

ALL INDIA STATE BANK OFFICERS FEDERATION AND ORS. A

v.

UNION OF INDIA AND ORS.

SEPTEMBER 13, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.] B

Service Law :

State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 : Paragraph 17. C

Promotion—Candidates—From post of Senior Management Grade Scale V to Top Executive Grade Scale VI in State Bank of India—Zone of consideration—Omission to limit number of candidate—Validity of—Originally minimum two years' service in the previous grade/scale required and zone of consideration limited to three to four times the number of vacancies—However, promotional policy dated 7.3.1989 discontinued limitation of zone of consideration and raised minimum service from two to four years—Held : promotional policy not illegal—State Bank of India (Supervising Staff) Service Rules, 1975—State Bank of India Act, 1955—Ss. 17 and 43. D E

Promotion—Candidates—From Senior Management Grade Scale V to Top Executive Grade Scale VI—Eligibility of—Promotional policy dated 7.3.1989—Modification in norms of—Held: promotional policy not arbitrary—Eligibility norms made on realistic basis—To choose best talents to man critical positions—Court could not sit in appeal to decide what was good for Bank. F

Promotion—From Senior Management Grade Scale V to Top Executive Grade Scale VI—Interview—Candidates—Number of—Guidelines dated 23.6.1986 issued under Regn. 17—Limited number of candidates to be interviewed to three to four times of vacancies—Applicability of—Held : applicable only to Nationalised Banks and not to State Bank of India—Furthermore, said guidelines could not be regarded as directions under Section 18 of State Bank of India Act—Government of India, Ministry of Finance Guidelines dated 23.6.1986—Officers Service Regulations Regn. 17—Banking Regulation Act, 1949. G H

A *Promotion—Candidates—From Senior Management Grade Scale V to Top Executive Grade Scale VI—Eligibility of—Promotional policy dated 7.3.1989—Modification in norms of—Made by Central Board of State Bank of India—Allegedly motivated to benefit certain candidates—Conditions precedent for such allegations to succeed—Held : person making such allegation must conclusively show that intended beneficiaries wielded influence over all members of Board—Neither this condition fulfilled nor Chairman or Directors impleaded—Hence, petitioners could not be allowed to raise said allegations of mala fides.*

C *Promotion—Candidates—From Senior Management Grade Scale V to Top Executive Grade Scale VI—Consideration of past records—Absence of uniform appraisal system—Annual Confidential Reports—Replaced by assignment appraisal system throughout the Bank not simultaneously but in a phased manner from 1986 to 1990—Consequently, in case of some officers annual confidential reports considered while in case of others assignment appraisal reports considered—Held : absence of uniform appraisal system did not vitiate selection—Consideration of two types of reports did not result in discrimination—Constitution of India, 1950, Art. 14.*

E *Promotion—Candidates—From Senior Management Grade Scale V to Top Executive Grade Scale VI—Past record for period which exceeded minimum length of service in post immediately below—Consideration of—Whether valid—Held : consideration of performance of six years while minimum service for eligibility was four years did not cause prejudice to any officer.*

F *Promotion—Candidates—From Senior Management Grade Scale V to Top Executive Grade Scale VI—Interview—Prescribed minimum 60% marks as eligibility criterion—Validity of—Held : interview marks represented only 25% of aggregate marks—No exaggerated weightage given to marks prescribed in interview.*

G *Practice and Procedure :*

H *Affidavit—False allegation in—Challenge of promotion to Top Executive Grade Scale VI in State Bank of India in writ petition by petitioner—Federation—In rejoinder affidavit, the then President of petitioner—Federation deposed that in fact only V, an officer of Bank, had allotted marks on the individual promotion appraisal forms on basis of which list of candidates*

prepared and signed by three members of Screening Committee—Supreme Court directed the then President to verify on affidavit the said allegation specifying precise source of information—Supreme Court also warned that if allegation was found false that also would have its own consequences—President filed additional affidavit deposing that he derived information from V himself and another officer of Bank—Chief General Manager (Personnel) of Bank as well as two officers, referred to in said additional affidavit, filed their own affidavits denying said allegation—Furthermore, allegation not substantiated by photo copies of appraisal forms of promotees—Held : In such circumstances, said allegation in rejoinder affidavit of the then President absolutely false—The then President already apologised to Supreme Court for some mis-statements in an earlier affidavit—Supreme Court expressed its disapproval and anguish over that matter—But did not dismiss petition in view of offer of Bank to contest the case on merits—Since the then President once again made false statements in his affidavit despite said observations of Supreme Court, he deserved to be prosecuted—However, since he was no longer President of Federation and since prosecution might take further time, instead of directing him to be prosecuted, the petition dismissed with costs, quantified at Rs. 20,000 of which Rs. 10,000 to be paid by him personally—Constitution of India, 1950, Art. 32—Judicial strictures.

The petitioner-Federation filed a writ petition before this Court challenging the new promotional policy framed by the respondent-Bank on 7.3.1989 relating to the promotion from the post of Senior Management Grade Scale V to Top Executive Grade Scale VI. The said Policy was framed by the Central Board under paragraph 17 of the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 which had been framed under Section 43 of the State Bank of India Act, 1955. The State Bank of India (Supervising Staff) Service Rules, 1975 framed under Section 43 of the Act, dealt with various grade and scales of officers, conduct rules, salary, seniority, promotion, etc. From 1975 onwards the Central Board approved a promotion policy under which assignment appraisals and interviews were made the two components of the selection procedure. According to the petitioners zone of consideration from amongst the eligible officers had been varying from time to time. From 8.6.1982 onwards two years' service in the previous grade/scale became a condition of eligibility for promotion but the zone of consideration was limited to three to four times the number of vacancies. In the policy framed on 7.3.1989 the Central Board made three modifications

A which were as follows :

(i) The minimum service in the previous grade/scale for being eligible for promotion was raised to four years.

B (ii) The maximum marks for interview and performance appraisal were refixed as 50 and 150 instead of 100 and 100 respectively.

(iii) The limitation of the zone of consideration was discontinued.

C From 1986 onwards the system of writing of annual confidential reports was substituted by a new appraisal system in which the appraisee got an opportunity of writing self appraisal. However, this new system was not introduced throughout the Bank simultaneously but was completed in a phased manner only in 1990.

D The main contention of the petitioners was that it was unreasonable not to limit the zone of consideration to three to four times of the number of vacancies. It was further contended by the petitioners that the change in the policy was completely arbitrary and without any reason; that the guidelines dated 23.6.1986 issued by the Government of India, Ministry of Finance under Regulation 17 of the Officers Service Regulations mentioned that the number of persons to be considered for promotion from one scale to another should normally be restricted to three or four times the number of vacancies; that the promotion policy should not have been in conflict with the said guidelines; that the change in policy in 1989 was motivated with a view to benefiting respondents 4 and 5; that uniform system of appraising the work was not followed in that in case of some employees annual confidential reports were considered and in case of others assignment appraisal reports were considered which had caused prejudice to a section of the employees of the Bank; that with the change in the eligibility norm to four years instead of the actual five/six service there was a need for reducing the consideration of period of appraisal from six years to four years; that as this had not been done the junior officers who were considered were at an advantageous position because their performance in Scale V as well as in the lower Scale IV was considered whereas in the case of senior officers their performance in Scale V alone was considered because they had rendered more than five to six years service in that grade; that prescribing of 60 per cent marks for the interview as an eligibility criteria was arbitrary, unfair and unjust; and

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that the percentage of marks in the *viva voce* examination should not have not more than 15 per cent. A

Dismissing the petition, this Court

HELD : 1. Having a reasonable eligibility condition, as four years in the present case, may become meaningless if all the eligible officers are not considered for promotion. By increasing the number of years from two to four the field has been somewhat restricted and considering that selection has to be made only on the basis of merit, it is not unreasonable to give an opportunity to all the eligible officers to compete with each other and for the best persons to be selected. Therefore, it cannot be held that the change of the policy brought by the Board in its meeting on 7.3.1989 in this regard is in any way bad in law. [271-G-H] B C

Ashok Kumar Yadav v. State of Haryana, [1985] 4 SCC 417; *V.J. Thomas & Ors. v. Union of India & Ors.*, [1985] Supp. SCC 7 and *S.B. Mathur & Ors. v. Chief Justice of Delhi High Court*, [1989] Supp. 1 SCC 34, held inapplicable. D

2. There is nothing wrong if the bank devised a policy defining the eligibility norms on a realistic basis and devised a system whereby the best available talent would be chosen to man the critical positions. Keeping this objective in view the changes in the promotion policy have been made. It is always for the employer to see how to promote and utilise the best talent available in the organisation. The promotion policy originally framed in the year 1975 has been amended from time to time. The changes have now been made in 1989 keeping in mind the requirement of the bank and based on the experience of the bank in regard to making selection for promotion. The changes so made cannot be regarded as arbitrary and the Court cannot sit in appeal and decide as to what is good for the institution. Under the new policy the petitioners are also eligible for consideration and they cannot have any grievance because certain persons who were eligible under the old policy, but in practice were not considered for promotion, are now considered under the new policy. The object of the new policy seems to be not only to redress the injustice to those officers resulting on account of the difference between the rules and the practice but also with the object of selecting the best talent for the top executive posts. [274-H; 275-A-C] E F G

3. The guidelines in question have been issued by the Government H

A under the Regulations framed under the Banking Regulations Act, 1949 which Act does not apply to the State Bank of India. The said guidelines dated 23.6.1986 are addressed to the Chief Executives of twenty nationalised banks and only a copy of the same was marked to the Chairman of the respondent bank. Furthermore as far as State Bank of India is concerned paragraph 17 of the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 empowers the Central Board or the Executive Committee to lay down a policy regarding promotion to all grades of officers in the Bank. The aforesaid guidelines which have been issued expressly relate to the nationalised banks, and not to the State Bank of India, and cannot be regarded as directions which are issued under Section 18 of the State Bank of India Act, 1955 as was sought to be suggested by the petitioners. [272-C-F]

D 4.1. The modification was approved by the Chairman and all the Directors who were present in the meeting of the Board. For an allegation of *mala fide* to succeed it must be conclusively shown that respondents 4 and 5 wielded influence over all the members of the Board who were present in the said meeting. No such allegation has been made. The decision to modify the promotion policy was taken by a competent authority, namely, the Central Board in a duly constituted meeting held on 7.3.1989 and it is not possible to accept that this change in the policy was brought about solely with a view to help respondents 4 and 5. [274-C-D]

F 4.2. Moreover, the person against whom *mala fides* are alleged must be made a party to the proceeding. The allegation that policy was amended with a view to benefit respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of *Mala fide*. [274-E-F]

G 5. It is no doubt that in the case of some employees annual confidential reports were considered and in the case of other employees assignment appraisal reports were considered. However, this cannot be a good ground for holding that the selection is vitiated. No particulars have been given in the writ petition in order to show that the officers in whose case that annual confidential reports were considered had suffered a disadvantage. Each report of an officer, whether an annual confidential report or assignment

appraisal report, had to be considered on its own and the performance assessed. There is nothing to suggest that such assessment on the basis of the annual confidential report or the assignment appraisal report could not have been given. It is, therefore not possible to hold that the consideration of two types of reports had resulted in any discrimination.

[275-G; 276-C-D-E]

6. The procedure of considering the assignments in respect of the positions held during the past six years was in vogue even when the eligibility criteria was two years which has now been revised to four years. Furthermore even in the case of some senior officers the assignments would cover a portion of their tenure as Scale IV officers. In considering such reports what has to be seen is whether the assignment targets which are set have been satisfactorily met or not. It would not be very material as to in which scale the officer was while adjudging this aspect. Normally in order to assess the merit of an officer a period covering three assignments was considered to be necessary. This being so six years annual assignment reports had to be considered and such consideration could not be said to have caused any prejudice to any officer. This contention, therefore, is without any substance. [277-F; G; H]

7.1. There can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for *viva voce* or interview which can be regarded as unreasonable will depend on the facts of each case. What the interview or *viva voce* marks should be, may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection. Where merit can be best judged by holding an interview there such marks may be high but each case will have to be judged on its own facts. Interview marks may be the minimal in such cases as relating to admission to a college. [278-B-C-D]

Periakaruppan v. State of Tamil Nadu, [1971] 1 SCC 38 and *Ajay Hasia v. Kalid Mujib Sehwardi*, [1981] 1 SCC 722, relied on.

7.2. In the present case, the interview marks represent only 25 per cent of the aggregate, i.e. 200 marks. In order to be eligible a candidate is required to obtain 60 per cent of these fifty marks. Considering the fact that the selection has to be made for appointment to the top executive

- A cadre and keeping in view the job requirements and the nature of responsibility the bank has raised the minimum qualifying percentage from 50 per cent to 60 per cent. At the same time the total number of interview marks have been reduced from 100 to 50. Under the circumstances it cannot be contended that exaggerated weightage has been given to the marks to be obtained in the interview. [279-G-H; 280-A]

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Lila Dhar v. State of Rajasthan, [1981] 4 SCC 159; *State of U.P. v. Rafiquddin*, [1987] Supp. SCC 401 and *Mehmood Alam Tariq & Ors. v. State of Rajasthan & Ors.*, [1988] 3 SCC 241, relied on.

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8.1. In the rejoinder affidavit the then President of the petitioner-Federation deposed that in fact only V, an officer of the Bank had allotted the marks on the individual promotion appraisal forms on the basis of which a list of candidates was prepared by three members of the Screening Committee. This Court directed the then President to verify on affidavit specifying the precise source of information from which the said allegation was derived. This Court also warned that if the allegation was found false that also would have its own consequences. The then President filed an additional affidavit deposing that he had derived the information from V himself and another officer of the Bank. The Chief General Manager (Personnel) of the Bank as well as the two officers, referred to in the said additional affidavit, filed their own affidavits, denying the said allegation. Furthermore, the allegation was not substantiated by photo copies of the appraisal forms of the promotees. In such circumstances, the said allegation in the rejoinder affidavit of the then President of the petitioner-Federation is absolutely false. [280-A]

8.2. The then President had already "tendered an unqualified apology" to this Court for some mis-statements made in an earlier affidavit. This Court expressed its disapproval and anguish over that matter but did not dismiss the petition in view of the offer of the respondent-Bank to contest the case on merits. Since the then President had once again made false statements in his affidavit despite the said observations of this Court he deserved to be prosecuted for having committed perjury. However, since he is no longer the President of the Federation and considering that prosecution may take further time, instead of directing him to be prosecuted, this writ petition is dismissed with costs which are quantified at Rs. 20,000 of which Rs. 10,000 will be paid by him personally. [284-E-F]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 507 of 1989. A

(Under Article 32 of the Constitution of India.)

WITH

Writ Petition (C) No. 1260 of 1989. B

Under Article 32 of the Constitution of India.

Rajinder Sachher, R. Vasudevan, D.S. Chauhan, K.D. Saini for
Lawyers Inn for the Petitioners. C

Dr. A.F. Julian and A. Mariarputham for the Petitioner.

Shanti Bhushan, Shanti Swarup Sharma, Sanjay Kapur, Rajiv Kapur,
A.V. Rangam and A. Ranganathan for the Respondents.

The Judgment of the Court was delivered by D

KIRPAL, J. The All India State Bank Officers Federation, which is registered as a trade union of the officers of the State Bank of India working throughout the country, is seeking to challenge a new promotional policy framed by the respondent bank on 7th March, 1989 relating to the promotion from the post of Senior Management Grade Scale V to Top Executive Grade Scale VI. E

The respondent bank was established by the State Bank of India Act, 1955 (for short 'the Act') and according to Section 17 of the said Act its Management is entrusted to the Central Board constituted under the Act. Under Section 43 of the said Act the Bank is empowered to appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions. Sub-section (1) of Section 43 gives the bank the power to determine the terms and conditions of the appointment of such persons. F

The bank framed State Bank of India (Supervising Staff) Service Rules, 1975, in exercise of its powers under Section 43 of the Act. These rules deal with various grades and scales of officers, conduct rules, salary, seniority, promotion etc. Again, under Section 43 of the Act, the Central Board of the bank framed the State Bank of India Officers (Determination H

A of Terms and Conditions of Service) Order 1979 (hereinafter referred to as 'DTCS Order'). This Order deals with various grades and scales of officers, salary perquisites, appointments, probation, confirmation, promotion, age of retirement rules, terminal benefits etc. The grades and scales of officers are as follow :

B	<i>"From 1.10.79</i> (consequent upon revision of service conditions)	<i>From 1.2.84</i> (consequent upon wage revision)
C	Junior Management Grade I and all officer Gr. II	Junior Management Gr. I
D	Middle Management Grade Scale II	Middle Management Grade Scale II
E	Middle Management Grade Scale III	Middle Management Grade Scale III
E	Senior Management Grade Scale IV	Senior Management Grade Scale IV
E	Senior Management Grade Scale IV-A	Senior Management Grade Scale V
F	Senior Management Grade Scale V	Top Executive Grade Scale VI Dy. General Manager
F	Top Executive Grade Scale VI General Managers	Top Executive Grade Scale VII - General Managers
G	Top Executive Grade Scale VII Chief General Managers	Top Executive Grade Special Scale I-Chief General Managers
G	Top Executive Grade Special Scale I Dy. Managing Directors	Top Executive Grade Special Scale II- Dy. Managing Directors"

Paragraph 17 of the DTCS Order specifically deals with promotion of staff and is as under :

H "Promotions to all grades of officers in the Bank shall be made

in accordance with the policy laid down by the Central Board or the Executive Committee from time to time." A

In exercise of the powers under this paragraph the Central Board of the Bank has, from time to time, been determining the policy for promotion to various grades of scales of officers. The policy for promotion from Senior Management Grade Scale V to Top Executive Grade Scale VI, with which we are concerned in the present petition, and Top Executive Grade Scale VI to Top Executive Grade Scale VII was framed by the Central Board in its meeting held on 28th November, 1975. Prior to 1975 the promotion policy which was in force for promotion to Top Executive Grade Scale VI and to Scale VII did not provide for any selection procedure. From 1975 onwards the Central Board approved a promotion policy under which assignment appraisals and interviews were made the two components of the selection procedure. According to the petitioners zone of consideration from amongst the eligible officers had been varying from time to time. Generally the Bank had been following a ratio of 1 : 3 or 1 : 4 between the number of vacancies and the number of candidates. The Central Board at its meeting held on 8th June, 1982 approved a modification in the promotion policy in terms of which officers with two years service in Senior Management Grade Scale V were to be eligible for promotion to Top Executive Grade Scale VI and officers with two years service in Top Executive Grade Scale VI were to be eligible for promotion to Top Executive Grade Scale VII. It is an admitted fact that as the zone of consideration was restricted to three to four times the number of vacancies, the candidates who were actually considered for promotion to Top Executive Grade Scale had put in a minimum five to six years of service in Scale IV, even though the minimum eligibility condition was of only two years service. B
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In its meeting held on 7th March, 1989, the Central Board of the Bank made two modifications in the then existing policy which were as follow :

(i) The eligibility criterion for consideration for promotion to Top Executive Grade Scale VI was refixed at four years service in the previous grade/scale, instead of the existing two years service. G

(ii) Previously evaluation of the eligible officers was done by allotment of marks on the performance appraisal and interview. An aggregate H

A of 200 marks were being allotted; 100 marks used to be allotted for performance appraisal and another 100 marks for interview. The qualifying marks both for performance appraisal and interview were 60 per cent. Now as a result of the modification made on 7th March, 1989 out of the aggregate of 200 marks, 150 marks were now allotted for performance appraisal (in lieu of the earlier 100 marks) and 50 marks (in lieu of the earlier 100 marks) had been allotted for interview. The qualifying marks for performance appraisal had been changed from 60 per cent to 80 per cent, while the qualifying marks for interview remained unaltered at 60 per cent.

C The manner in which the performance has been appraised has also undergone a change from time to time. Since long there had been in force a system of writing annual confidential reports. Since 1974 or 1975 a system of assignment appraisal was also introduced by the bank. In the year 1986, according to the petitioners, the bank brought about further change in the system of performance appraisal. The old system of writing of annual confidential reports was substituted by a new and more open and participatory appraisal system. According to the writ petition in this new system the appraisee got an opportunity of writing self appraisal. However, this new system was not introduced throughout the bank simultaneously. The old system of recording of annual confidential reports remained in position till that was gradually replaced by the self appraisal system. We were informed that now since 1990 the system invoked is only that of self appraisal and the old system of writing annual confidential reports no longer exists.

F The writ petition has been filed challenging the aforesaid modification in the promotion policy which was approved by the Central Board in its meeting held on 7th March, 1989. There are various grounds of attack to the resolution approving the new promotion policy. It is also the case of the petitioners that the manner in which the process of promotion has been undertaken was defective.

G The main thrust of arguments of Mr. Rajindar Sachar, learned senior counsel appearing on behalf of the petitioners, was that it was unreasonable not to limit the zone of consideration to three to four times the number of vacancies. As a result of the new policy, it was submitted, a much larger number of relatively junior officers have been considered and promoted.

In order to show that injustice had been done to senior eligible officers, as a result of the change in the policy, our attention was drawn to the following statement with regard to the filling up of 58 vacancies in Scale VII on selection made in 1989 :

	No. of officers who qualified with 70% marks in the past performance	No. of officers who qualified with 60% marks in the interview	No. of officers promoted
Total number of officers considered under the impugned policy and belonging to the 1982, 1983 1984 and left over of earlier batches.	270	104	58
498			
Number of officers belonging to the 1982 and left over of earlier batches out of the total of 498 officers considered.	102	62	16
212			

The contention on behalf of the petitioners was that eligible candidates after the 1982 batch should not have been considered and if the zone of consideration had been limited to three to four times then the filed of choice would have been restricted and only those officers who were in Scale V in the year 1982 or earlier would have been considered and promoted. In support of his contention that doing away with the zone of consideration was not reasonable, reliance was placed on the decision of this Court in the case of *Ashok Kumar Yadav v. State of Haryana*, [1985] 4 SCC 417.

Ashok Kumar Yadav's case was concerned with the recruitments made by the Haryana Public Service Commission to 61 posts in Haryana

- A Civil Service (Executive) and other allied services. The relevant rules provided that a competitive examination was to be held consisting of written examination in different papers having an aggregate of 700 marks and a *vive voce* examination carrying 200 marks. The rules, *inter alia*, further provided that no candidate was eligible to appear in the *vive voce* test unless he obtained 45 per cent marks in aggregate in all the subjects.
- B In response to the said advertisement 6000 candidates applied and appeared for the written examination and out of these over 1300 secured 45 per cent marks and had thus qualified for being called for the interview or the *vive voce* examination. Though originally the recruitment was only for 61 posts but during the time when the selection process was under way a
- C total number of 119 posts became available. The Haryana Public Service Commission invited all the 1300 and odd candidates who had qualified for the *viva voce* test and the interview lasted for almost half a year. On the basis of the total marks obtained in the written examination as well as *viva voce* test 119 candidates were selected and recommended by the Commission to the State Government. Some of the candidates who were not
- D selected filed a writ petition in the Punjab and Haryana High Court challenging the said selection. Five of the selected candidates, including Ashok Kumar, were impleaded as respondents.
- E The Division Bench of the High Court allowed the writ petition and held that the Haryana Public Service Commission should not have called for interview all the candidates who had obtained more than 45 per cent marks in the written examination and the number of candidates to be called for interview should not have exceeded twice or thrice the number of vacancies required to be filled. This was one of the grounds on which the
- F selection of Ashok Kumar and other candidates was quashed. Thereupon appeals were filed by Ashok Kumar Yadav and the State of Haryana. Their appeal was allowed by this Court and the selection made by the Haryana Public Service Commission was upheld. While dealing with the submissions relating to the Haryana Public Service Commission calling the 1300 and
- G odd candidates for *viva voce* test, who had secured 45 per cent or more marks in the written examination for only 61 seats, it was observed by this Court that merely because minimum qualification for eligibility to appear at the *viva voce* test for a candidate was to obtain at least 45 per cent marks in the aggregate in the written examination the Haryana Public Service
- H Commission was under no obligation to call for *viva voce* test all the

candidates who satisfied the minimum eligibility requirements. It was open to the Commission to call for *viva voce* test a limited number of candidates who figured at the top of the list. After referring to Kothari Committee's Report on "Recruitment Policy and Selection Methods for the Civil Service Examination" at page 447 it was observed as follows :

"We are therefore of the view that where there is a composite test consisting of a written examination followed by a *viva voce* test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled. The Haryana Public Service Commission in the present case called for interview all candidates numbering over 1300 who satisfied the minimum eligibility requirement by securing a minimum of 45% marks in the written examination and this was certainly not right, but we may point out that in doing so, the Haryana Public Service Commission could not be said to be actuated by any *mala fide* or oblique motive, because it was common ground between the parties that this was the practice which was being consistently followed by the Haryana Public Service Commission over the years and what was done in this case was nothing exceptional."

Relying upon the aforesaid passage it was strongly contended by Mr. Sachar that the policy of 7th March, 1989 which did away with the concept of zone of consideration was clearly contrary to the aforesaid observations of this Court in *Ashok Kumar Yadav's* case.

In our opinion *Ashok Kumar Yadav's* case can be of no assistance to the petitioners. It is no doubt true that this Court did make the aforesaid observation that the number of candidates to be called for interview should not exceed twice or at the highest thrice the number of vacancies to be filled. Nevertheless after making this observation the Court posed a question as to "whether this had any invalidating effect on the selections made by the Haryana Public Service Commission". The answer to this was provided in the subsequent paragraph in the following words "We do not think that the selection made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than twenty times the number of

A available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice the number of candidates should have been called for the interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made."

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C It is clear from the aforesaid that this Court was of the opinion that while it was desirable that the number of candidates who were called for *viva voce* examination should not be unduly large but it did not agree with the conclusion of the High Court that calling large number of candidates invalidated the selection. In other words not having a restricted zone of consideration was not regarded as illegal or bad in law. An unduly large number of candidates to be interviewed may make it impossible to carry out a satisfactory *viva voce* test and the interview may tend to be casual, superficial or sloppy. The above quoted observations are only words of

D caution lest the *viva voce* test be reduced to farce. Notwithstanding the fact that the Court did not approve of a large number of candidates being called for interview, nevertheless the selections so made by the Haryana Public Service Commission were not invalidated by this Court and the judgment of the High Court was set aside and the selection made was upheld.

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F Whereas in *Ashok Kumar Yadav's* case for 61 vacancies, which were originally notified, 1300 and odd candidates were called for *viva voce* examination and this Court held that this was not invalid, in the present case for 58 vacancies only 498 eligible officers were considered for promotion. Applying the ratio of decision of *Ashok Kumar Yadav's* case to the facts of the present case it cannot be said that the policy of considering all the eligible officers for promotion, without having a restricted zone of consideration is in any way bad in law. In fact in this manner no eligible officer can have a grievance, which may be legitimate, that he was not considered even though he was eligible.

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H Our attention was also drawn to the case of *V.J. Thomas and Ors. v. Union of India and Ors.*, [1985] Supp. SCC 7. The decision in this case has no application here because there the Court was concerned with a case where it was held that if the vacancies were few, and the candidates were disproportionately large in number, department could make a classification

amongst eligible candidates on the basis of their length of experience so as to restrict the examination only for those having longer service leaving others to appear in the next examination. Similarly the decision in *S.B. Mathur and Ors. v. Chief Justice of Delhi High Court and Ors.*, [1989] Supp. 1 SCC 34 holding that the zone of consideration or field of choice can be limited to a multiple of number of vacancies, on the basis of seniority, has no application to the point in issue here. In fact the Court referred to the decision in *Ashok Kumar Yadav's* case (supra) and, in principle to the observation on which reliance has been placed by Mr. Sachar, and in was observed at page 51 para 19 as under :

"The Bench however, went on to hold that, in its view, merely because the Haryana Public Service Commission had called all the 1300 candidates who obtained 45 per cent or more marks in the written examination to appear in the interview that did not invalidate the selection made. This decision points out that the minimum eligibility qualification has to be kept distinct from the zone of consideration and even if there are a large number of candidates who satisfy the minimum eligibility requirement it is not always required that they should be included in the zone of consideration, it being open to the authority concerned to restrict the zone of consideration amongst the eligible candidates in any reasonable manner."

Our attention has not been drawn to any decision or observation of this Court which has taken a contrary view. Having a reasonable eligibility condition, as four years in the present case, may become meaningless if all the eligible officers are not considered for promotion. By increasing the numbers of years from two to four the field has been somewhat restricted and considering that selection has to be made only on the basis of merit, it is not unreasonable to give an opportunity to all the eligible officers to compete with each other and for the best persons to be selected. Moreover, this case relates to in-service promotion while *Ashok Kumar Yadav* was a case of direct recruitment. We are, therefore, unable to agree with the petitioners that the charge of the policy brought by the Board in its meeting on 7th March, 1989 in this regard is in any way bad in law.

It was then contended that on 23rd June, 1986 the Government of India, Ministry of Finance, had issued guidelines under Regulation 17 of

A the Officers Service Regulation. In the said guidelines it was mentioned that the number of persons to be considered for promotion from one scale to another should normally be restricted to three to four times the numbers of vacancies for which the promotions are being considered. The modification on 7th March, 1989 in the promotion policy, it was submitted, should not have been done in a way which was in conflict with the said guidelines
B and, therefore, doing away with the zone of consideration was not warranted.

We do not find any merit in this contention, for more reasons than one. Firstly, these guidelines have been issued by the Government under
C the Regulations framed under the Banking Regulations Act, which Act does not apply to the State Bank of India. The said letter of 23rd June, 1986, enclosing the guidelines, is addressed to the Chief Executives of twenty nationalised banks and only a Copy of the same was marked to the
D Chairman of the respondent bank. As far as the State Bank of India is concerned the central Government can issue directions under Section 18 of the State Bank of India Act, 1955 and no directions in this behalf have been issued. Furthermore as far as State Bank of India is concerned
E paragraph 17 of the DTCS Order of 1979, which has been quoted earlier, empowers the Central Board or the Executive Committee to lay down a policy regarding promotions to all grades of officers in the Bank. The
E aforesaid guidelines which have been issued expressly relate to the nationalised banks, and not to the State Bank of India, and cannot be regarded as directions which are issued under Section 18 of the State Bank of India Act, as was sought to be suggested by the counsel for the petitioners.

F It was then contended by Mr. Sachar that the change in the policy in 1989 was motivated with a view to benefit respondents 4 and 5. The allegation in the writ petition in this regard was that respondent No. 4 was working as Chief Officer (Industrial Relations) in the central office of the bank and was of 1984 batch officer in scale IV. Respondent No. 5 was also
G a scale V officer of 1983 batch and was working as Private Secretary to the Chairman of the Bank at Central Office, Bombay. It was alleged that on account of the positions so held they wielded a lot of power in determining the personal policies of the bank. These respondents, it was alleged, succeeded in getting some imaginary hardships of junior scale IV officers
H highlighted in the conference of Chief General Managers held in January,

1988. In proof of the influence which respondents 4 and 5 had, it was submitted that the memorandum dated 2nd March, 1989 containing the proposal for the amendment in the promotion policy was not included as an agenda item of the meeting of the Central Board which was to be held on 7th March, 1989, and was not circulated in advance. This memorandum was presented before the Board as a table item and the Chairman, it was contended, ought not to have allowed the introduction of this memorandum without its being included as a regular item on the agenda.

The allegations relating to *mala fides* so made in the writ petition have been denied in the affidavit filed on behalf of the respondent bank. It has been explained therein that the Chief General Managers and other top executives are concerned with the development of human resources. As such, all policy matters, before being formulated, are discussed with Chief General Managers at an appropriate forum. It is after such a conference was held that various suggestions and views had emerged. They were examined by a group headed by a Senior Managing Director and other senior functionaries. A report submitted by the group was then examined by the Central Management Committee of the bank which decided that the recommendations of the Cadre Management Group, relating to promotions to Top Executive Grade Scale VI and VII, be accepted and should be implemented from the current year itself. This decision was taken by the Central Management Committee in late February, 1989. As certain vacancies in these Scales VI and VII had been identified, the Central Management Committee felt that these positions should be fitted up as early as possible so that important positions in the bank do not remain vacant. On 2nd March, 1989 the Deputy Managing Director (Personnel and Systems) prepared and signed a memorandum seeking the approval of the Central Board of the said policy. A meeting of the Central Board had already been fixed for 7th March, 1989 and the next meeting was expected to be held after one and a half to two months. With a view to expedite the consideration of the change in the policy the Deputy Managing Director sent the memorandum to the Managing Director and the Chairman. The Chairman and the Managing Director agreed that the memorandum be put to the Central Board at its meeting to be held on 7th March, 1989. By that time the usual agenda items fixed earlier for the Central Board meeting had already been circulated. It was in these circumstances that the item was placed as a table item at the Central Board meeting held on 7th March, 1989 with the consent of the Chairman and

A the Directors who were present at the meeting. It was also denied that the policy had been modified with a view to help respondents 4 and 5. Allegations of *mala fides* were denied.

B In view of the aforesaid explanation of the respondent bank, which we see no reason to disbelieve, it is clear that the petitioners have made baseless and reckless allegations of *mala fide*. Respondents 4 and 5 obviously had no direct or indirect role to play either in the formulation of the policy or in the memorandum being placed as a table item to be taken up for consideration in the meeting held on 7th March, 1989. The modification was approved by the Chairman and all the Directors who were present

C in the meeting of the Board. For an allegation of *mala fide* to succeed it must be conclusively shown that respondents 4 and 5 wielded influence over all the members of the Board who were present in the said meeting. No such allegation has been made. The decision to modify the promotion policy was taken by a competent authority, namely, the Central Board in a

D duly constituted meeting held on 7th March, 1989 and we are unable to accept that this change in the policy was brought about solely with a view to help respondents 4 and 5.

E There is yet another reason why this contention of the petitioners must fail. It is now settled law that the person against whom *mala fides* are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who

F present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of *mala fide*, which allegations, in fact, are without merit.

G It was also submitted that the change in the Policy was completely arbitrary and without any reason. We are unable to accept this contention. The respondent bank is a business organisation and it must identify the best available talent in the organisation for holding challenging assignments in the top executive grades. There is nothing wrong if the bank devised a policy defining the eligibility norms on a realistic basis and devised a system whereby the best available talent would be chosen to man the critical

H positions. Keeping this objective in view the changes in the promotion

policy have been made. It is always for the employer to see how to promote and utilise the best talent available in the organisation. The promotion policy originally framed in the year 1975 has been amended from time to time. The changes have now been made in 1989 keeping in mind the requirement of the bank and based on the experience of the bank in regard to making selection for promotion. The changes so made cannot be regarded as arbitrary and the Court cannot sit in appeal and decide as to what is good for the institution. Under, the new policy the petitioners are also eligible for consideration and they cannot have any grievance because certain persons who were eligible under the old policy, but in practice were not considered for promotion, are now considered under the new policy. The object of the new policy seems to be not only to redress the injustice to those officers resulting on account of the difference between the rules and the practice but also with the object of selecting the best talent for the top executive posts.

It was next contended that a uniform system of appraising the work was not followed which has caused prejudice to a section of the employees of the bank. Prior to April 1986 appraisal used to be on the basis of the annual confidential reports. With effect from April, 1986 a new system known as annual appraisal system was introduced. Under the new system the appraisal report states with the writing by an employee himself, which is called self appraisal. It is then forwarded to the superior authorities who record their own remarks on the performance of the employee concerned. At already noticed this self appraisal system was not applicable in respect of all the candidates. The comparative merit was assessed by taking into consideration the annual confidential reports in the case of some employees and the new performance appraisal reports in the case of others. Alleging that this has caused prejudice to those employees whose annual confidential reports were considered the submission made was that the procedure so adopted was discriminating.

It is no doubt true that in the case of some employees annual confidential reports were considered and in the case of other employees assignment appraisal reports were considered. In our opinion, however, this cannot be a good ground for holding that the selection is vitiated. Firstly, no particulars have been given in the writ petition in order to show that officers in whose case the annual confidential reports were considered and suffered a disadvantage. If the petitioners were serious in raising this

A contention they would have given particulars as to how many of the 58 officers who were selected were those in whose case annual confidential reports were considered and how many were those in whose case the assignment appraisal reports were considered. In the absence of this basic fact it cannot be presumed that the section of the employees whose annual confidential reports were considered had suffered a disadvantage. Further-

B more confronted with the situation whether the performance of the officer was recorded in two different types of reports the managements had, as of necessity, to consider the same and evaluate them. Even though the assignment appraisal reporting system may be an improvement in the existing system of writing annual confidential reports, the performance of the

C officer concerned could have been determined from the annual confidential reports. In fact this was being done before the gradual introduction of appraisal reporting system. Each report of an officer, whether an annual confidential report or assignment appraisal report, had to be considered on its own and the performance assessed. It is only if they received 70 per

D cent marks on the basis of this assessment that they were eligible for being called for the interview. There is nothing to suggest that such assessment, and assignment of marks, on the basis of the annual confidential report on the assignment appraisal report could not have been given. It is, therefore, not possible to hold that the consideration of two types of reports had resulted in any discrimination.

E

It was then submitted that under the existing policy the performance appraisal comprised of self appraisal and annual confidential reports for six years. With the change in the eligibility norm to four years instead of the actual five/six years service, it was submitted, there was a need for

F reducing the consideration of period of appraisal from six years to four years. As this has not been done the junior officers who were considered were at an advantageous position because their performance in Scale V as well as in the lower Scale IV was considered whereas in the case of senior officers their performance in Scale V alone was considered because they had rendered more than five to six years service in that grade.

G

In reply the respondent bank in its affidavit has explained as follows:

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"So far as assignment appraisal are concerned the assignment in respect of positions held during the past 6 years are assessed irrespective of the posts held. This has been followed even under

the pre-revised promotion policy, i.e., when eligibility criterion was 2 years of same continued even when officers were considered after 5/6 years. For the impugned promotion as well the same thing has been followed. There was no need to reduce the period of assignment. Appraisal to be considered from 6 years to 4 years. It is reiterated that the Annual Confidential reports for 5 years and Assignment Appraisal for 6 years irrespective of the assignment held have been uniformly assessed in respect of officers. Since 5 years Annual Confidential Reports were to be considered, reports starting from as on 31.12.84 to 31.12.88 on thereafter were considered in respect of all officers. As such, even in respect of an officer in Senior Management Grade Scale V of 1.8.84 batch reports as Scale V have only been assessed. So far as the Assignment Appraisal Reports are concerned, it is submitted that, an assignment covers generally a period of two to three years. Since the last 6 years assignment appraisal is taken into consideration, the oldest assignment will relate to the year 1983 assignment would normally cover a period commencing from 1980-81. Thus even in respect of a 1.8.82 batch Scale V officer, assignment could and would cover a portion of his assignment as Scale IV officer. Thus the contention that respondent Nos. 4 and 5 (or other Scale V officers of 1.8.83 and 1.8.84 batches) have got any special advantages are not well founded."

The aforesaid explanation clearly shows that the procedure of considering the assignments in respect of the positions held during the past six years was in vogue even when the eligibility criteria was two years which has now been revised to four years. Furthermore even in the case of some senior officers the assignments would cover a portion of their tenure as Scale IV officers. In considering such reports what has to be seen is whether the assignment targets which are set have been satisfactorily met or not. It would not be very material as to in which scale the officer was while adjudging this aspect. It was submitted by Mr. Shanti Bhushan, learned senior counsel appearing for the respondents that each assignment covers two years. Normally in order to assess the merit of an officer a period covering three assignments was considered to be necessary. This being so six years annual assignment reports had to be considered and we do not find that such consideration could have caused any prejudice to any officer. This contention, therefore, is without any substance.

- A It was also contended that prescribing of 60 per cent marks for the interview as an eligibility criteria was arbitrary, unfair and unjust. It was further submitted that the percentage of marks in *viva voce* examination should not have been more than 15 per cent.
- B We do not find any merit in this contention. There can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for *viva voce* or interview which can be regarded as unreasonable will depend on the facts of each case. Decisions of this Court show that no rigid rule, relating to percentage of marks for interview of general universal application can or has been laid down. What
- C the interview on *viva voce* marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection. Where merit can be best judged by holding an interview there
- D such marks may be high but each case will have to be judged on its own facts. Interview marks may be the minimal in such cases as relating to admission to a college as held by this Court in *Periakarupan v. State of Tamil Nadu*, [1971] 1 SCC 38 and *Ajay Hasia v. Khalid Mujib Sehrwardi*, [1981] 1 SCC 722. In *Lila Dhar v. State of Rajasthan*, [1981] 4 SCC 159 this Court, on the other hand, held that in some cases relating to recruitment
- E from amongst persons of matured personality holding of an interview may be the only way subject to basic and essential requirements being satisfied. The following observations in this regard made in *Lila Dhar's* case are very apposite:
- F "There are of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview test, catch a glimpse of the future personality. It the case of such services, where sound selection must combine academic ability with personality promise, some weight
- G has to be given, though not much too great a weight, to the interview test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection
- H is to be made, the body to which the task of holding the interview

test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission. (emphasis supplied)"

Again in the *State of U.P. v. Rafiquddin Ors.*, [1987] Supp. SCC 401 dealing with a case relating to U.P. Civil Service (Judicial Branch) Rules, 1951 the prescription of 35 per cent qualifying minimum marks for *viva voce* test was upheld. In this connection it was observed that if any minimum marks either in the written test or in *viva voce* test are fixed by the Public Service Commission so as to determine the suitability of a candidate the same has to be respected.

It is not necessary to multiply the number of cases in this regard except to notice the decision of this Court in *Mehmood Alam Tariq and Ors. v. State of Rajasthan and Ors.*, [1988] 3 SCC 241. This case related to recruitment by the Public Service Commission to certain branches of service under the State by a scheme of competitive examination. The Division Bench of the Rajasthan High Court had declared the rules which required that a candidate must secure a minimum of 33 per cent of the marks prescribed for the *viva voce* examination as being unconstitutional. While allowing the appeal arising from the said judgment this Court held that considering the nature of the services for which the recruitment was to be made the provision in the rules requiring the candidate to obtain a minimum of 33 per cent of marks in *viva voce* test could not be regarded as bad in law.

Applying the ratio of the aforesaid decisions in this case we find that the interview marks represent only 25 per cent of the aggregate, i.e., 200 marks. In order to be eligible a candidate is required to obtain 60 per cent of these fifty marks. Considering the fact that the selection has to be made for appointment to the top executive cadre and keeping in view the job requirements and the nature of responsibility the bank has raised the minimum qualifying percentage from 50 per cent to 60 per cent. At the same time the total number of interview marks have been reduced from 100 to 50. Under the circumstances it cannot be contended that exag-

A gerated weight has been given to the marks to be obtained in the interview.

As already noticed the process of selection contemplates the assessment of the annual reports. In the rejoined affidavit filed by one Sh. Umed Singh, the then President of the petitioner Federation, it was contended as follows :

B

"In fact in the impugned promotions only one person Shri V.K. Mehrotra, General Manager has allotted marks on the individual promotion appraisal forms. A list of candidates was prepared and the marks allotted by Shri Mehrotra were copied and then the list was got signed by the three Deputy Managing Directors. This can be ascertained from the records itself."

C

In view of the aforesaid averment this Court in its order dated 27th July, 1990 noted that this was a very serious allegation and as the Court did not find from the affidavit the basis on which this allegation was made, it directed Sh. Umed Singh "to verify on affidavit this allegation and to state specifically whether the allegations have been made on his personal knowledge or on the basis of information believed to be true and the preuse (sic) source of the information from whom the information was derived will have to be specifically stated as otherwise credence whatever can be given to allegation of this type. If the allegation is to be found false that also will have its own consequences." By this order the Court also required that the file containing the photo copies of the appraisal records of all the persons promoted should be tendered in the Registry and the same was required to be kept by the Registrar in a sealed cover.

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Pursuant to the aforesaid order a further affidavit dated 10th August, 1990 was filed in this Court by Sh. Umed Singh. In paragraph 2 of this affidavit he stated that the averments made by him in his rejoinder affidavit were based on the information derived by him from Sh. V.K. Mehrotra and one Sh. R.P. Rastogi, the then Deputy General Manager, Central Office, Bombay. Elaborating this it was stated that the deponent had met Sh. V.K. Mehrotra in the room of the P.A. to the General Manager (Planning), State Bank of India, New Delhi on or around 28th April, 1989. It is at that time Sh. V.K. Mehrotra is alleged to have informed Sh. Umed Singh that he had been called by the Central Office in connection with the awarding of marks for promotion appraisals. It was further stated in this affidavit of Sh. Umed Singh that Sh. R.P. Rastogi had told him that marks on the individual

promotion appraisal forms were awarded by Sh. V.K. Mehrotra and the statement of marks in respect of various candidates was signed by the Screening Committee comprising of the three Deputy Managing Directors. A

In response to the aforesaid additional affidavit of Sh. Umed Singh a counter affidavit dated 12th October, 1990 of Sh. M.N. Sheorey, Chief General Manager (Personnel) of the respondent bank was filed. In this affidavit Sh. Sheorey stated that Sh. Umed Singh was incorrect in stating that Sh. V.K. Mehrotra had allotted marks on individual appraisal forms. Explaining the procedure which was actually followed Sh. Sheorey, in paragraphs 4 and 5 of this affidavit observed as follows : B

"That in March 1989 an office order to the following effect had been issued by the Chairman of the State Bank of India which is being set out hereunder : C

"As per the extant procedure, the recommendations received from the Circles and Central Office departments, for promotion to Top Executive Grade Scale, VI and VII are processed by Personnel Department, as per the laid down norms. Thereafter, the officers who fulfil the norms are called for interview. From the current year, it is proposed to have a second stage screening of all these reports after they are processed by the Personnel Department. The list of the officials to be interviewed will be finalised thereafter. The committee comprising Shri B. Gupta, Deputy Managing Director (OSD), Shri M.C. Sharma, Dy. Managing Director (Agriculture & Rural Banking), and Shri B.K. Mazmudar, Deputy Managing Director (Personnel & Systems) will be the members of the Screening Committee. The necessary secretarial support will be provided by the Chief General Manager (Personnel & HRD)." D E F

Each and every promotion appraisal form was scrutinised by the Screening Committee consisting of 3 Deputy Managing Directors and it was the Screening Committee which used to finally determine the marks to be given to different officers in respect of each promotion appraisal form. What the deponent as Chief General Manager (Personnel and HRD), since redesignated as Chief General Manager (Personnel), did was to provide assistance to the G H

A deliberations of the Screening Committee. The final marksheet was accordingly signed by all the 3 members of the Screening Committee.

B It is submitted that, I, as Chief General Manager, Personnel and HRD, in view of about 500 candidates' appraisal forms being involved, had taken assistance in arranging/processing the papers from Shri R.P. Rastogi who was the Dy. General Manager (Personnel Administration) as also Shri V.K. Mehrotra who had earlier been the Chief Officer (presently known as Dy. General Manager) of Personnel Administration Dept. before putting them up to the Screening Committee."

C Along with this an, affidavit of Sh. V.K. Mehrotra was also filed where, while referring to the earlier statement of Sh. Umed Singh alleging that Sh. V.K. Mehrotra had allotted marks on the individual promotion appraisal forms, it was categorically stated that the said statement was absolutely false. Sh. R.P. Rastogi, another officer mentioned in the affidavit of Sh. Umed Singh, has also filed an affidavit in this connection in which he has stated as follows :

E "Mr. Umed Singh never asked me at any time any question relating to the processing of the promotion papers nor told me anything as to what Mehrotra told him. These allegations are pure figments of deponent's imagination. With regard to further allegation that I told the deponent that while marks on the individual promotion forms were awarded by Shri V.K. Mehrotra these were copied in a separate paper and signed by three Deputy Managing Directors, firstly. I never told anything to Mr. Umed Singh and secondly the second fact itself is not true."

G The photo copies of the documents including the appraisal forms which have been filed in Court have also been examined by us. No document in these two volumes which have been filed has been shown to us to be in the handwriting of Sh. V.K. Mehrotra. In other words the documents so filed do not show that Sh. V.K. Mehrotra had any role, as alleged, to play in awarding marks on the individual appraisal forms. Furthermore the affidavits filed by Mr. Sheorey, Sh. Mehrotra and Sh. Rastogi clearly belie the allegations made by Sh. Umed Singh in his rejoinder affidavit. There H is no reason as to why the affidavits filed by these senior officers of the

bank should be disbelieved. This is more so when we find that the allegation with regard to Sh. Mehrotra has been made at a late stage. The writ petition was filed in this Court on 21st April, 1989. The alleged conversation between Sh. Umed Singh and Sh. V.K. Mehrotra is stated to have taken place on or about 28th April, 1989. It is not till the filing of the rejoinder affidavit on 23rd October, 1989 that an allegation regarding alleged conversation with Sh. V.K. Mehrotra was made in this Court. If such a conversation, as alleged, had taken place one would have expected the petitioners to approach the Court at the earliest either with a view to amend the writ petition or to file an additional affidavit making allegations raised in the rejoinder affidavit and thereby giving an opportunity to the respondents to file the reply. This conduct of Sh. Umed Singh shows that the bald allegation regarding Sh. V.K. Mehrotra assigning the marks, as contained in the rejoinder affidavit, is an afterthought. We have, therefore, no hesitation in coming to the conclusion that the averments made by Sh. Umed Singh in his rejoinder affidavit of 23rd October, 1989 and the further affidavit of 10th August 1990 with regard to Sh. V.K. Mehrotra are absolutely false. While on this subject it will be pertinent to note that the respondents in their counter affidavit had taken an objection to the effect that the writ petition should be dismissed because the petitioners had suppressed certain material facts from this Court and had also tried to abuse the process of the Court, attention of the Bench of this Court was drawn to the affidavits of Sh. Umed Singh which had been filed in this case. In the order dated 16th April, 1990, the Bench went into the question as to whether some of the statements made in the writ petition as well as in the affidavit are correct or not. It also took note of an affidavit filed by Sh. Umed Singh in which he had purported to "tender an unqualified apology." for some mis-statements made in an earlier affidavit. Ultimately the Bench came to the conclusion that "apart from mis-statements in the affidavit filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of the Court." The Bench also further expressed its anguish in the following words :

"We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by

- A keeping away material facts from the Court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate mis-statements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that atleast in future people will act more truthfully and with a greater sense of responsibility."

- B
- C The petition was not dismissed on account of mis-statements and suppression of material facts because of the concession made by the counsel for the bank that he was appearing for a public sector undertaking and was prepared to contest the petition on merits and that the preliminary objection was primarily intended to bring to the notice of the court the conduct of the petitioners in this regard.

- D It is indeed unfortunate that despite the aforesaid observations made by the Bench in its order dated 16th April, 1990, Sh. Umed Singh has not batted an eye lid and has, once again made false statements in his affidavit dated 10th August, 1990. Normally we would have ordered the prosecution of Sh. Umed Singh for having committed perjury. We are, however, informed that he is no longer the President of the Federation and considering that prosecution may take further time, it will not be practical to initiate such proceedings in this connection at this stage.

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- F For the aforesaid reasons this writ petition is dismissed with costs which are quantified at Rs. 20,000 of which Rs. 10,000 will be paid by Sh. Umed Singh personally.

Writ Petition No. 1260 of 1989

- G For the reasons stated in the judgment in writ petition No. 507 of 1989, this writ petition is also dismissed.

V.S.S.

Petitions dismissed.