancies. Officers with same grading maintaining their inter se seniority in the feeder post.

(c) Appointments from the panel shall be made in the order of names appearing

in the panel for promotion.

7.2. Since the disciplinary proceedings/ departmental enquiry was pending against the private respondent No. 4 at the time of holding the meeting of the said DPC associated with the MPSC on 15.12.2003, the findings of the DPC in respect of the suitability of the respondent No. 4 for his promotion were to be kept in sealed cover. The Govt. of Manipur under the letter of the Joint Secretary (CADA), Govt. of Manipur dated 11.12.2003 sent the supplementary note for DPC to the Secretary, MPSC, Imphal. The supplementary note reads as follows:

In case the findings of the DPC has to be kept under sealed cover, a suitable officer may be recommended for officiating appointment till the sealed cover is opened.

As the findings of the said DPC in respect of the respondent No. 4 Shri K. Manoranjan Singh, was kept in sealed cover the said DPC recommended the present writ petitioner for appointment by promotion to the post of Superintending Engineer (CADA) on officiating basis. Accordingly, the Govt. of Manipur issued an order being No. 23-A/8/91-CAD dated 19th December, 2003 for appointing the writ petitioner to the post of Superintending Engineer (CADA) by promotion on officiating basis.

As the charges leveled against the private respondent No. 4 for which the said departmental enquiry/disciplinary enquiry was held, were proved, the Govt. of Manipur imposed the penalty of "Censure" against the respondent No. 4, Shri K. Manoranjan Singh vide orders of the Governor of Manipur being No. 33/20/ 2004-CAD Imphal the 2nd July, 2004. The operative portion of which reads as follows:

Now, therefore, the Governor of Manipur hereby holds that the said charges framed against Shri K. Manoranjan Singh stand proved and imposes the penalty of "Censure" on him.

A copy of the said order of the Governor of Manipur dated 2.7.2004 is available at Annexure-A/3 to the present writ petition.

8. After imposing the penalty of "Censure" to the private respondent No. 4 under the said order of the Govt. of Manipur dated 2.7.2004 it is alleged that the state respondents failed or neglected to comply with the guidelines made in para 3.1 and 3.2 of the said office memorandum of the Govt. of India dated 14.9.1992 which had been adopted by the Govt. of Manipur under the said office memorandum dated 24th November, 1992. Accordingly, the petitioner approached this Court by filing a writ petition being WP(C) No. 48 of 2005 in this Court for necessary and appropriate writ and direction. This court by passing final judgment and order dated 9.6.2005 had disposed of the W.P.(C) No. 48 of 2005. This court while passing the said judgment and order dated 9.6.2005 in W.P.(C) No. 48 of 2005 held that as the Govt. of Manipur had imposed penalty of "Censure" on the respondent No. 4 Shri K. Manoranjan Singh, the findings of the said DPC held on 15.12.2003 in respect of the suitability of the respondent No. 4

for appointment by promotion to the lone post of Superintending Engineer (CADA) which is kept in sealed cover is invalid and ineffective.

9. The respondent No. 4, Shri K. anoranjn Singh also filed a representation/ review petition for reviewing or reconsideration of the said order of the Govt. of Manipur being No. 33/20/2004-CAD dated 2nd July, 2004 for imposing the minor penalty of "Censure" to him. The Govt. of Manipur after due consideration of the said review petition passed the order being No. 33/20/2004-CAD, Imphal the 28th May, 2005 for rejecting the review application.

10. The Government of Manipur under the letter of the Secretary/Commissioner (CAD), Govt. of Manipur dated 24.6.2005 requested the Manipur Public Service Commission for taking up necessary action stating that by the order dated 9.6.2005 passed in W.P.(C) No. 48 of 2005 the Hon"ble Gauhati High Court directed that the sealed cover of the proceedings of the DPC held on 15.12.2003 for the post of Superintending Engineer (CADA) be opened and appropriate action be taken and also the court, further, observed that the proceedings of the DPC held on 15.12.2003 so far as the respondent No. 4, Shri K. Manoranjan Singh, is concerned is invalid and ineffective. Under the said letter of the Commissioner (CAD), Govt. of Manipur dated 24.6.2004, the Manipur Public Service Commission has been requested to take action on the line indicated by this Court. Later on, the Government of Manipur under the letter of the Commissioner (CAD), Govt. of Manipur dated 25.8.2005 requested the Commission to concur in the regularization of the officiating appointment of the present writ petitioner as Superintendent Engineer (CADA). For easy reference the said letter of the Commissioner (CAD), Govt. of Manipur dated 25.8.2005 is quoted below:

No. 23-A/8/91-CAD GOVERNMENT OF MANIPUR Secretariat: Command Area Development Deptt. Imphal, the 25th August, 2005

To,

The Secretary

Manipur Public Service Commission, Imphal.

Sub : Appointment by promotion to the post of Superintending Engineer in the Department of CADA, Manipur.

Sir,

I am directed to invite a reference to the commission's letter No. 8-A/22/2003-MPSC (P) dated 01.07.2005 on the above subject and to say that the departmental enquiry against Shri K. Monoranjan Singh has been completed and the penalty of "Censure" has been imposed on him vide Govt. order No. 33/20/2004-CAD dated 02.07.2004 (Copy enclosed). A review petition filed by Shri K. Monoranjan Singh has also been rejected vide Government Order No. 33/20/2004-CAD dated 28.05.2005 (copy enclosed). The Government is,

therefore, of the view that the recommendation of the DPC meeting held on 15.12.2003 in respect of Shri K. Monoranjan Singh cannot be acted upon in view of para 3.1 of the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel & Training) letter No. 2201 I/4/91-Estt(A) dated 14.9.1992 as adopted by the State Government vide Govt. of Manipur, Department of Personnel & Administrative Reforms (Personnel Division) Office Memorandum No. 1/5/92-DP dated 24.11.1992 (copy enclosed).

2. It may be recalled that the same DPC recommended Shri W. Kumar Singh for officiating appointment to the post of Superintending Engineer in the CADA till the findings of the DPC kept under sealed cover is opened. Accordingly, Shri W. Kumar Singh was promoted as Superintending Engineer, CADA on officiating basis vide Govt. order No. 23-A/8/91-CAD dated 19.12.2003 (copy enclosed).

3. In the above circumstances the Commission may kindly concur in the regularization of the officiating promotion of Shri W. Kumar Singh as Superintending Engineer/CADA.

Yours faithfully, Sd/- (Henry K. Heni) Commissioner (CADA), Govt. of Manipur.

11. In reply to the said letter of the Government of Manipur, the Secretary, Manipur Public Service Commission under his letter dated 14.9.2005 requested the Commissioner (CAD), Govt. of Manipur to send necessary papers relating to the eligible officers in the feeder so that a fresh DPC may be held for regular appointment to the said one post of Superintending Engineer (CADA) as early as possible. The writ petitioner being aggrieved by the said letter of the Secretary, Manipur Public Service Commission for holding a fresh DPC for the said lone vacancy in the post of Superintending Engineer (CADA) arose on 1.3.2003 for which the said DPC associated with the Manipur Public Service Commission held its meeting on 15.12.2003 filed the present writ petition for quashing the said letter of the Secretary. Manipur Public Service Commission dated 14.9.2005 and also for a direction to the DPC associated with the respondent No. 3, Manipur Public Service Commission to select or sent the most suitable officer amongst the eligible Executive Engineers (excepting the private respondent No. 4, Shri K. Manoranjan Singh) for whom, the assessment had already been made by the DPC associated with the Manipur Public Service Commission in its meeting held on 15.12.2003.

12. The respondent No. 3, Manipur Public Service Commission, filed the affidavit-in-opposition in the present writ petition. The main ground taken in their affidavit-in-opposition is that the case of the respondent No. 4, Shri K. Manoranjan Singh and the writ petitioner and others are to be considered afresh by the next DPC in the normal course for the said lone vacancy in the post of Superintending Engineer (CADA) arose on 1.3.2003 as the findings of the earlier DPC held on 15.12.2003 which was kept in sealed cover had subsequently cannot be acted upon with the imposition of "Censure" to the respondent No. 4, Shri K. Manoranjan Singh and also as the respondent No. 4 is required to be considered

by the next DPC in the normal course. Respondent No. 4 also filed affidavit-in-opposition putting up his case for holding fresh DPC for the said lone vacancy in the post of Superintending Engineer (CADA) arose on 1.3.2003 on the ground similar to that of the respondent No. 3, Manipur Public Service Commission, in their affidavit-in-opposition.

13. The core question involved in the present writ petition is as to whether the said DPC associated with the Manipur Public Service Commission held on 15.12.2003 for the said lone vacancy in the post of Superintending Engineer (CADA) arose on 1.3.2003 is to be held again as the findings of the said DPC in respect of the suitability of the respondent No. 4 which had been kept in sealed cover cannot be acted upon for Shri K. Manoranjan Singh as he was found guilty in the departmental enquiry or proceedings against him in the name of considering his case by the next DPC in the normal course ?

14. Mr. A. Bimol Singh, learned Counsel appearing for the petitioner in order to substantiate the case of the petitioner had relied on the decision of the Apex Court:

1. Collector of Thanjavur Distt. and Others Vs. S. Rajagopalan and Others, ;
2. Union of India Vs. K.V. Jankiraman, etc. etc., ;
3. State of M.P. and Another Vs. I.A. Qureshi, ;
4. Jai Narain Ram Vs. State of U.P. and others, .

Mr. H.S. Paonam, learned Counsel appearing for the private respondent No. 4, Shri K. Manoranjan Singh, in order to bolster up the case of the respondent No. 4 put into service the decision of the Apex Court in Bihar State Electricity Board Vs. Suresh Prasad and Others, .

15. The Apex Court in Union of India v. K.V. Jankiraman (Supra) held that the findings of the DPC in respect of suitability of the officers against whom disciplinary proceedings is pending shall be kept in a sealed covered and to be opened after the completion of the disciplinary proceedings or/court proceedings. If on the conclusion of the disciplinary proceedings or/ court proceedings, the officer concerned is completely exonerated, the sealed covered is to be opened, recommendations of the DPC are to be acted upon and if any penalty is imposed on the officer as a result of the disciplinary proceedings or/if he is found guilty in the proceedings against him the findings of the sealed covered shall not be acted upon, and the case of the officer for promotion shall be considered in the usual course or/usual manner by the next DPC in the normal course after completion of the disciplinary or/ court proceedings. The Apex Court, further, held that when an employee is held guilty and penalized and is, therefore, not promoted at least till date on which he is penalized he cannot be said to have been subjected to a further penalty on that account. And also that an employee found guilty of a misconduct cannot be placed on par with the other employees and his case is to be treated differently. The gist of the fact in Union of India and Ors. v. K.V.

Jankiraman (*supra*) was that the tribunal was of the view that when an employee is visited with any penalty as a result of the disciplinary proceedings, there should be a review DPC as on the date when the sealed covered procedure was followed and review DPC should consider the findings in the sealed covered as also the penalty imposed. The Apex Court by setting aside the said view of the tribunal held that:

29. According to us, the Tribunal; has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum, expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalized in praesenti. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalized awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after Clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.

16. Keeping in view of the ratio decidendi laid down by the Apex Court in *Union of India and Ors. (supra)*, this Court has answered the core question formulated

above in the present writ petition in negative inasmuch as the respondent No. 4, Shri K. Manoranjan Singh who was found guilty cannot be placed on par with the other employees and his case is to be treated differently and as such he cannot be promoted at least till the date on which he is penalized and as such for the said lone vacancy in the post of Superintending Engineer (CADA) arose on 1.3.2003, respondent No. 4 cannot be considered for promotion as he was penalized by imposing penalty of "Censure" by the said order of the Govt. of Manipur dated 2.7.2004.

17. The view of this Court is also reinforced by the decision of the Apex Court in *State of M.P. v. I.A. Qureshi* (supra) wherein the Apex Court in a clear and unequivocal term held that once the findings of the DPC in respect of one officer/employee had been kept in sealed cover because of the pendency of the disciplinary proceedings and later on disciplinary proceedings ended with imposing minor penalty with "Censure", the proceedings which had been kept in sealed cover cannot be acted upon and the case of the said officer will be considered by the next DPC if there be any vacancy. This court is of the considered view that according to the ratio decidendi laid down by the Apex Court in *State of M.P. v. I.A. Qureshi* (supra), the case of the concerned government employee whose case was kept under sealed cover by a selection committee because of the pendency of the disciplinary/ court proceedings and later on disciplinary proceedings or court proceedings ended on imposing of minor penalty with "Censure", his case shall be considered by the next DPC for the vacancy arose subsequent to the DPC findings of which was kept under sealed cover and later on ineffective because of the imposing of penalty. 8 (SCC) 9 of *State of M.P. v. I.A. Qureshi* (supra) read as follows:

8. We are unable to accept the said contention of Shri Khanduja. "Censure" cannot be equated with a warning since under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, "censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2.5.1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings."

9. The grievance of the respondent is that even after the conclusion of the departmental proceedings, no steps have been taken to hold a fresh DPC for considering the case of the respondent for promotion. That is a matter for the appellants to consider. If there was any vacancy on the date of conclusion of the

departmental proceedings against the respondent, he should be considered for promotion against such vacancy by holding a DPC for that purpose.

18. The post of Superintending Engineer (CADA) is a selection post. Admittedly, the DPC associated with the MPSC held on 15.12.2003 had followed the principles and guidelines laid down by the Govt. of Manipur to be followed by the Departmental Promotion Committee in a proceedings for selection of a candidate for appointment by promotion to the selection post in the said office memorandum dated 29.4.1999. According to the said guidelines of the Government of Manipur or/ the principles for promotion for selection post, the bench mark for promotion to the post of Superintending Engineer (CADA) would be "Very Good" and accordingly the officers graded as "Very Good" would be eligible for appointment by promotion to the post of Superintending Engineer (CADA) and officer graded as "Outstanding" would be above the officers graded as "Very Good" in the select penal. From the assessment chart of the eligible Executive Engineers including the petitioner prepared by the DPC associated with the Manipur Public Service Commission in its meeting held on 15.12.2003 writ petitioner had been graded as "Outstanding" and he (writ petitioner) being senior to one Shri O. Ibochouba Singh in the grade of Executive Engineer, he would be above Shri O. Ibochouba Singh in the select penal. It is also crystal clear that the grading of the writ petitioner is same to that of the private respondent No. 4, Shri K. Manoranjan Singh, who had been recommended by the said DPC associated with the MPSC in its meeting held on 15.12.2003 but the recommendation of the private respondent No. 4 cannot be acted upon cause of the imposition of minor penalty of "Censure".

19. We may here recall the decision of the Apex Court in *Jai Narain Ram v. State of U.P.* (supra). The fact of the case in *Jai Narain Ram v. State of U.P.* (supra) was that out of 15 posts in the Treasury Officers - Accounts Officers in U.P. Finance and Accounts Services, 4 posts were reserved for members of the Scheduled Castes. As a result of competitive examination conducted by the PSC, 4 Scheduled Castes candidates were recommended for the said 4 reserved posts and the last candidate of the 4 recommended scheduled castes candidates was one Anil Kumar Rai who secured 400 marks in total, and the 4 recommended scheduled castes candidates did not join the said 4 reserved post of Accounts Officers. The 4 writ petitioners filed the writ petition before the High Court for issuing a writ of mandamus or/direction to the PSC to recommend their names as they are also qualified in the test conducted by the PSC. The High Court rejected the writ petition. On appeal, the Apex Court had directed the PSC to recommend the names of the writ petitioners for appointment to the said 4 reserved posts as they are equally qualified and their marks also are almost at par with the marks secured by the said 4 selected candidates. The fact of the case is spelt out in Para 2 of the judgment of the Apex Court and the findings are at Paras 6, 7 & 8. Accordingly, paras 2,6,7 and 8 of the SCC in *Jai Narain Ram* (supra) is quoted below :

2. We have heard the learned Counsel for the appellant and the State. For the recruitment in the 15 posts of Treasury Officers - Accounts Officers in U.P. Finance and Accounts Services, Sales Tax Officers (6 posts) and Regional Audit Officers (4 posts), advertisement was made in 1988., Out of 15 posts in the Treasury Officers - accounts Officers in U.P. Finance and Accounts Service, 4 posts were reserved for members of the Scheduled Castes. It would appear that as a result of competitive examination conducted by the PSC, the last candidate selected for these 4 posts was one Anil Kumar Rai who secured 361 marks in written examination and 39 marks in personality test out of 400 marks. The PSC had recommended the names of four candidates. As a result, the appellant and three others--one Balkesh Singh, Bali Ram Prasad, Amar Singh, who secured 347+53 (total 400 marks), 344 + 56 (total 400 marks), 3660+39 (total 399 marks) and the appellant 351 +48 (total 399 marks), could not be recommended, as there was no request by the Government for putting them in the waiting list. Since they could not be appointed, the appellant had approached the High Court for a writ of mandamus or direction to the PSC to recommend his name for appointment in the Accounts Service. The High Court dismissed the writ petition No. nil of 1992 by order dated 4.12.1992 on the ground that the peititoner was not intimated that he was selected. Since there was no information that he was put in the select list, direction would not be given to appoint him as Accounts Officer in Accounts Service.

6. It is not in dispute that the appellant is a reserved candidate belonging to scheduled castes. In view of the admitted position that four posts were reserved in the Finance Department in Category I mentioned earlier and 4 selected candidates appeared to have not joined in the service, as asserted in paragraph 11 of the SLP and not specifically denied by the respondents in the counter-affidavit in paragraph 6 as referred to earlier, it is clear that the appellant also is the fourth candidate in the order of merit and would have been selected, had there been a requisition by the State Government for appointment of the reserved candidates.

7. Right to seek appointment to a post under Article 14 read with Articles 16(1) and (4) is a constitutional right to equality. The State failed to perform its constitutional duty to requisition the PSC to recommend the next qualified persons to the posts reserved for Scheduled Castes. Under these circumstances, the denial of appointment to the appellant and three others above him is unconstitutional. Therefore, the respondents are not justified in denying the claim of the appellant for the appointment to the above posts.

8. The PSC is, therefore., directed to recommend the name of the appellant for appointment in the first category, i.e. Treasury Officers and Accounts Officers, within a period of six weeks from the date of the receipt of the order and the State is directed to issue order of appointment to the appellant within a period of six weeks thereafter.

20. The fact of the case in Bihar State Electricity Board v. Suresh Prasad and Ors.

(Supra) relied upon by Mr. H.S. Paonam, learned Counsel for the respondent No. 4 is that the candidates whose names appear below the selected candidate in order of merit should be kept in the waiting list for utilization in the event of non-joining by the recommended candidates to the posts for which they were recommended according to the writ petitioner. The decision of the Apex Court in such factual context in Bihar State Electricity Board v. Suresh Prasad & Ors (supra) will not help the case of the respondent No. 4.

21. For the reasons discussed above, this Court is of the considered view that the Manipur Public Service Commission erred in law in issuing the impugned letter dated 14.9.2005; and accordingly set aside. For further granting the relief in the present writ petition, this Court has taken into consideration of the ratio laid down in Jai Narain Ram v. State of U.P. (supra); DPC associated with the Manipur Public Service Commission or/MPSC held on 15.12.2003 is directed to recommend the name of the writ petitioner for appointment to the post of Superintending Engineer (CADA) as he had already been assessed and graded as "Outstanding" by the DPC associated with the MPSC in its meeting held on 15.12.2003 for appointment to the said lone vacancy in the post of Superintending Engineer (CADA) arose on 1.3.2003. The whole exercise should be completed within one month from the date of receipt of the judgment and order of this Court. Parties are to bear their own costs.