

UNION PUBLIC SERVICE COMMISSION

A

v.

M. SATHIYA PRIYA AND OTHERS

(Civil Appeal No. 10854 of 2014)

APRIL 13, 2018

B

**[MOHAN M. SHANTANAGOUDAR AND  
NAVIN SINHA, JJ.]**

*Service Law – Appointment by promotion – Respondent was appointed as Deputy Superintendent of Police in the State – The names of the officers which were to be considered for appointment to the IPS included the name of respondent – On an oral assessment of her service records, the Selection Committee did not include her in the select list of 2008 – Aggrieved, respondent filed application before CAT, which was allowed – Judgment of CAT was confirmed by the High Court – Appellant-UPSC contended that both CAT and High Court erred in taking into consideration the Annual Confidential Reports from 01.04.2003 to 31.03.2008 – On appeal, held: The IPS regulations and the guidelines framed therein by the Central Government are to be applied jointly at the time of making the selection list – Selection Committee was to consider the performance of the officer i.e., the service records including the last five years, preceding the year for which the selection list is to be prepared as per the guidelines – As crucial date for determining the eligibility of the officers is 1<sup>st</sup> January of the particular year for which selections are made, the Annual Confidential Reports upto the year ending 31<sup>st</sup> March of the year preceding the year of selection list are to be taken into account as per the Guidelines – In instant case, the selection list was to be prepared for the year 2008 – Crucial date for reckoning the eligibility of the officers in the matter on hand was 1<sup>st</sup> January, 2008 – Accordingly, the Annual Confidential Reports upto the year ending 31<sup>st</sup> March, 2007 i.e., the year preceding the year of the selection list, were to be taken into account – Accordingly, only the Annual Confidential Reports of five years upto the year ending 31<sup>st</sup> March, 2007 are relevant i.e. Annual Confidential Reports from 01.04.2002 to 31.03.2007 needed to be taken into account at the time of selection – The same*

C

D

E

F

G

H

A *was being rightly done by the Selection Committee in the matter on hand – Both CAT and High Court misdirected themselves and considered Annual Confidential Reports from 01.04.2003 to 31.03.2008 – Further, the Selection Committee constituted by the UPSC is manned by experts in the field, one have to trust their assessment unless it is actuated with malice or bristles with mala*  
B *fides or arbitrariness – In the instant case, neither the decision nor the decision making process was actuated with malice, and no grave mistake was committed by the Selection Committee leading to arbitrariness – The selection was made rationally – IPS(Appointment by Promotion) Regulations, 1955 – regn. 5.*

C **Allowing the appeal, the Court**

**HELD: 1. The error that crept into the findings of the Tribunal, as confirmed by the High Court, was on account of the basic fact that they erred in not properly appreciating the span/ scope of selection by a Selection Committee. For the purpose of**  
D **consideration of a candidate for selection to the IPS in respect of the select list of 2008, the Annual Confidential Reports from 1.4.2003 to 31.03.2008 could not have been taken into account by the Selection Committee. As per para 3.1 of the Guidelines, the assessment of the eligible officers is with special reference**  
E **to the performance of the officer during the last five years, preceding the year for which the select list is prepared. As the crucial date for determining the eligibility of the officers is taken 1<sup>st</sup> January of a particular year for which the selections are being made, the Annual Confidential Reports upto the year ending 31<sup>st</sup> March of the year preceding the year of selection list are to**  
F **be taken into account as per para 3.2 of the Guidelines. In the matter on hand, the selection list was to be prepared for the year 2008. Thus, the crucial date for reckoning the eligibility of the officers in the matter on hand is 1<sup>st</sup> January, 2008. Accordingly, the Annual Confidential Reports upto the year ending 31<sup>st</sup> March,**  
G **2007 i.e., the year preceding the year of the selection list, are to be taken into account. The Selection Committee will consider the performance of the officer i.e., the service records including the last five years, preceding the year for which the selection list is to be prepared as per para 3.1 of the Guidelines. Accordingly,**

H

only the Annual Confidential Reports of five years upto the year ending 31<sup>st</sup> March, 2007 are relevant i.e. Annual Confidential Reports from 01.04.2002 to 31.03.2007 needed to be taken into account at the time of selection. The same was being done by the Selection Committee in the matter on hand. Hence, no fault can be found. It seems that the CAT, as well as the High Court, has misdirected in coming to the wrong conclusion that Annual Confidential Reports from 1.4.2003 to 31.03.2008 ought to have been taken into consideration inasmuch as such conclusion is against the IPS (Appointment by Promotion) Regulations, 1955 & the Guidelines framed therein by the Central Government. [Para 12] [719-C-H]

2. The CAT and the High Court have mainly relied on the grading given in the Annual Confidential Reports of the officers at the State level while coming to their conclusion. But, in terms of the Regulations and the Guidelines framed therein, for categorising the officers, the Selection Committee was required to consider the overall relative assessment of the service records of each of the eligible officers. The Selection Committee is not guided merely by the grading recorded in the Annual Confidential Reports but makes its own assessment on the basis of the quality of the officer as indicated in various columns recorded by the Reporting/Reviewing/Accepting Authority thereunder. In other words, the Selection Committee is not required to compulsorily accept the gradings given in the Annual Confidential Reports as it would amount to merely acting as a post office and the whole process would be nothing but a farce. The grading recorded in the Annual Confidential Report of a particular year may differ from the grading arrived at by the Selection Committee in respect of the said Annual Confidential Report depending on all relevant material. [Para 13] [720-A-D]

3. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of the UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. When a High Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and

A

B

C

D

E

F

G

H

A considered their cases for promotion, it is not open to the CAT  
and the High Court to sit over the assessment made by the  
Selection Committee as an appellate authority. The question as  
to how the categories are assessed in light of the relevant records  
and as to what norms apply in making the assessment, is  
B exclusively to be determined by the Selection Committee. Since  
the jurisdiction to make selection as per law is vested in the  
Selection Committee and as the Selection Committee members  
have got expertise in the matter, it is not open for the Courts  
generally to interfere in such matters except in cases where the  
C process of assessment is vitiated either on the ground of bias,  
mala fides or arbitrariness. It is not the function of the Court to  
hear the matters before it treating them as appeals over the  
D decisions of the Selection Committee and to scrutinise the relative  
merit of the candidates. The question as to whether a candidate  
is fit for a particular post or not has to be decided by the duly  
constituted expert body, i.e., the Selection Committee. The  
Courts have very limited scope of judicial review in such matters.  
[Para 15] [720-G, H; 721-A-C]

4. This Court has repeatedly observed and concluded that  
the recommendations of the Selection Committee cannot be  
E challenged except on the ground of mala fides or serious violation  
of the statutory rules. The courts cannot sit as an appellate  
authority or an umpire to examine the recommendations of the  
Selection Committee like a Court of Appeal. This discretion has  
been given to the Selection Committee only, and the courts rarely  
F sits as a Court of Appeal to examine the selection of a candidate;  
nor is it the business of the Court to examine each candidate and  
record its opinion. Since the Selection Committee constituted  
by the UPSC is manned by experts in the field, one have to trust  
their assessment unless it is actuated with malice or bristles with  
mala fides or arbitrariness. [Para 16] [722-F, G]

G 5. In the matter on hand, neither the decision nor the  
decision making process was actuated with malice, and no grave  
mistake was committed by the Selection Committee leading to  
arbitrariness. The selection has been made rationally. The  
applicant-respondent no.1 was duly considered by the Selection  
Committee. However, on an overall assessment of her service  
H

records, her name was not included in the select list due to the statutory limit of its size and as officers with higher grading were available for inclusion in the select list as per the provisions of Regulation 5(5) of the Regulations. [Para 19] [724-C-D] A

*R.S. Dass v. Union of India and Others (1986) Suppl. SCC 617 : [1987] SCR 527 ; UPSC v. K. Rajaiah and Others (2005) 10 SCC 15 ; Union of India v. A.K. Narula (2007) 11 SCC 10 : [2007] 7 SCR 262 ; M. V. Thimmaiah v. UPSC (2008) 2 SCC 119 : [2007] 13 SCR 624 – referred to.* B

Case Law Reference C

[1987] SCR 527	referred	Para 7
(2005) 10 SCC 15	referred	Para 16
[2007] 7 SCR 262	referred	Para 17
[2007] 13 SCR 624	referred	Para 18

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10854 of 2014. D

From the Judgment and Order dated 24.06.2013 of the High Court of Judicature at Madras in Writ Petition No. 15367 of 2010.

Ms. Binu Tamta, Adv. for the Appellant. E

R. Venkatramani, Sr. Adv., Nitish Gupta, Chandra Prakash, Dr. Ritu Bhardwaj, Yashraj Bundela, Radhakrishnan, M. Yogesh Kanna, Advs. for the Respondents.

The Judgment of the Court was delivered by

**MOHAN M. SHANTANAGOUDAR, J.** 1. This appeal is directed by the Union Public Service Commission (for short, 'UPSC') against the judgment and order dated 24.06.2013, passed by the High Court of Judicature at Madras in Writ Petition No. 15367 of 2010, whereby the High Court has dismissed the aforesaid writ petition filed by the UPSC and confirmed the order of the Central Administrative Tribunal, Chennai Bench, Chennai (for short, 'CAT'), dated 07.04.2010 directing the official respondents to consider the name of the first respondent herein for appointment to the IPS by taking into account the service records for the period from 1.4.2003 to 31.3.2008, and appoint her to the IPS by notionally treating such appointment with effect from F  
G  
H

A the date of notification, i.e., 5.5.2009, and also by giving appropriate place of seniority to the first respondent amongst the private respondents.

2. Brief facts leading to this appeal are:

B The first respondent (contesting respondent) was appointed as Deputy Superintendent of Police in the State of Tamil Nadu; she joined for duties on 26.05.1997; she was promoted as Superintendent of Police on 10.06.2006 and has worked at different places on the said post. In the seniority list of State Police Service (for short 'SPS') Officers, the first respondent, at the given point of time, stood at serial No.11. Since the fourth person in the seniority list was over-aged, the first respondent C was effectively considered at serial No.10 in the seniority list for the purpose of this case. For the year 2008, there were ten vacancies for SPS to the Indian Police Service (for short, 'IPS'), which is an All India Service. The appointment by promotion to the IPS is governed by the IPS (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the 'Regulations'). The zone of consideration is three times the D number of vacancies and, therefore, at least thirty names ought to be considered for appointment to the IPS. The names of the first thirty officers in the SPS including the name of the first respondent, were placed before the Selection Committee for consideration for appointment to the IPS for the year 2008. The name of the first respondent was E considered at serial No. 9 in the zone of consideration. On an oral assessment of her service records, the Selection Committee graded the first respondent as "Good". On the basis of this grading, she could not be included in the select list of 2008 due to the statutory limit of its size and the availability of officers with higher grading for inclusion in the select list. Though, at an earlier point of time, it was found that disciplinary F proceedings were pending against Srimati V. Jayashree (respondent no.6 herein), subsequently on being cleared by the disciplinary authority, the Government of India issued a notification appointing Srimati V. Jayashree also to the IPS. Thus, all the ten vacancies were filled by the Government of India including that of respondent no.6 herein.

G 3. Aggrieved by the non-inclusion of her name in the select list of 2008, the first respondent filed Original Application No. 441 of 2009 before the CAT, inter alia contending that on valid assessment of her service records, the Selection Committee ought to have graded her as "Outstanding" or at least "Very Good", and in that event she would have

H

been selected for appointment to the IPS. She also contended that her service records are better than those of almost all the private respondents and that the Selection Committee had acted in an arbitrary manner in making the selection by superseding her for appointment to the IPS. A

4. The CAT allowed the Original Application No. 441 of 2009 filed by the first respondent herein by its judgment dated 07.04.2010. The judgment of the CAT is confirmed by the High Court of Judicature at Madras in Writ Petition No. 15367 of 2010, vide impugned judgment and order dated 24.06.2013. The judgments of the CAT and the High Court are called in question in this appeal by the UPSC. B

5. There cannot be any dispute that the UPSC discharges the functions and duties assigned to it under Article 320 of the Constitution. By virtue of the provisions in the All India Services Act, 1951, separate recruitment rules have been framed for the IAS/IPS/IFS. In pursuance of Sub-rule (1) of Rule 9 of the IPS (Recruitment) Rules, 1954, the IPS (Appointment by Promotion) Regulations, 1955 have been framed. The method of appointment is provided in Regulation 5, which reads thus: C  
D

“5. PREPARATION OF A LIST OF SUITABLE OFFICERS:-

5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission; E  
F

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when;

- a. there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the state Police Service under rule 9 of the recruitment rules; or G

H

A                    b. the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under rule 9 of the Recruitment Rules;

B                    Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet as on the 31<sup>st</sup> December of each year.

C                    EXPLANATION:- In case of Joint Cadres, a separate select list shall be prepared in respect of each State Police Service.

D                    5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Police Services in the order of seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).

E                    Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers;

F                    Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded;

G                    Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of January of the year for which the Select List is prepared he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

H

Provided also that in respect of any released Emergency Commissioned or Short Service Commissioned officers appointed to the State Police Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the 1<sup>st</sup> day of January of the year for which the Select List is prepared, in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

EXPLANATION: The powers of the State Government under the third proviso to the sub-regulation shall be exercised in relation to the members of the State Police Service of constituent State, by the Government of that State.

5(2)(A) Deleted.

5(3) The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared:

Provided that a member of the State Police Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years.

Provided further that a member of the State Police Service who has attained the age of fifty four years on the first day of January of the year for which the Select List is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of “January of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation(1)”.

H

- A 5(3)(A) The Committee shall not consider the case of such member of the State Police Service who had been included in an earlier select list and :
- a) had expressed his unwillingness for appointment to the service under regulation 9;
- B Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his unwillingness to be considered for appointment to the service;
- b) was not appointed to the service by the Central Government under regulation 9 (a).
- C 5(4) The Selection Committee shall classify the eligible officers as “Outstanding”, “Very Good”, “Good” and “unfit” as the case may be on an overall relative assessment of their service records.
- D 5(5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as “Outstanding” then from amongst those similarly classified as “Very Good” and thereafter from amongst those similarly classified as “Good” and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.
- E Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.
- F Provided further that while preparing year wise select lists for more than one year pursuant to the 2<sup>nd</sup> proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.
- G
- H

EXPLANATION I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be. A

EXPLANATION II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential. B  
C

5 (6) Omitted.

5 (7) Deleted.”

6. Ms. Binu Tamta, learned counsel representing the appellant herein, while taking us to the material on record, submits that the CAT, as well as the High Court, has fallen into error by virtually assessing the performance of the first respondent as an appellate authority and that too wrongly; they have erred in taking into consideration the Annual Confidential Reports from 1.4.2003 to 31.03.2008; the relevant Annual Confidential Reports to be considered for the purpose of the selection in question were from 1.4.2002 to 31.03.2007, the Selection Committee has rightly taken into consideration the Annual Confidential Reports of those years only, and therefore the impugned judgments are bad in law; the selection is to be made by the Selection Committee not only based on Annual Confidential Reports in respect of the concerned officer but also based on other relevant factors including the examination of service records of the officer in comparison to the other officers in the eligibility list/zone of consideration and on the basis of overall relative assessment. D  
E  
F

Contrary to the afore-mentioned procedure prescribed and being followed throughout, the CAT, as well as the High Court, has decided the matter purely on the basis of the grading found in the Annual Confidential Reports of the first respondent, and that too of the year 01.04.2003 to 31.03.2008. G

7. Per contra, Shri Venkatramani, learned senior counsel argued in support of the judgments of the CAT as well as the High Court contending that the service record of the first respondent has been mostly H

A “Outstanding” throughout till 31.03.2008, or even till 31.03.2007; the first respondent ought to have been graded as “Outstanding” or at least “Very Good”; absolutely no reasons are assigned to supersede the first respondent by making the appointment of her juniors in preference to the first respondent; the other private respondents were graded as “Very Good” but none of the six juniors selected had the “Outstanding” grading

B in their service records, and some of them did not even have the “Very Good” grading; the Selection Committee and the UPSC have not objectively evaluated the first respondent in accordance with the regulations, and hence the list prepared which was impugned before the CAT was rightly modified with a direction to appoint the first respondent

C in IPS. Relying upon the judgment in the case of **R.S. Dass vs. Union of India and others 1986 (Supp) SCC 617**, he contended that Regulation 5 examines the role of seniority in the process of selection, and importance and primacy was given to merit. The categorisation of meritorious candidates is done on the basis of service records including Confidential Character Roll as mentioned by senior officers holding high

D positions. He further contended that it cannot be said now-a-days, if one is aware of the facts and currents of life, that simply because categorization and judgment of the service records of officers are in the hands of senior officers, it is a sufficient safeguard. There has been considerable erosion in the intrinsic sense of fairness and justice in some

E of the senior officers. From instances of the conduct of many, some of the senior officers and men in high position, it cannot be said that such thinking on the subject of erosion is not wholly unjustified. Selection on merits confers wide discretion on the authority making the selection, and in the absence of reasons there would be no objectivity, and the members of the State Civil Service might receive discriminatory treatment by the

F Selection Committee. On these, among other things, he prayed for dismissal of the appeal.

8. This Court in the case of **R. S. Dass vs Union of India**(*supra*) has observed that in order to rule out any grievance, actual or fancied, some objective basis for categorisation in the manner indicated should

G be laid down. If such objective basis is made known, and after categorisation the selection of junior officers in preference to senior officers is made, the Selection Committee need not state reasons, and the same would not be violative of the canons of justice. In order to ward off any suspicion in the minds of the candidates, this Court suggested

H

to the government and the authorities concerned that there should be some basis for the categorisation of the officers, and such basis should be objective and not merely subjective evaluation, and furthermore such basis should be formulated in the form of guidelines. Pursuant to such observations made by this Court, the Central Government framed guidelines which have to be followed by the Selection Committee and the UPSC. The relevant parts of the Guidelines, as on 12.03.2008, are as under:

“2.1 For preparing the Select Lists, the crucial date for reckoning the eligibility of officers is taken with respect to the first day of the “year” as defined under Regulation 2(1)(l) of the IAS (Appointment and Promotion) Regulations, and which is presently the calendar year. The year in which the Selection Committee actually meets {i.e. SCM year} is co-terminus with the definition under Regulation 2(1)(l). Further, in these Guidelines, while reference is made to the provisions of the IAS (Appointment by Promotion) Regulations, the corresponding provisions of the IPS & IFS Regulations would be applicable while preparing the IPS & IFS Select Lists respectively.

2.2 As per the provisions of the Promotion Regulations, where year-wise Select Lists are being prepared by the Selection Committee, the crucial date for determining the eligibility of the officers is taken as on 1<sup>st</sup> January of the Select List year and the notional due date for preparing the Select List of an earlier year is taken as 31<sup>st</sup> December of that Select List year for reckoning the availability of eligible officers. For the Select List of the current year, the availability of eligible officer is reckoned on the date of the Selection Committee Meeting.

2.3 In accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee has to classify the eligible officers as ‘Outstanding’, ‘Very Good’, ‘Good’ or ‘Unfit’ as the case may be on an overall relative assessment of their service records (i.e. ACRs and the documents kept therein by the competent authority). For making an overall relative assessment, the committee will not depend solely on the grading recorded by the reporting/reviewing/accepting authority but will make its independent assessment of the service records of the eligible officers as per the procedure indicated below.

- A 3.1 The Selection Committee would go through the service records of each of the eligible officers, with special reference to the performance of the officer during the last five years, preceding the year for which the Select List is prepared and after deliberation will record the assessment of the Committee in the Assessment Sheet comprising the Assessment Matrix [Officer x Year-wise assessment] and the column for Overall Assessment of the officers.
- B
- C 3.2 As the crucial date for preparation of the Select List is 1<sup>st</sup> January of the year of the Select List, the ACRs upto the year ending 31<sup>st</sup> March (where ACRs are written on a financial year-wise basis) or 31<sup>st</sup> December (where ACRs are written on calendar year-wise basis) of the year preceding the year of the Select List are to be taken into consideration by the Selection Committee.
- D 4.1 The Selection Committee will go through the records of the eligible officers and make their assessment after deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing Officer/ Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. The Selection Committee would take into account orders regarding appreciation for the meritorious work done by the concerned officers. Similarly it would also keep in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged.
- E
- F 4.2 The Selection Committee would not be guided merely by the overall grading, if any, that may be recorded in the ACRs but would make its own assessment on the basis of the entries in the ACRs because sometimes the overall grading in an ACR may be inconsistent with the grading under various parameters or attributes. Further, if the Reviewing Authority or the Accepting Authority, as the case may be, has differed from the assessment made by the reporting officer or the Reviewing Authority, as the case may be, the remarks of the latter authority should be taken as the final remarks for the purpose of assessment provided it is
- G
- H

apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing Authority are complementary to each other and does not have the effect of overruling the other, then the remarks should be read together and final assessment made by the Selection Committee as indicated in para 4.1. This is also in accordance with the DPC guidelines of DOP&T, as contained in its OM No. 22011/5/86-Estt.(D) dated 10.04.1989 as amended from time to time.

4.4 While finalising the Overall Assessment of the officers [para 3.1 above refers], an officer shall be graded as:

A. "Outstanding", if in the opinion of the Selection Committee, the service records of the officer reflect that he is of outstanding merit possessing exceptional attributes and abilities and these characteristics are reflected in at least four of the ACRs for the last five years including the ACR for the last year (i.e. upto the preceding year for which the Select List is prepared) provided he is graded at least "Good" in the ACR of the remaining year. While grading an officer as "Outstanding", the following indicative guidelines would be observed.

(i) Whilst the overall grading in the ACRs will have its relevance, however, in order to have a final view, it will be essential to carefully peruse and assess all the individual attributes/columns in the ACRs like, Work Performance, Targets Achieved, Supervision, Managerial capabilities, personality traits etc. before the Committee decides to grade an officer as 'Outstanding'.

(ii) Thus, there should be an in-depth analysis of the performance of the officer before he is rated as 'Outstanding'. There should also be consistency in the grading given by different Committees in different years.

(iii) Considering the fact that such 'Outstanding' officers are going to supersede other officers, there is a greater need to ensure that such an officer has met the stringent norms of being graded as 'Outstanding'. For such purposes, the ACRs of the concerned officer should elaborate his

A  
B  
C  
D  
E  
F  
G  
H

A significant achievements or exceptional nature of work in the areas of law and order, disaster management, implementation of developmental schemes etc.

(iv) Postings are not within the competence of an officer for which he ought not to be discriminated. However, the Committee may also like to examine the various positions that such 'Outstanding' officers have occupied and the nature of duties performed by him over the years in the process of assessing the officer.

B

C

B. "Very Good", if in the opinion of the Selection Committee, his ACRs reflect that the officer has done highly meritorious work and possesses positive attributes and these characteristics are reflected in at least four of the last five ACRs (i.e. upto the preceding year for which the Select List is prepared) provided he is graded at least "Good" in the ACR of the remaining year.

D

C. "Good", if in the opinion of the Selection Committee, the service records reflect that the officer's performance is generally satisfactory and he is considered fit for promotion and those characteristics are reflected in each of the ACRs for the last five years (i.e. up to the preceding year for which the select list is to be prepared).

E

D. An officer may be categorised as "Unfit" if his reports are lacking any positive merit or whose performance is not generally satisfactory or if there are entries in some of the latest ACRs which adversely reflect on his suitability for promotion or if the ACRs contain orders of penalty which in the opinion of the Selection Committee would render the officer unsuitable for promotion."

F

G

Paras 2.1 and 2.2 of the Guidelines are relating to the fixing of crucial dates for determining the eligibility of the officers i.e. 1<sup>st</sup> January of the select list year. Para 2.3 declares that the overall relative assessment will not solely depend on the grading recorded by the Reporting/Reviewing/Accepting Authority, but the Selection Committee will make its own independent assessment of the service records. Para 3.1 deals with scope of assessment. The Selection Committee will

H

consider the performance of each of the officers, i.e., service records during the last five years, preceding the year for which the selection list is prepared. Para 3.2 states that as the crucial date for reckoning the eligibility of the officers is 1<sup>st</sup> January of the select list year, the Annual Confidential Reports up to the year ending 31<sup>st</sup> March of the year preceding the year of selection list are to be taken into account. Para 4.1 prescribes the procedure for assessment. The said guideline mandates that the Selection Committee shall go through all the relevant records and make its assessment after deliberating on the quality of the officer as indicated in various columns in the Annual Confidential Reports, and then finally arrive at the conclusion. Para 4.2 specifies that the Selection Committee would not be guided merely by the overall grading in the Annual Confidential Report, but would make its own assessment on the basis of all entries in the Annual Confidential Report, because sometimes the overall grading in an ACR may be inconsistent with the grading under various parameters or attributes. This virtually means that the Selection Committee will not act as a post office but will take a decision on due application of mind. Para 4.4 mentions the overall assessment/categorisation of officers. It states that while finalising the overall assessment of the officers as per para 3.1, an officer shall be graded as “Outstanding”, “Very Good”, “Good” and “Unfit”. The para states in detail as to how such grading should be assigned, and on what basis.

9. The Regulations as well as the Guidelines are to be applied jointly at the time of making the selection list. In our considered opinion, the Regulations and the Guidelines jointly prescribe adequate procedure and they form a complete code in themselves. In accordance with the provisions of the Regulations and Guidelines, the Selection Committee, presided over by the Chairman/Member of the UPSC, makes a list for the selection of SPS Officers for promotion to the IPS. As per Regulation 5(1) of the Regulations, the number of members of the SPS to be included in the Select List of a particular recruitment year for promotion to the IPS, is determined by the Government of India (Ministry of Home Affairs) in consultation with the State Government concerned, keeping in mind the number of substantive vacancies as of 1<sup>st</sup> January of the year the Selection Committee meets. Thereafter, the State Government forwards a proposal to the UPSC along with the Seniority List, an Eligibility List (up to a maximum of three times the number of vacancies) of the SPS Officers, Integrity Certificates, certificates regarding disciplinary/criminal

A  
B  
C  
D  
E  
F  
G  
H

- A proceedings, certificates regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers.

On receipt of the afore-mentioned records from the State Government, the UPSC places such records before the Selection Committee when the Selection Committee meets for selection for the recruitment year. In accordance with the provisions of Regulation 5(4) of the Regulations, the Selection Committee classifies the eligible SPS Officers included in the zone of consideration as “Outstanding”, “Very Good”, “Good” or “Unfit”, as the case may be, on an overall relative assessment of their service records. Thereafter, the Selection Committee prepares a list as per the provisions of Regulation 5(5) of the Regulations by including the required number of names first from the officers finally classified as “Outstanding”, then from amongst those similarly classified as “Very Good” and thereafter from amongst those similarly classified as “Good”. As per the provisions of Regulations 6 and 6A, the State Government and the Central Government are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Government and the Central Government and the requisite records received from the State Government or the Central Government, the Commission will take a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7. Appointments to the IPS are made from the select list by the Government of India (Ministry of Home Affairs). From the afore-mentioned, it is clear that complete procedure is prescribed for selection and appointment to the IPS cadre from the SPS.

- F 10. As mentioned *supra*, it is the contention of the first respondent that the Selection Committee ought to have graded her as “Outstanding” or at least “Very Good”, on an overall relative assessment of her service records, and consequently she would have been selected for the year 2008. It is her further contention that on a comparative assessment of her service records with those of the private respondents, who were junior to her, she could not have been excluded from the selection list as her service records are better than those of almost all of them. Thus, according to her, the Selection Committee has acted expressly in an arbitrary manner in the said process of selection by superseding the first respondent.

H

11. The CAT and the High Court have virtually assessed the performance of the first respondent afresh, mainly taking into account the service records for the period from 1.4.2003 to 31.03.2008, and have directed the official respondents to appoint her to the IPS by notionally treating such appointment with effect from the date of notification, i.e., with effect from 5.5.2009 by giving her appropriate place of seniority amongst the private respondents.

12. In our considered opinion, the error that crept into the findings of the Tribunal, as confirmed by the High Court, was on account of the basic fact that they erred in not properly appreciating the span/scope of selection by a Selection Committee. For the purpose of consideration of a candidate for selection to the IPS in respect of the select list of 2008, the Annual Confidential Reports from 1.4.2003 to 31.03.2008 could not have been taken into account by the Selection Committee, as observed by the CAT and the High Court. As per para 3.1 of the Guidelines, the assessment of the eligible officers is with special reference to the performance of the officer during the last five years, preceding the year for which the select list is prepared. As the crucial date for determining the eligibility of the officers is taken 1<sup>st</sup> January of a particular year for which the selections are being made, the Annual Confidential Reports upto the year ending 31<sup>st</sup> March of the year preceding the year of selection list are to be taken into account as per para 3.2 of the Guidelines. In the matter on hand, the selection list was to be prepared for the year 2008. Thus, the crucial date for reckoning the eligibility of the officers in the matter on hand is 1<sup>st</sup> January, 2008. Accordingly, the Annual Confidential Reports upto the year ending 31<sup>st</sup> March, 2007 i.e., the year preceding the year of the selection list, are to be taken into account. As mentioned *supra*, the Selection Committee will consider the performance of the officer i.e., the service records including the last five years, preceding the year for which the selection list is to be prepared as per para 3.1 of the Guidelines. Accordingly, only the Annual Confidential Reports of five years upto the year ending 31<sup>st</sup> March, 2007 are relevant i.e. Annual Confidential Reports from 01.04.2002 to 31.03.2007 needed to be taken into account at the time of selection. The same was being done by the Selection Committee in the matter on hand. Hence, no fault can be found. It seems that the CAT, as well as the High Court, has misdirected in coming to the wrong conclusion that Annual Confidential Reports from 1.4.2003 to 31.03.2008 ought to have been taken into consideration inasmuch as such conclusion is against the Regulations & the Guidelines.

A 13. The CAT and the High Court have mainly relied on the grading  
given in the Annual Confidential Reports of the officers at the State  
level while coming to their conclusion. But, in terms of the Regulations  
and the Guidelines framed therein, for categorising the officers, the  
Selection Committee was required to consider the overall relative  
assessment of the service records of each of the eligible officers. The  
B Selection Committee is not guided merely by the grading recorded in the  
Annual Confidential Reports but makes its own assessment on the basis  
of the quality of the officer as indicated in various columns recorded by  
the Reporting/Reviewing/Accepting Authority thereunder. In other words,  
the Selection Committee is not required to compulsorily accept the  
C gradings given in the Annual Confidential Reports as it would amount to  
merely acting as a post office and the whole process would be nothing  
but a farce. The grading recorded in the Annual Confidential Report of  
a particular year may differ from the grading arrived at by the Selection  
Committee in respect of the said Annual Confidential Report depending  
D on all relevant material.

14. Learned counsel for the UPSC, drawing the attention of the  
Court to the contents of the affidavit filed by the UPSC before the CAT,  
submits that the Selection Committee also reviews and determines the  
overall grading recorded in the Annual Confidential Reports to ensure  
that the overall grading in the Annual Confidential Reports is not  
E inconsistent with the grading/remarks under various specific parameters  
or attributes. It is brought to the notice of the Court that the Selection  
Committee takes into account orders regarding appreciation for  
meritorious work done by the officers concerned and also keeps in view  
orders awarding penalties or any adverse remarks duly communicated  
F to the officers, which even after due consideration of their representation  
by the suitable forum, are not expunged. The afore-mentioned norms  
are uniformly applied to all the States/Cadres in the matter of induction  
into the All India Services.

15. The Selection Committee consists of experts in the field. It is  
G presided over by the Chairman or a Member of the UPSC and is duly  
represented by the officers of the Central Government and the State  
Government who have expertise in the matter. In our considered opinion,  
when a High Level Committee or an expert body has considered the  
merit of each of the candidates, assessed the grading and considered  
their cases for promotion, it is not open to the CAT and the High Court to  
H

sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the Courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the Court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body, i.e., the Selection Committee. The Courts have very limited scope of judicial review in such matters.

We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Acton "Power tends to corrupt, and absolute power corrupts absolutely". The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by the UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinised the experience, Annual Confidential Reports and other relevant factors which were required to be considered before selecting the eligible candidates for the IPS. The Selection Committee had in fact scrutinised the merits and demerits of each candidate taking into consideration the various factors as required, and its recommendations were sent to the UPSC. It is the settled legal position that the Courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The

A  
B  
C  
D  
E  
F  
G  
H

A constraints – self-imposed, undoubtedly – of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

16. No doubt, the Selection Committee may be guided by the classification adopted by the State Government but, for good reasons, the Selection Committee may evolve its own classification which may be at variance with the grading given in the Annual Confidential Reports. As has been held by this Court in the case of **UPSC vs. K. Rajaiah and others (2005) 10 SCC 15**, the power to classify as “Outstanding”, “Very Good”, “Good” and “Unfit” is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State authorities in the Annual Confidential Reports is not binding on the Selection Committee. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of grading at variance with that of the State Government, reasons be recorded. But having regard to the nature of the function and the power confined to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government’s decision. It is relevant to note that no allegations of malice or bias are made by the first respondent at any stage of the proceedings against the Selection Committee or the UPSC.

This Court has repeatedly observed and concluded that the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a Court of Appeal. This discretion has been given to the Selection Committee only, and the courts rarely sits as a Court of Appeal to examine the selection of a candidate; nor is it the business of the Court to examine each candidate and record its opinion. Since the Selection Committee constituted by the UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness.

17. In the case of **Union of India vs. A.K. Narula** reported in **(2007) 11 SCC 10**, this Court in similar circumstances observed thus:

H

“15. The guidelines give a certain amount of play in the joints to DPC by providing that it need not be guided by the overall grading recorded in CRs, but may make its own assessment on the basis of the entries in CRs. DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness, that the selection calls for interference. Where DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by DPC, the court will not interfere (vide *SBI v. Mohd. Mynuddin* [(1987) 4 SCC 486 : 1987 SCC (L&S) 464 : (1987) 5 ATC 59] , *UPSC v. Hiranyalal Dev* [(1988) 2 SCC 242 : 1988 SCC (L&S) 484 : (1988) 7 ATC 72] and *Badrinath v. Govt. of T.N.* [(2000) 8 SCC 395 : 2001 SCC (L&S) 13] ). The Review DPC reconsidered the matter and has given detailed reasons as to why the case of the respondent was not similar to that of R.S. Virk. If in those circumstances, the Review DPC decided not to change the grading of the respondent for the period 1-4-1987 to 31-3-1988 from “good” to “very good”, the overall grading of the respondent continued to remain as “good”. There was no question of moving him from the block of officers with the overall rating of “good” to the block of officers with the overall rating of “very good” and promoting him with reference to DPC dated 13-6-1990. In the absence of any allegation of mala fide or bias against DPC and in the absence of any arbitrariness in the manner in which assessment has been made, the High Court was not justified in directing that the benefit of upgrading be given to the respondent, as was done in the case of *R.S. Virk.*”

18. In the case of **M.V. Thimmaiah vs. UPSC** reported in (2008) 2 SCC 119, this Court, after considering various judgments on the subject, observed thus:

“30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to

A

B

C

D

E

F

G

H

- A the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good.
- B If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions. ....”
- C 19. In the matter on hand, we find that neither the decision nor the decision making process was actuated with malice, and no grave mistake was committed by the Selection Committee leading to arbitrariness. We find that it is not a case of pick and choose, but the selection has been made rationally. The applicant-respondent no.1 was duly considered by
- D the Selection Committee. However, on an overall assessment of her service records, her name was not included in the select list due to the statutory limit of its size and as officers with higher grading were available for inclusion in the select list as per the provisions of Regulation 5(5) of the Regulations.
- E 20. So far as the case of respondent no.6 – Srimati V. Jayashree is concerned, initially some disciplinary proceedings were pending against her. Though the disciplinary proceedings were pending, the name of Srimati V. Jayashree, respondent no.6 herein, on an overall relative assessment of her service records, was provisionally included in the select list, subject to clearance in the disciplinary proceedings. Since the
- F State Government had certified the integrity of the said officer, in view of the fact that the disciplinary proceedings ended with a negative report, her name was finally included in the select list. Such procedure was adopted by the Selection Committee in accordance with the first proviso to Regulation 5(5) of the Regulations, which reads thus:
- G “Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment
- H to the service has come to the notice of the State Government.”

The proviso to Regulation 5(5) specifically provides for inclusion of officers in the select list against whom departmental/criminal proceedings are pending, their inclusion in the select list remains provisional, subject to clearance of departmental/criminal proceedings. However, their appointments to the IPS can be made only after their names are made unconditional in the select list, in accordance with the second proviso to Regulation 7(4) of the Regulations, which reads thus:

“7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the Select List by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later:

xxx                      xxx                      xxx

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as “Unconditional”, to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of forty five days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force.”

21. Since the name of Srimati V. Jayashree, respondent no.6 herein, was provisionally included in the select list and was made unconditional in the select list after her exoneration in the disciplinary proceedings, she was appointed in the 2008 batch.

22. Having regard to the entire material on record, we do not find any ground to agree with the reasons assigned by the CAT and the High Court while coming to their conclusion. The High Court has strangely made out a fresh additional point in favour of the first respondent by observing that, on perusal of the records maintained by the Selection Committee, the High Court was not able to find the grading of the officers

- A recorded by the State Government. In other words, the High Court was of the view that since the records submitted before the Selection Committee did not include the grading of the officers recorded by the State Government, the Selection Committee did not have an opportunity to take into account the grading recorded by the State Government while coming to its conclusion. We do not agree with the said observations.
- B The CAT while deciding the matter has taken into account all the records including the grading of the State Government, which means such records were very much available at the time of consideration before the Selection Committee, as well as at the time of decision by the CAT. In this context, it is brought to the notice of the Court by the learned counsel representing
- C the UPSC that after the selection process is over, the Annual Confidential Reports maintained by the State Government with the grading given to the officers by the State Government were sent back to the State Government, since those records belong to the State Government; the rest of the records remained with the UPSC. The records which were available with the UPSC were produced before the High Court. However,
- D the records pertaining to the grading of the officers recorded by the State Government could have been secured by the High Court from the State Government. Instead of securing records from the State Government, the High Court has strangely observed that such records were not available before the Selection Committee. It is but natural for
- E the Selection Committee to send back the records to the State Government after the selection process is ended and appointments are made.

23. In view of the above, the judgments of the CAT dated 07.04.2010, and the High Court of Judicature at Madras dated 24.06.2013, stand set aside.

- F 24. Accordingly, the instant civil appeal is allowed. There shall be no order as to costs.