



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5884 OF 2005

Dr.Anu Verma, Age 49 years,  
Chief Medical Officer, Commandant,  
Group Centre, CRPF, Talegaon, Pune.

Petitioner

versus

1. The Secretary,  
Ministry of Home Affairs, Govt. of India,  
New Delhi-400011.

2. The Director General of Police,  
Directorate General, CRPF,s  
CGO Complex, Lodhi Road,  
New Delhi-110003.

3. The Inspector General of Police, CRPF,  
3<sup>rd</sup> floor, CGO Complex, CBD Belapur,  
Navi Mumbai-400701.

Respondents

Mr.Ramesh Ramamurthy with Mr.Saikumar Ramamurthy and Mr.Aalim N.Pinjari  
for Petitioner.

Mr.Aniruddha A.Garge i/by Ms.S.V.Bharucha for Respondent nos.1 to 3.

CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

Date of Reserving the Judgment : 9<sup>th</sup> March 2026

Date of Pronouncing the Judgment : 18<sup>th</sup> March 2026

JUDGMENT (Per : Aarti Sathe, J.) :-

1. This petition under Article 226 of the Constitution of India has been  
filed praying for the following substantive reliefs: -

“a) That this Honourable Court be pleased to issue a Writ of Certiorari or any  
other appropriate writ, order or direction and call for the records and proceedings

leading to the rejection of the case of the petitioner for grant of non functional selection grade (NFSG) as well as the rejection of her representation against the same under Order dated 26.07.2004 (Exhibit "J") & letter dated 26.05.2005 (Exhibit "O") and after examining the legality and propriety of the same, this Honourable Court be pleased to quash and set aside the said Orders dated 26.07.2004 (Exhibit "J") and 26.05.2005 (Exhibit "O") and direct the respondents to reconsider the case of the petitioner afresh for grant of NFSG;

b) That this Honourable Court be pleased to hold and declare that any gradings below the benchmark "Very Good" and which have not communicated to the petitioner cannot be taken into account at the time of consideration of the petitioner's case for grant of NSG either under the DOPT OM dated 09.10.1989 or under DACP Scheme and this Honourable Court be further pleased to declare that the said uncommunicated gradings below the benchmark in the relevant ACRs have to be excluded from consideration and the petitioner considered, as if, she is upto the benchmark in all years;

c) That this Honourable Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction to direct the respondents to reconsider the case of the petitioner for grant of NFSG ignoring the gradings in the ACRs for the relevant period which are below the benchmark "Very Good" and also any other adverse remarks or material, which have not been communicated to the petitioner.

d) That this Honourable Court be pleased to direct the respondents to grant the petitioner the said promotion to Non-Functional Selection Grade (NFSG) on par with her juniors (promoted under order dated 09.05.2004) from the same due date with all consequential service benefits including due seniority, arrears, fixation and any other admissible benefits;

e) Pending the hearing and final disposal of this petition, this Honourable Court be pleased to direct the Respondents to consider the case of the Petitioner for grant of NESG in future by ignoring any gradings below benchmark "Very Good" and any other adverse material which have not been communicated to the petitioner;

f) That ad interim relief in terms of prayer (c) above be granted."

2. The primary challenge in the aforesaid petition is to the order dated 26<sup>th</sup> July 2004 and 26<sup>th</sup> May 2005 whereby the Petitioner's case for promotion in Non Functional Selection Grade (NFSG) for higher pay scale, which was introduced in the Central Services including Armed Forces by the Department of Personnel and Training (DoPT) under Office Memorandum (O.M.) dated 09<sup>th</sup> October 1989 has been rejected.

3. Briefly the facts are : -

i. The Petitioner was appointed to the post of General Duty Officer Grade II which is the rank of Deputy Superintendent of Police/Company Commander in the Central Reserve Police Force (CRPF). The Petitioner who was a doctor also served as a member of the Armed Forces of the Union of India. At the time of filing the present petition, the Petitioner was holding the post of Chief Medical Officer (CMO) (O.G.) which is of the same rank as that of the Commandant in CRPF.

ii. On 09<sup>th</sup> October 1989, the DoPT introduced nonfunctional selection grade in the Central Services including armed forces vide O.M. of even date. Clause 4 of the O.M. prescribed that persons will be considered eligible for NFSG, if they have two “very good gradings” in the last five Annual Confidential Reports (ACRs). Clause 7 of the O.M. also prescribed that the screening committee may in exceptional cases while recording reasons in writing recommend candidates who may not fulfill the above-mentioned criteria.

iii. An amendment was sought to be made to the NFSG on the recommendation of the 5<sup>th</sup> Pay Commission and O.M. dated 06<sup>th</sup> June 2000 was issued in pursuance thereto. In the said O.M. dated 06<sup>th</sup> June 2000, in the paragraph no. 2, it was categorically clarified that appointment to NFSG is not a promotion but merely a placement in higher pay scale.

iv. Further another O.M. dated 08<sup>th</sup> January 2003 was issued by the DoPT wherein again it was clarified that the grant of NFSG is not a case of promotion but merely a case of placement in higher pay scale. The said O.M. was issued in the context of application of Sealed Cover Procedure.

v. On 05<sup>th</sup> April 2000, the Ministry of Health and Family Welfare on the recommendation of 5<sup>th</sup> Pay Commission introduced Dynamic Assured Career Progression (DACP scheme) for officers of Central Health Services by issuing a circular of even date. In the aforesaid circular, the grades of each rank plus the rank they would be promoted to was also specified. Paragraph 3 of the said Circular particularly clarified that the benefit of DACP scheme which was basically placement in higher pay scale would be made without linkage to vacancies. It is the Petitioner's contention that the said DACP scheme was adopted and applied by the Ministry of Home Affairs (MHA) for doctors in CRPF vide letter dated 05<sup>th</sup> September 2002. On 1<sup>st</sup> November 2003, in the gradation list published by CRPF of Medical Officers, the Petitioner's name appeared at Sr. No. 60. By another letter dated 03<sup>rd</sup> November 2003 issued by Additional Deputy Inspector General of Police, which was an inter-office note, it was informed to the Petitioner that she was eligible for promotion to the next grade along with other officers, subject to being found fit by Departmental Promotion Committee (DPC) under the DACP scheme. The Petitioner was therefore asked to undergo medical examination on that behalf.

vi. By order dated 09<sup>th</sup> May 2004, the promotion of NFSG/DACP scheme was published and a list of 56 names featured on it who were eligible for grant of NFSG by the DPC. It is the Petitioner's contention that in the said list the names of the juniors of the Petitioner appeared and that of Dr.N.C.Saha also appeared in the said list at Sr. No. 46, in spite of the fact that Dr.N.C.Saha was placed below the Petitioner in the gradation list at Sr. No. 61.

vii. On 21<sup>st</sup> May 2004, as the Petitioner was aggrieved on account of her non promotion to the post of CMO (NFSG), she made a representation of even date to the Director General (D. G.) CRPF, submitting that she is entitled to be promoted before Dr. N. C. Saha and the other 11 juniors who were promoted before her,

viii. The aforesaid representation made by the Petitioner was rejected vide letter dated 26<sup>th</sup> July 2004 (hereinafter referred to as the 'impugned rejection') and it is the Petitioner's contention that the reason given in the said letter for the aforesaid rejection was that the DPC had considered the case of Petitioner but as Petitioner could not make the grade prescribed for promotion, she was not promoted. It is the Petitioner's contention that the impugned rejection is not proper, and it amounts to a non-speaking order inasmuch as no adverse material was found against the Petitioner which would come in her way of making the grade for grant of NFSG.

ix. Being aggrieved by the impugned rejection the Petitioner made a further representation dated 4<sup>th</sup> October 2004, wherein the Petitioner requested for being granted a personal interview with the Director General, CRPF to put forth her case in respect of non-grant of the grade of CMO (NFSG).

x. On 16<sup>th</sup> November 2004, a signal was received from the headquarters i.e. Deputy Inspector General (Personnel) CRPF whereby it was indicated that the DPC for promotion for the year 2004-05 was likely to be taken and that the Medical Officers mentioned in the said signal would be completing the prescribed period of promotion to the next grade and were thus eligible for

being considered for promotion and therefore it was requested that the Petitioner submit her medical report along with vigilance certificate. It is also the Petitioner's contention that it had come to her knowledge that in the last five ACRs in her case, she had got the necessary gradings for being eligible for grant of NFSG promotion. The Petitioner also further learnt that problem had occurred in cases of many of the officers in the CRPF that they had received only "good" grading by their reporting officers in spite of there being no adverse entry in the ACRs. The Petitioner also was facing a similar problem in her last five ACRs i.e. the period under consideration and though the grading "good" was not adverse but the same could come in the way of promoting an eligible and deserving officer.

xi. On 30<sup>th</sup> December 2004 the Petitioner was given a personal interview by the Director General, CRPF at his office in Delhi, however, though the Director General, CRPF was sympathetic to the cause of Petitioner there was no redressal of the Petitioner's issue by the Director General, CRPF. The Petitioner, therefore, also made a representation dated 1<sup>st</sup> February 2005, through proper channel to the Home Secretary, MHA, regarding her non promotion to NFSG on par with her juniors. She also pointed out that there were no adverse entries in the ACRs and no short comings in her service in the last 17 years.

xii. On 3<sup>rd</sup> May 2005, in pursuance of the signal dated 16<sup>th</sup> November 2004, the record of the Petitioner and other persons were sent for consideration and the results of the DPC were published vide signal of even date which did not include the name of the Petitioner, and persons who were juniors to the Petitioner were promoted by the said order to the NFSG. It is the Petitioner's contention that

she was not selected for grant of NFSG because the Respondents did not take any steps to rectify the errors/mistakes in the system of ACRs as pointed out by the Petitioner and on the basis of defective system of writing ACRs the Petitioner was not promoted. It is the Petitioner's contention that in fact she has never received any adverse remarks in her impeccable career in the last 17 years and in fact the Inspector General of Police, Pune had appreciated her work by sending her a letter of appreciation in May-2004.

xiii. On 26<sup>th</sup> May 2005, the Petitioner received a reply from the office of D.G. CRPF that her representation dated 1<sup>st</sup> February 2005 was rejected by the Competent Authority and the same rejection did not ascribe any reasons. The said rejection dated 26<sup>th</sup> May 2005 (hereinafter referred to as 'subsequent rejection') was received by the Petitioner after a gap of two months i.e. on 7<sup>th</sup> July 2005.

xiv. It is this subsequent rejection and the earlier impugned rejection, whereby the Petitioner has not been granted promotion, which the Petitioner seeks to challenge in the present petition.

4. Learned counsel Mr. Ramesh Ramamurthy along with Mr. Saikumar Ramamurthy and Mr. Aalim Pinjari appeared on behalf of the Petitioner. Learned counsel Mr. Aniruddha Garge instructed by Mr. S. V. Bharucha appeared on behalf of Respondent Nos. 1 to 3. With the assistance of learned counsels on behalf of the parties, we have perused the papers and proceedings.

**Submissions on behalf of the Petitioner :**

5. The submissions made on behalf of the Petitioner can be summarized as follows :

i. It was submitted that the criterion for being eligible for NFSG grade as prescribed by the DoPT under their O.M. dated 9<sup>th</sup> October 1989 was that an officer should have two “very good” gradings in the last five ACRs. CRPF cannot prescribe a higher grading which was not sanctioned by any authority and on the basis thereof the Petitioner was rejected for the NFSG promotion.

ii. It was also submitted that the grading “good” given in the ACR if not communicated to an employee, cannot be acted upon at the time of consideration of the said person for promotion if the benchmark is “very good” for the said promotion. The grading “good” in the ACR was never communicated to the Petitioner and in fact the error regarding the said grading was pointed out which was not rectified. It is the Petitioner’s submission that even though the grading “good” is not an adverse remark, however, if there is a higher benchmark which has been prescribed i.e. “very good” then, the said grading would come in the way of the Petitioners’ promotion. It was further submitted that the NFSG grade is not a grade promotion but merely an entitlement for higher pay scale and therefore there was no reason to reject the claim of the Petitioner for grant of the said grade. It was submitted that since the NFSG promotion was merely placement in a higher pay scale, the normal criterion for promotion had to be applied and the criterion as prescribed by DoPT in the O.M. dated 9<sup>th</sup> October 1989, had to be taken into consideration. It was also submitted that the NFSG is granted without linkage to vacancies and hence since it is not linked to vacancies but is only a placement in a higher pay scale, the Petitioner is entitled for promotion in a higher

pay scale.

iii. It was also submitted by the Petitioner that the Petitioner was granted NFSG grade from 5<sup>th</sup> April 2005 as opposed to 5<sup>th</sup> April 2002 whereby pushing the pay of the Petitioner down by three years as compared to her juniors. This grade has been granted to the Petitioner on the gradings, as given in her ACRs, which were relied on to reject her earlier promotions. Therefore, it is submitted that a contradictory stand has been adopted by the Respondents.

**Submissions on behalf of the Respondents :**

6. The learned counsel Mr. Aniruddha Garge on behalf of the Respondents has primarily reiterated the submissions as made in affidavits filed on behalf of the Respondents. The Respondents have filed affidavit, dated 24<sup>th</sup> November 2005 through R. K. Nigam, Deputy Commandant CRPF and affidavit filed on 12<sup>th</sup> December 2005 by Anil Duggal, Additional Deputy Inspector General of Police, CRPF. The Respondents have primarily contended in the affidavits that the MHA has issued instructions vide their U.O. No. I-45023/20/2004 Pers-II dated 30<sup>th</sup> April 2004, that for the purpose of promotion to the rank of CMO O.G. the benchmark is of “very good” grading and there should be at least three “very good” entries and the other two entries should not be below “good” out of the last five ACRs. It has also been contended in the said affidavit that since the benchmark grading prescribed by the Government for promotion was “very good” and the Petitioner could not make the same grade as required for promotion and in the last five ACRs she was categorized as unfit by the DPC convened on 3<sup>rd</sup> March 2004 and 24<sup>th</sup> March 2005, and hence, her promotion was rejected. The relevant paragraphs of the affidavit dated 24<sup>th</sup> November 2005 and affidavit dated 12<sup>th</sup> December 2005 are reproduced below:-

### Affidavit dated 24<sup>th</sup> November 2005:

5. With reference to para 1(a) the said petition I repeat and reiterate whatever stated in above and deny all the contentions of the Petitioner alleged in the petition which are contrary thereto or inconsistent therewith. I say that as per DOP & T OM No. 28038/1/88 -Estt (D) dated 9-10-1989 Hereto annexed and marked Annexure R-4 which contains the instructions on the DPCs and related matters, para 1 (IV) thereof provides that, for the purpose of grant of NFSG there should be at least two "Very Good" grading in the last five years. Later on DOP & T vide their OM No. 35034/7/97 Estt (D) dated 8-2-2002 Hereto annexed and marked Annexure R-6 have prescribed that for the purpose of promotion to the post carrying pay scale of Rs. 12,000-16,500/-and above the benchmark will be "Very Good". On this Ministry of Home Affairs (MHA) have issued instructions vide their UO No. I-45023/20/2004 Pers II dated 30-4-2004 stipulating that for the purpose of promotion to the rank of CMO (OG) and above for the bench mark of "Very Good", should be there with at least three "Very Good" entries, and other two entries not below "Good" out of last five ACRs. Hereto annexed and marked Annexure R-5 is a copy of the said instructions issued by MHA, UO No. I-45023/20/2004 Pers II dated 30-4-2004. I say that in any case NFSG is a promotional grade and not placement in the higher pay scale according to DACP Scheme Hereto annexed and marked Annexure R-1.

6. With reference to para 1(b) of the said petition I deny the averments therein as alleged which are contrary to or inconsistent with what has been stated in this reply. Para 1( c to e) pertain to records.

7. With reference to para 1(f) of the said petition I deny the contentions therein and say that the Petitioner was considered for promotion to the rank of CMO (NFS) convened on 3-3-2004 alongwith the other eligible CMO (OG). The Benchmark grading prescribed by the Govt. for promotion was and is "Very Good". The Petitioner could not get or make out the grade as required for the promotion as aforesaid and therefore whoever could make out the grade as required were promoted including juniors to the Petitioner.

8. With reference to para 1(g) of the said petition I say that what is stated therein is substantially correct. The representation of the Petitioner was examined in detail and was rejected by the competent authority being devoid of merit vide Directorate letter No. P VII-1/2004 -CRC (MOS) dated 7-7-2004. I further say that the Petitioner was superseded due to her not acquiring the prescribed benchmark grading and not due to adverse ACR grading which was not the criteria for promotion.

9. With reference to para 1(h) I say that the Petitioner had also met DG along with the representation dt. 21-5-2004 which was examined and rejected by the DG being devoid of merit. Accordingly, the Petitioner was informed. Copy of the information dated 7/7/2004 given to the Petitioner regarding position. Hereto annexed and marked Annexure R-7 and R-8

10. With reference to para 1(I and j) of the said petition I offer no comments as the same are parts of the records. I say that the contents of the Annual Confidential Report of the Officer are confidential and can not be discussed in this petition. I

deny that the petition is entitled to be compared with the cases of others. The minutes of the meeting were only suggestive in nature and not binding.

11. With reference to para 1(k) of the petition I deny that the contention of the petitioner that the Director General was sympathetic to the cause of the petition and put the petitioner to strict proof thereof. I deny the petitioner's contention as she could not meet the benchmark prescribed for placement to the rank of CMONFSG) and therefore, she was not promoted as alleged. I say that no case was made out of review of the earlier representation. The petitioner's representation was rejected being devoid of merit by the Competent Authority.

12. With reference to para 1 (I) of the petition I deny the contentions thereof and I say that another DPC was convened on 24-3-2005 to consider all the eligible CMO (OG). The DPC considered all the eligible CMOs (OG) including the Petitioner and after assessing the records of all eligible 19 Medical Officers, the DPC recommended promotion of 09 CMO (OG) as CMO (NFSG). Accordingly, promotion of 08 CMO (OG) to the Grade of CMO (NSG) was released vide Directorate Signal No. P.VII-1/2004 CRC (Mos) dated 03-05-2005 and signal No. P.VIII/05-CRC-Mos dated 17-08-05 Hereto annexed and marked Annexure R-9 and R-10. The Petitioner was graded 'UNFIT' by the DPC, as she could not achieve the prescribed benchmark grading of "Very Good" as required. I further say that the Petitioner's statements regarding the preparation and maintenance of Annual Confidential Reports of Officers, cannot be compared with the Petitioner's case of promotion. I say that it is the prerogative and the right of the Govt. to issue suitable guidelines/instructions prescribing the benchmark grading for conducting DPCs for promotion from one rank to another being the employer and an appointing authority.

13. With reference to para 1(m) of the said petition I say that the contention therein has no relevance with the present case and hence I do not offer any comments. The basis criteria for being eligible for promoting is that the officer must fall in the "VERY GOOD GRADE".

14. With reference to para 1(m) of the said petition I deny whatever stated therein. I say that the benchmark grading prescribed by the Govt. vide U.O No. I-45023/20/2004- Pers-II dated 30-4-04, stipulated that for the purpose of promotion to the rank of CMO (OG) and above, the bench mark was of "Very Good" and there should be at least three "Very Good" entries and other two entries not below "Good" in last five ACRs Hereto annexed and marked Annexure R-5.

15. With reference to para 1(0) of the petition I repeat and reiterate that the Petitioner is discussing about the preparation and maintenance of Annual Confidential Reports of officers which cannot be compared with the Petitioner's promotion case. It is the prerogative and the right of the Govt. to issue suitable guidelines/ instructions prescribing the bench mark grading for conducting DPC's for promotion from one rank to another, being the employer and appointing authority. These are policy decisions which cannot be challenged. I further say that the bench mark grading prescribed by the Govt. vide UO No. I- 45023/20/2004- Pers-II dated 30-4-04, stipulated that, for the purpose of promotion to the rank of CMO (OG) and above, the bench mark was of "Very Good" entry and there should be at least three "Very Good" entries and other two entries not below "Good" in last five ACRs. Hereto annexed and marked Annexure R-5.

17. With reference to para 1(p) of the petition I deny the contentions of the said para and as is already stated hereinabove the Petitioner was considered for promotion to the rank of CMO.

19. I say that promotion for all practical purposes differs from office to office. DOP & I also has clarified that according to their instructions, the benchmark for promotion to the posts carrying pay scale of Rs. 12,000-16,500 and above is "Very Good". I say that it has been left to the DPC to grade officers as "Very Good" on the basis of his /her overall service records, especially of ACRs for last 5 years. I say that the Petitioner has miserably failed firstly to achieve the prescribed gratification for promotion as aforesaid and secondly has consequently failed to make out a case in this Writ Petition entitle her for any reliefs as prayed for or otherwise and the petition being misconceived is liable to be dismissed and be dismissed with costs.

(Emphasis supplied)

### Affidavit dated 12<sup>th</sup> December 2005:

3. I say that in order to mislead this Hon'ble Court the Petitioner has suppressed material facts of the matter and as such has not come to the Hon'ble Court with clean hands and is therefore not entitled to any relief as prayed for or otherwise. The True and Correct facts pertaining the matter are as follows:

a) I say that New Dynamic Assured Career Progression (DACP) Scheme as granted to Central Health Service Doctor vide GOI, Ministry of Health and Family Welfare (Dept. of Health) letter No. 21/14/97-PC (H)/ CHS-V dated 5-4-02 which was extended to the Doctors of Central Police Forces vide MHA letter No. P-VII-1 / 2002-CRC-MO/CRPF/PF.III dated 5-9-03 and 26-9-2003 Hereto annexed and marked Annexure R-1, R-2 and R-3. In accordance with the said scheme, the CMO's (OG) who have rendered not less than four years' regular service in the grade of CMO (OG) are eligible to be appointed as CMO (Non Functioning Selection Grade).

b) The MHA has issued necessary instructions vide their U.O No. I-45023/20/2004 Pers-II dated 30-4-2004 stipulating that for the purpose of promotion to the rank of CMO (OG) the benchmark is of "Very Good". There should be at least three "Very Good" entries and other two not below "Good" out of last five ACRs. Hereto annexed and marked Annexure R-5.

c) According to that Departmental Promotion Committee (DPC) was held on 3-3-2004 to consider all the eligible CMO (OG). The parameters adopted by the DPC for assessing their performance were inter-alia of completion of 4 years' regular service in the grade of CMO (OG), and fitness to hold the post by attaining the benchmark of "Very Good" during preceding 5 years and medical categorization 'Shape-I'. Accordingly the DPC considered all the eligible CMOs (OG) including the case of Petitioner and after assessing the records of all eligible 76 medical officers, the DPC recommended promotion of 62 CMO (OG) as CMO (Non Functioning Selection Grade). Therefore, as approved by the Competent Authority, 62, CMO (OG) of the grade of CMO (NFSG) were released vide Directorate Signal No. P VII -1/04 CRS (MOS) dated 8-5-04.

d) In the above selection process, the Petitioner failed to achieve the prescribed benchmark of 'VERY GOOD' and also that she was categorized as 'UNFIT' and was therefore not promoted to the grade of CMO (NFSG).

5. With reference to para 1(a) the said petition I repeat and reiterate whatever stated in above and deny all the contentions of the Petitioner alleged in the petitions which are contrary thereto or inconsistent therewith. I say that as per DOP & T OM No.28038/1/88 -Estt (D) dated 9-10-1989 Hereto annexed and marked Annexure R-4 which contains the instructions on the DPCs and related matters, para 1 (IV) thereof provides that, for the purpose of grant of NFSG there should be at least two "Very Good" grading in the last five years. Later on DOP & T vide their OM No. 35034/7/97 Estt (D) dated 8-2-2002 Hereto annexed and marked Annexure R-6 have prescribed that for the purpose of promotion to the post carrying pay scale of Rs. 12,000-16,500 / - and above the benchmark will be "Very Good". On this Ministry of Home Affairs (MHA) have issued instructions vide their UO No. I-45023/20/2004 Pers II dated 30-4-2004 stipulating that for the purpose of promotion to the rank of CMO (OG) and above for the bench mark of "Very Good", should be there with at least three "Very Good" entries, and other two entries not below "Good" out of last five ACRs. Hereto annexed and marked Annexure R-5 is a copy of the said instructions issued by MHA, UO No. I-45023/20/2004 Pers II dated 30-4-2004. I say that in any case NFSG is a promotional grade and not placement in the higher pay scale according to DACP Scheme Hereto annexed and marked Annexure R-1.

7. With reference to para 1(f) of the said petition I deny the contentions therein and say that the Petitioner was considered for promotion to the rank of CMO (NFSG) convened on 3-3-2004 alongwith the other eligible CMO (OG). The Bench mark grading prescribed by the Govt. for promotion was and is "Very Good". The Petitioner could not get or make out the grade as required for the promotion as aforesaid and therefore whoever could make out the grade as required were promoted including juniors to the Petitioner. With reference to para 1(g) of the said petition I say that what is stated therein is substantially correct. The representation of the Petitioner was examined in detail and was rejected by the competent authority being devoid of merit vide Directorate letter No. P VII-1/2004 -CRC (MOS) dated 7-7-2004. I further say that the Petitioner was superseded due to her not acquiring the prescribed benchmark grading and not due to adverse ACR grading which was not the criteria for promotion.

12. With reference to para 1 (I) of the petition I deny the contentions thereof and I say that another DPC was convened on 24-3-2005 to consider all the eligible CMO (OG). The DPC considered all the eligible CMOs (OG) including the Petitioner and after assessing the records of all eligible 19 Medical Officers, the DPC recommended promotion of 09 CMO (OG) as CMO (NFSG). Accordingly, promotion of 08 CMO (OG) to the Grade of CMO (NFS) was released vide Directorate Signal No. P.VII-1/2004 CRC (Mos) dated 03-05-2005 and signal No. P.VIII / 05-CRC-Mos dated 17-08-05 Hereto annexed and marked Annexure R-9 and R-10. The Petitioner was graded 'UNFIT' by the DPC, as she could not achieve the prescribed benchmark grading of "Very Good" as required. I further say that the Petitioner's statements regarding the preparation and maintenance of Annual Confidential Reports of Officers, cannot be compared with the Petitioner's case of promotion. I say that it is the prerogative and the right of the Govt. to issue suitable guidelines/instructions prescribing the benchmark grading for conducting DPCs for promotion from one rank to another being the employer and an appointing authority.  
(Emphasis supplied)

14. With reference to para 1(n) of the said petition I deny whatever stated therein. I say that the benchmark grading prescribed by the Govt. vide U.O No. I-45023/20/2004- Pers-II dated 30-4-04, stipulated that for the purpose of

promotion to the rank of CMO (OG) and above, the bench mark was of "Very Good" and there should be at least three "Very Good" entries and other two entries not below "Good" in last five ACRs Hereto annexed and marked Annexure R-5.

15. With reference to para 1(0) of the petition I repeat and reiterate that the Petitioner is discussing about the preparation and maintenance of Annual Confidential Reports of officers which cannot be compared with the Petitioner's promotion case. It is the prerogative and the right of the Govt. to issue suitable guidelines/ instructions prescribing the benchmark grading for conducting DPC's for promotion from one rank to another, being the employer and appointing authority. These are policy decisions which cannot be challenged. I further say that the benchmark grading prescribed by the Govt. vide UO No. I- 45023/20/2004-Pers-II dated 30-4-04, stipulated that, for the purpose of promotion to the rank of MO (OG) and above, the benchmark was of "Very Good" entry and there should be at least three "Very Good" entries and other two entries not below "Good" in last five ACRs. Hereto annexed and marked Annexure R-5.

16. I say that the Petitioner had failed to achieve the prescribed benchmark grading of "Very Good" as required and hence was categorized as 'UNFIT' by the DPC convened on 3-3-2004 and 24-3-2005. I say that Govt. instructions existing at present do not permit to communicate the grading below the benchmark prescribed for promotion to certain higher grades in service to distinguish the right candidate for promotion to the higher post and hence a lower grading cannot be treated as adverse. With reference to para 1(p) of the petition I deny the contentions of the said para and as is already stated hereinabove the Petitioner was considered for promotion to the rank of CMO (NSG) convened on 3-3-2004 and 24-3-2005 alongwith other eligible CMO (OG) but since the petitioner could not fulfill the criteria for being eligible to be considered for NFSG grade prescribed by the Govt for promotion. The said grade must be "Very Good" which the Petitioner could not achieve and hence was declared as "Unfit" for promotion. With reference to para 2(i) (ii) (i). I deny the contention of the petitioner that her case needs to be reconsider. In fact the Respondents are considered her representation on two occasions after due diligence and in according with the eligibility criteria & rules laid down by the Govt.

18. I say that the post of medical officers in CPFS is combatised and all promotion to higher posts is on the same line as for other officers in General Duty stream of similar ranks and pay scales. I further say that a commandant is promoted on the benchmark of "three Very Good" ACRs. Same benchmark is applicable to the Petitioner's promotion in the pay scale of Rs 14,300-18,300 since the pay scale for both the posts is alike.

19. I say that promotion for all practical purposes differs from office to office. DOP & T also has clarified that according to their instructions, the benchmark for promotion to the posts carrying pay scale of Rs. 12,000-16,500 and above is "Very Good". I say that it has been left to the DPC to grade officers as "Very Good" on the basis of his /her overall service records, especially of ACRs for last 5 years. I say that the Petitioner has miserably failed firstly to achieve the prescribed gratification for promotion as aforesaid and secondly has consequently failed to make out a case in this Writ Petition entitle her for any reliefs as prayed for or otherwise and the petition being misconceived is liable to be dismissed and be dismissed with costs."

(Emphasis supplied)

**Analysis :**

7. Having heard learned counsels on behalf of the parties, and we are of the considered view that the impugned rejection and subsequent rejection dated 26<sup>th</sup> July 2004 and 26<sup>th</sup> May 2005 respectively are arbitrary and does not set out any cogent reasons to deny the Petitioner the promotion under the NFSG.

8. The impugned rejection dated 26<sup>th</sup> July 2004, simpliciter has rejected the Petitioners' promotion on the ground that the Petitioner could not make the grade prescribed for promotion. In the said impugned rejection dated 26<sup>th</sup> July 2004 the Petitioner was not communicated as to what was the grade expected out of the Petitioner to make it to the said promotion. Further, the rejection also has failed to consider that there were no adverse remarks insofar as the Petitioner was concerned in her last five ACRs and her service record has been impeccable since last 17 years.

9. We are also of the view, that even though the NFSG promotion has been given the nomenclature as promotion but the same is merely an entitlement/ placement in a higher pay scale and is not in any way related to vacancies thereby making the rejection arbitrary and of no consequence insofar as the Petitioner is concerned. Even the subsequent rejection dated 26<sup>th</sup> May 2005 passed by Director General, CRPF does not set out any reasons as to why the Competent Authority has rejected the memorial dated 3<sup>rd</sup> February 2005, submitted by the Petitioner in respect of her non-promotion in NFSG. These rejections are therefore based on a complete non application of mind on the part of the Competent Authorities and have further failed to take into consideration that by way of O.M. dated 9<sup>th</sup>

October 1989, the criterion for promotion was only two “Very Good” gradings in the last five ACRs. The subsequent O.M. dated 8<sup>th</sup> January 2003, also did not make any changes insofar as the said criterion was concerned and it was further clarified that NFSG was a mere placement in a higher pay scale and there was no requirement for any further gradation insofar as the Petitioner was concerned. The impugned rejection and the subsequent rejection have not spelt out any reasons as to why the Petitioner was not considered for promotion under NFSG, particularly in view of the fact that there were no adverse comments or reports in the last five ACRs of the Petitioner. It is seen that for the very first time in the affidavits dated 24<sup>th</sup> November 2005 and 12<sup>th</sup> December 2005 filed on behalf of the Respondent, that the Respondents have sought to make out a case that the MHA has issued instructions vide their U.O. No. 1-45023/20/2004 Pers-II dated 30<sup>th</sup> April 2004, stipulating that for the purpose of promotion to the rank of CMO (O.G.) and above, for the benchmark of “very good”, there should be at least three “very good” entries other than “good” entries out of the last five ACRs . This was never communicated to the Petitioner and therefore the impugned rejection and subsequent rejection cannot be sustained and are liable to be quashed and set aside.

10. It has also been brought to our notice that the Petitioner was granted NFSG grade on 5<sup>th</sup> April 2005 and this promotion was made on the basis of the ACRs of the last five years of the Petitioner wherein the objection regarding grading of the Petitioner was not raised. It is therefore our view that if the Petitioner could be promoted in the year 2005 without any objection, then a different set of parameters could not be assigned for not granting promotion to her

along with her juniors who were promoted by order dated 9<sup>th</sup> May 2004. The impugned rejection dated 26<sup>th</sup> July 2004 and the subsequent rejection dated 26<sup>th</sup> May 2005 have failed to consider this aspect of the matter and are completely non-speaking in nature attributing no reason whatsoever in rejecting the Petitioners' promotion under NFSG.

11. We are further of the view that if there are any adverse remarks against the Petitioner, and the same are to be put against the Petitioner prior to promotion, the Respondent authorities are duty bound to provide the same to the Petitioner. In the present case, at no stage and especially in the impugned rejection dated 26<sup>th</sup> July 2004 and subsequent rejection dated 26<sup>th</sup> May 2005, the Petitioner was never supplied any reason or adverse remarks before rejecting her promotion, vitiating the entire rejection process.

12. Our view gets fortified by the below referred judgments. It was held by the Supreme Court in **State of Uttar Pradesh Vs. Yamuna Shankar Mishra & Another**<sup>1</sup> that under service law, confidential reports is to enable an employee to improve his performance in public service and any adverse remarks, etc. has to be made known to the employee.

4. In *S. Ramachandra Raju v. State of Orissa*- this Court underlined the need to write confidential reports objectively, fairly and dispassionately in a constructive manner either commenting/downgrading the conduct, character, efficiency or integrity of the officer in that behalf. It is stated in para 11 that from the year 1973-74, the performance of the duty by the appellant therein was consistently as "satisfactory" to "fair" except for the year 1987-88 in which year he dropped down suddenly as an average or below average teacher. In that behalf it was held that "when he was a responsible teacher and he had cordial relations with the student 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 integrity, the same whether would become "below average" only for the Academic Year 1987-88

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**1** 1997 SCC L.S. 903

without discernible reasons, it would speak volumes about 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 prospects 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 commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned 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 would be 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 employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible for the superior or controlling officers to extract legitimate work from them. The writing of the confidential 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 officers 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. In that case, on account of the vague remarks made for the year 1987-88, the appellant therein was compulsorily retired from service. This Court, after looking into the entire record, set aside the order. In Moti Ram Deka v. G.M., N.E.F.**

**Rlys.?, a Bench of seven Judges had held 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 public servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject of course, to the protection under Article 311(2); but to maintain honesty, straightforwardness and efficiency in permanent civil servants, it was pointed out, 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. In Delhi Transport Corpn. v. D.T.C. Mazdoor Congress? (SCC at p. 739), 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 servant would inevitably create a sense of insecurity. The unbridled wide discretionary powers would conceivably be abused. Thereby this Court laid emphasis that: (SCC p. 739, para 272)**

(Emphasis supplied)

... An assurance of security of service to a public employee is an 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 para 275 at pp. 740-41, it is further pointed out that:

... Courts should take note of actualities of life that persons actuated to corrupt practices are 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 them. 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 liking 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."

5. In *State Bank of India v. Kashinath Kher*, (SCC at p. 771 in para 15), this Court pointed out that:

**'... The object of writing the confidential report is twofold, 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 Corpn.* case pointed out the 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 objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellants 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 has 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 procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust.'** (Emphasis supplied)

In *U.P. Jal Nigam v. Prabhat Chandra Jain*- (SCC at p. 364, para 3), this Court had held that while writing the confidential reports, if the officials were to be downgraded from the previous reports,

... 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 that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be 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, not be 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 perilously be adverse and to say that an 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. Thedowngrading 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 Jai Nigam, we donot find any difficulty in accepting the ultimate result arrived at by the High Court.

6. In *Sukhdeo v. Commr. Amravati Division*<sup>®</sup> (SCC para 6) this Court has pointed out that:

"It is settled law that when the Government resorts to compulsorily retire a government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In *State Bank of India v. Kashinath Kher* (para 15), this Court had held that the controlling officer while writing confidential and character roll report, 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 officers 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 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 for 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 writing for improvement and yet was not availed of so that it would form part of the record."

7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(J) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an

overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.”  
(Emphasis supplied)

13. The aforesaid decision was followed in the case of **Dev Dutt Vs. Union of India & Others<sup>2</sup>**, wherein the Supreme Court has held that the grading “very good”, “good”, “average” or “poor” was required to be communicated to the employees working in Government Offices, Statutory Bodies, Public Sector Undertakings or other State instrumentalities where Constitutional obligations, principles of natural justice and fairness applies. The gradings have to be communicated within a reasonable period so that the employee concerned gets an opportunity of representation for improvement of his/her grading and this requirement flows from constitutional obligations of fairness, non-arbitrariness and natural justice. The relevant paragraphs of the aforesaid decision are reproduced below:

“9. In the present case the benchmark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have "very good" entry for the last five years. Thus in this situation the "good" entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It

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**2** 2008 (8) SCC 725

is thus the rigours of the entry which is important, not the phraseology. The grant of a "good" entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

10. Hence, in our opinion, the "good" entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-1994 should be upgraded from "good" to "very good". Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the "good" entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the "good" entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the "good" entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

11. Learned counsel for the respondent submitted that under Office Memorandum No. 21011/4/87 [Estt.'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11-9-1987, only an adverse entry is to be communicated to the employee concerned. It is well settled that no rule or government instruction can violate Article 14 or any other provision of the Constitution, as the Constitution is the highest law of the land. The aforesaid office memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the employee concerned and not other entries, would in our opinion become arbitrary and hence illegal, being violative of Article 14. All similar rules/government orders/office memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are therefore liable to be ignored.

12. It has been held in *Maneka Gandhi v. Union of India*? that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the ACR of a public servant is arbitrary because it deprives the employee concerned from making a representation against it and praying for its upgradation. In our opinion, every entry in the annual confidential report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide *State of U.P. v. Yamuna Shanker Misra*\*. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

13. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.

14. In most services there is a gradation of entries, which is usually as follows:
- (i) Outstanding
  - (j) Very Good
  - (li) Good
  - (iv) Average
  - (v) Fair
  - (vi) Poor

A person getting any of the entries at Items (i) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the authority concerned.

15. If we hold that only "poor" entry is to be communicated, the consequences may be that persons getting "fair", "average", "good" or "very good" entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit).

16. In our opinion if the office memorandum dated 10/11-9-1987, is interpreted to mean that only adverse entries (i.e. "poor" entry) need to be communicated and not "fair", "average" or "good" entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or to get some other benefit. For example, if the benchmark is that an incumbent must have "very good" entries in the last five years, then if he has "very good" (or even "outstanding") entries for four years, a "good" entry for only one year may yet make him ineligible for promotion. This "good" entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or to for some other extraneous consideration.

17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India*? that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

34. Originally there were said to be only two principles of natural justice:

(1) the rule against bias and (2) the right to be heard (*audi alteram partem*). However, subsequently, as noted in *A.K. Kraipak case*? and *K.I. Shephard case*, some

more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide *S.N. Mukherjee v. Union of India*. In *Maneka Gandhi v. Union of India*? (vide paras 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

35. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the court to develop new principles of natural justice in appropriate cases.

36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

38. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India v. Major Bahadur Singh*. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to government servants).

39. In *Canara Bank v. V.K. Awasthy* this Court held that the concept of natural justice has undergone a great deal of change in recent years. As observed in para 8 of the said judgment: (SCC p. 329)

"8. Natural justice is another name for common-sense justice.

Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values."

In para 12 of the said judgment it was observed: (SCC p. 330)

"12. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. V. Loc. Govt. Board* described the phrase as sadly lacking in precision. In *General Medical Council v.*

Spackman<sup>21</sup>, Lord Wright observed that it was not desirable to attempt 'to force it into any Procrustean bed'."

40. In State of Maharashtra v. Public Concern for Governance Trust it was observed (vide para 39): (SCC p. 606)

"39. ... In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play."

41. In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

42. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the judgment of the learned Single Judge as well as the impugned judgment of the learned Division Bench.

43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the "good" entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the "good" entry of 1993-1994 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

44. We, therefore, direct that the "good" entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

45. With these observations this appeal is allowed. No costs."

(Emphasis supplied)

14. The decision of the Supreme Court in Dev Dutt (supra) was followed in **Abhijit Ghosh Dastidar vs. Union of India and Others<sup>3</sup>** and **Sukhdev Singh vs. Union of India<sup>4</sup>**.

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<sup>3</sup>2009(16)-SCC-146

<sup>4</sup>2013(9)-SCC-566

15. The upshot of our above findings and in view of the settled position of law that if any adverse remarks or entries exist, the same are required to be communicated to the employees, so as to give an opportunity to the employee to seek an explanation of the adverse remarks/entries made against him/her. The non-communication of an adverse ACR otherwise would adversely affect the employee as the employee would not be aware about the assessment of his/her work and the nature of such entries. The non-communication of the adverse remarks, if any, in the ACRs also is against the principles of natural justice and would render any decision taken thereon as arbitrary and falling foul of Article 14 of the Constitution of India. In the facts of the present case, therefore, non-communication of the benchmarks violated the Petitioner's right which was available to the Petitioner rendering the rejection dated 26<sup>th</sup> July 2004 and subsequent rejection dated 26<sup>th</sup> May 2006 arbitrary and bad in law.

16. In view of the aforesaid discussion, we deem it appropriate to pass the following orders to meet the ends of justice:

#### ORDER

(I) The impugned rejection dated 26<sup>th</sup> July 2004 and subsequent rejection dated 26<sup>th</sup> May 2005 are quashed and set aside;

(II) Petitioner is entitled for all the service benefits under the NFSG promotion along with her other juniors who were promoted by order dated 9<sup>th</sup> May 2004 with effect from 5<sup>th</sup> April 2002, with all consequential service benefits including seniority, arrears and other benefits from 5<sup>th</sup> April 2002. The aforesaid

benefits to be granted to the Petitioner within a period of six weeks from the date this order is made available to the Respondents;

(III) Rule made absolute in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)