SUPREME COURT OF INDIA

Badrinath

Vs.

Govt. of T.N.

C.A.No.2453 of 1987

(M. Jagannadha Rao and U. C. Banerjee, JJ.)

29.09.2000

JUDGEMENT

M. JAGANNADHA RAO, J.:-

1. This appeal has been preferred against the judgment of the Central Administrative Tribunal dated 10-6-1986 in T.A.Nos. 45 and 137 of 1985. By the said judgment, the said TAs. were dismissed. Initially, the appellant had filed Writ Petitions 1343 and 1344 of 1981 in the High Court of Madras and the said petitions were transferred to the Tribunal.

2. The appellant prayed in the writ petition, the quashing of the order dated 7-8-1980, passed by the Department of Personnel and Administrative Reforms, Government of India (2nd respondent) rejecting his appeal against non-promotion to super-time scale and for the issue of a writ of mandamus to direct the Government of Tamil Nadu (1st respondent) and the Government of India, to promote the writ petitioner w.e.f. 16-1-77 to the super-time scale, being the date on which his junior was promoted to the said scale. Respondent No. 3 in the petition was Mr. V. Karthikeyan, IAS and respondent No. 4, Mr. C.V.R. Panikar, both former Chief Secretaries of Tamil Nadu. Mala

fides were imputed to both of them. The impugned order of the Central Govt. dated 7-8-80 was an order rejecting the appellant's appeal dated 10-2-78 under Rule 16 of the All India Services (Discipline and Appeal) Rules, 1963.

3. The following are the facts :

The appellant was appointed in the Indian Administrative Service on 7-5-1957 and was fixed in the Junior scale on 7-5-57. He was promoted to the Senior scale w.e.f. 29-1-62. He was promoted to the Selection grade w.e.f. 1-11-72, although some of his juniors were promoted to the selection grade w.e.f. 15-5-1971. His name was considered initially for promotion in the super-time scale on 30-8-1976 along with his batchmates by a Committee consisting of Mr. V. Kathikeyan, Chief Secretary to Government (3rd respondent), Mr. S. Viswanathan, the then First Member, Board of Revenue and Mr. C.V.R. Panikar, the Second Secretary to Government. The Committee recommended his supercession on the ground that there were displinary cases pending. But the Advisor to the Government directed that the promotions may stop with 1957 list. At that time therefore, the appellant was not superseded.

4. Later on, the Committee consisting of Sr. C.V.R. Panikar (Chief Secretary) (4th respondent), Mr. S. Viswanathan and Mr. K. V. Ramanathan met on 9-6-77 and 28-6-1977 and found the appellant not suitable for promotion to super-time scale. It was again the case of the State that at that time disciplinary cases were pending against the appellant. The Committee observed that out of four cases, one was disposed of with a decision not to proceed with further action. Of the remaining three, it was said that in one a 'censure' was recommended to the UPSC. The other two cases were pending. In one of these two, the Inquiry Officer had recommended reduction to maximum of the senior time scale for 2 years. On these grounds, appellant was not recommended on 28-6-77 but it was stated that as soon as the two disciplinary cases were over, the matter could be reconsidered. The appellant's juniors were promoted. It was against the said order that the appellant filed appeal on 10-2-78 to the Central Govt.

5. In the appeal dated 10-2-78 filed against supercession by the Screeing Committee on 9-6-77 and 28-6-77, the Central Government passed an order on 5-6-78 (Letter No. 11018/5/78-AIS III) (P. 156 of the file). It observed that the Committee which met on 9-6-77 and 28-6-77 did not consider his fitness on the basis of C.R. record as a whole and general assessment of work. The Committee was in error inasmuch as it decided the case of the appellant only on the basis of pendency of his disciplinary cases and that the above action of the Committee was no in accordance with the instructions of the Government of India dated 27-12-75. The Committee should have assessed his suitability on the basis of CRs. and placed the findings in a 'sealed cover', to be opened after the disciplinary proceedings were over. On this basis, an order of remand was passed. The Central Government also subsequently directed a Joint Screening Committee to be constituted.

6. After the remand order dated 5-6-79, the matter went back to the State Government. In its letter dated 27-7-79, the State Government gave its concurrence for constituting a Joint Screening Committee of representatives of the State Govt. and Government of India. The State Govt. then constituted a Committee on 20-8-79 consisting of Sri V. Karthikeyan, Chief Secretary, Tamil Nadu (3rd respondent), Sri. K. S. Sivasubrahmanyam, First Member, Board of Revenue, and Sri S. P. Srinivasan, Second Secretary to Government of Tamil Nadu. The Government of India's representatives were Sri Maheswari Prasad, IAS (Secretary, Department of Personnel and Administrative Reforms, New Delhi), and Sri P. R. Dubash, IAS (Establishment Officer, Department of Personnel and Administrative Reforms, Minister of Home Affairs, New Delhi). This Committee met on 30-8-79. Because the fourth disciplinary case regarding expenditure of Rs. 20,807 on furnishing office without prior sanction was pending, (the other three having been dropped) the Committee placed its assessment of the CRs upto 31-3-77 in a sealed cover. It also considered the CRs. from 1-4-77 till 30-8-79 for promoting him to super-time scale in 1979 and placed its recommendations in another sealed cover. These two sealed covers were to be opened after conclusion of the fourth disciplinary case.

7. Ultimately, in the said fourth disciplinary case, the State Govt. issued G.O. No. 859 Public (Special A) Department on 8-4-80 imposing a punishment of 'censure'. It related to the disciplinary inquiry relating to expenditure of Rs. 20,807 in painting and furnishing the appellant's office room without prior sanction. The order stated that earlier the State Govt. had provisionally opined that 'censure' ought to be awarded to the appellant and sought the approval of the UPSC, that the UPSC had finally "advised" imposition of penalty of censure and that the State Govt. was therefore imposing the said penalty. This order dated 8-4-80 was signed by Sri C.V.R. Panikar, Commissioner of Administrative Reforms (4th respondent).

8. The two sealed covers containing the recommendation of the Screening Committee dated 30-8-79 were then opened after the conclusion of the fourth disciplinary case. It was found that the Committee had not found the appellant fit upto 30-8-79 for the super-time scale.

9. On the basis of the contents inside the covers and in the light of the 'censure' awarded in the disciplinary case, a decision had to be taken in regard to the appellant's promotion to super-time scale.

10. The recommendations contained in the sealed covers were then put up before the Chief Secretary, Sri V. Karthikeyan on 19-4-80. He felt that he should not handle these files any more obviously because of a Court case filed by the appellant against him. He endorsed on the file :

"S. S. may please handle this and all other papers relating to this officer, in view of the special (circumstances) well known to all of us."

On this, Sri Srinivasan endorsed on 25-4-80 :

"The Committee's recommendations may be accepted."

11. The Committee's recommendations in the two sealed covers were thus accepted by the Government. The appellant was not found fit for promotion to super-time scale. The Government of Tamil Nadu then intimated the said decision to the Central Government on 22-5-80, so that the appellant's appeal dated 10-2-78 against supercession in 1977 could be finally disposed of.

12. The Government of India, on receipt of the State Government's letter noted that 'censure' was awarded in the fourth disciplinary case. It noted the recommendations of the Joint Screening Committee dated 30-8-79 as accepted by the State Govt. It then rejected the appellant's appeal as per office note dated 11-6-80. The same was signed by the Minister on 17-7-80. The State Government was intimated on 7-8-80. The factum of the said order was intimated to the appellant by the State Govt. on 4-9-80. These orders were questioned in the present proceedings.

13. In the meantime, on 28-6-77 the Governor of Tamil Nadu, during the President's rule had dropped all the four disciplinary cases. In spite of that, according to the appellant, the fourth case was however kept pending illegally. Further the adverse remarks of 1973-77 which were based only on the allegations in these four disciplinary cases were bound to be deleted as soon as the Governor dropped the four cases, but the deletion was delayed and meanwhile the case of the appellant was considered by the Screening Committee on 30-8-79 as above stated and he was not found fit. The attack is on the selection dated 30-8-79 and the various illegalities committed in that selection. Attack is also on Sri Karthikeyan who presided over that Committee.

14. The appellant had another grievance. There were also certain items of good work relating to the appellant and these were not placed earlier in his CRs. He, therefore, filed an appeal to the Government of India. Ultimately, the Government of India directed on 29-6-78 (P. 50 of file of Central Govt.) the State Govt. to incorporate the above positive aspects in his CRs. The State Govt. in its letter dated 17-3-79 (page 1089 of the file) accepted to incorporate four such items but rejected his request to incorporate the one other item in the CRs. This letter is signed by Sri C.V.R. Panikar. Regarding the item which was not accepted by the State to be recorded, there is some further correspondence but that is not very much important now. We shall be referring during the course of this judgment to certain other Reports of an academic nature published by the appellant which was useful to the State Government and which was commended by the Supreme Court and which the State Government refused to place in his record.

15. The appellant therefore filed the two writ petitions in 1981 in the High Court questioning the order of the Central Government dated 7-8-80 and seeking promotion from the date of his junior's promotion. The said writ petitions were transferred to the Central Administrative Tribunal as TAs. 45 and 137/85 and were dismissed on 10-6-87 rejecting all his contentions. This Civil appeal has been filed against the said common judgment.

16. In this appeal, we have heard the arguments of the appellant (party in person) (who was permitted to be assisted by Sri Sanjay Parekh, Advocate) and of learned Senior counsel, Sri C. S. Vaidyanathan for the State of Tamil Nadu and also for Sri V. Karthikeyan and for Sri Panikar. We also heard Sri P. P. Malhotra, learned senior counsel for the Government of India.

17. It was contended by Sri Badrinath, party in person, that the State of Tamil Nadu and in particular its Chief Secretaries, Sri V. Karthikeyan and Sri C.V.R. Panikar (respondents 3 and 4) had acted in a grossly biased manner and that grave injustice was done to him as a consequence thereof. The proceedings of the Joint Screening Committee dated 30-8-79 were vitiated because the fourth disciplinary case though dropped by the Governor during Governor's rule, was kept alive and an order of censure was passed. Certain adverse remarks which were relied upon were consequent to order of Central Government expunged on 29-5-80 by the State Government. Though adverse remarks prior to his promotion to the selection grade had lost their 'sting' they were highlighted and relied upon by the Joint Screening Committee. This undue importance was given to certain very old remarks which were mere general comments in his CRs and due importance was not given to the positive aspects of his career even though they were incorporated on 17-3-79 in his CRs and in fact till the Central Govt. wrote to the State Government on 29-6-78 and directed that the positive aspects of his career were to be incorporated in the CRs, they were not even incorporated in the CRs. This was done only on 17-3-79. The adverse remarks which were proximate and on which reliance was placed by the Joint Secretary Committee were remarks whose basis was knocked down once Governor directed on 28-6-77 the dropping of all four disciplinary cases. All the four disciplinary cases were dropped by the Governor on 28-6-77 and the said remarks ought to have been expunged but they were allowed to remain in the CRs and on the basis of the said CRs, he was found not fit by the Committee on 30-8-79. They were expunged and in some respects only partially much later on 29-5-80 long after the Committee meeting on 30-8-79. The Committee's adverse recommendations contained in two sealed covers - one upto 31-3-77 and the other upto 30-8-78 - were both based on trivial or "inadmissible" material and by not giving adequate weight to the positive aspects of his career which were incorporated in his CRs. on 17-3-79. The censure order issued by the State Government on 17-3-79 under the fourth disciplinary inquiry relating to furniture expenditure of Rs. 20,807/- could not have been taken into account by the State Government or the Central Government since the case itself was dropped on 28-6-77. Even on merits the allegation was not that the expenditure was wasteful or unwanted but that prior sanction was not obtained. The fact that the appellant had informed senior officers earlier and they allowed him to incur the expenditure was not considered. The senior officers who were working against the appellant could not find anything else except to use this as a useful weapon. The UPSC could not have given a recommendation for censure even though the charge was dropped by the Governor subsequent to the reference made to it. In fact, at one time the State Government was inclined to withdraw the above reference to UPSC after the Governor's Order but the UPSC was not willing. Therefore, if these errors were not committed, the Committee would have recommended grant of

super-time scale. Other officers with bad record were allowed to be promoted to the super-time scale and not the appellant.

18. The appellant further strongly relied upon the allegation of mala fides made by him in the writ petitions against the two Chief Secretaries, Sri Karthikeyan and Sri Panikar (respondents 3 and 4), details whereof were elaborately set out in the writ petition. He contended that these allegations ought to have been accepted by the Central Administrative Tribunal. The assessment of the CRs. should not have been made on 30-8-79 by a Committee chaired by Sri V. Karthikeyan because long before 30-8-79 the appellant had filed a writ petition No. 979/78 seeking prosecution of Sri Karthikeyan. The writ petition was no doubt dismissed on 23-1-79 but the writ appeal was allowed by the Division Bench on 20-12-84 and that judgment was confirmed by the Supreme Court on 15-10-87 in The Govt. of Tamil Nadu v. Badrinath, AIR 1987 SC 2381. The writ appeal was pending when the Committee chaired by Sri V. Karthikeyan made the impugned assessment on 30-8-79. Sri Karthikeyan had been, over a long period of years even before 1978 treating the appellant in a vindictive fashion and was making adverse remarks or comments in his CRs. The position of Sri C.V. Panikar was no different. He had awarded 'Censure' in regard to the fourth disciplinary case in spite of the fact that the Governor of Tamil Nadu had earlier directed dropping of the case. Both the officers treated the appellant badly and at one point of time, the Advisor to the Governor Mr. Dave made adverse comment on this aspect. After the Advisor left Madras, his remarks which were in favour of the appellant were not given effect to.

19. On the other hand, Sri C. S. Vaidyanathan, learned senior counsel for the respondents contended that under sub-rule 2(a) of Rule 3 of IAS (Pay) Rules, 1954, selection to the super-time scale is to be based by merit considering the entire record from the beginning of the career though with due regard to seniority. The adverse remarks before promotion in 1972 to the Selection grade could be relied upon. Suitability of officers is to be judged by evaluating their character Roll-record as a whole and general assessment of work throughout their career. In this case there were adverse remarks in his CRs throughout. There were also disciplinary cases earlier and later also. On the basis of CRs, an assessment was made by the Joint Screening Committee on 30-8-78 that appellant was not fit for promotion and that the matter be kept in sealed cover since the fourth disciplinary case was pending. The disciplinary case which was pending later ended in 'Censure' and therefore the State Government took a decision not to give him super-time scale and the Central Government too concerned by dismissing the appellant's appeal. This was absolutely justifiable. The Committee's evaluation could not be questioned under Article 226 or within the limited scope of the jurisdiction of the Central Administrative Tribunal. Even the Supreme court cannot go into merits of the assessment made by the Joint Screening Committee. The 'Censure' recommended by the State Government in regard to the fourth disciplinary case was in fact accepted by the UPSC and the final order was passed by the State imposing the punishment of censure. The order together with the assessment of CRs. were intimated to the Central Government. The Central Government then rightly rejected the appeal against non-promotion. There were no mala fides on the part of Mr. Karthikeyan or Mr. Panikar. These officers and the State Government have, in their detailed counters, denied all the allegations of mala fides. Sri Karthikeyan was Chairman of the Committee on 30-8-79 because, under the notification of Government of Madras in GOMs 1750 Public (Special-A) dated 20-8-78, the Chief Secretary, the First Member and Second Member, Board of Revenue were to be members. He could not have 'recused' himself from the proceedings. The

doctrine of 'necessity' applies to the facts of the case. It may be that certain adverse confidential reports were written earlier by these officers when they were reviewing officers or as Chief Secretaries. That they had to do in the cases of all officers whose confidential reports came before them. That does not disqualify them from sitting in the Screening Committees at a later point of time. If they have to recuse themselves, in most cases, they would not be able to perform their normal duties when they sit in Departmental Promotion Committees or Screening Committees. This Civil appeal is, therefore, liable to be dismissed.

20. Sri P. P. Malhotra, learned senior counsel for Central Government supported the orders of Central Government rejecting the appellant's appeal.

21. At the conclusion of the case, the files of the Central and State Governments were handed over to the Court.

22. On the basis of the above contentions, the following points arise for consideration :

(1) Whether, the award of 'censure' in the fourth disciplinary case (relating to furnishing his office without previous sanction) by the State Government was contrary to the directions of the Governor during, the President's Rule emergency and whether the State Government thereafter wanted to withdraw the reference to the UPSC and the UPSC refused to permit such withdrawal? Whether the appellant was treated fairly in respect of the said proceedings?

(2) Whether the assessment of the Confidential Reports of the appellant by the Joint Secretary Committee at its meeting dated 30-8-79 was vitiated by relying upon inadmissible or trivial material and by not giving weight to positive sides of his career and also by wrongly relying upon adverse remarks whose basis was knocked down by the dropping of various charges? Whether the appellant was dealt with fairly?

(3) Whether very old remarks made before the appellant's earlier promotion to selection grade could be relied upon strongly even though the sting in them had faded?

(4) Whether the Chief Secretary, Sri V. Karthikeyan should have recused himself from participating in the Joint Screening Committee meeting on 30-8-79? Or whether the doctrine of 'necessary' applied?

(5) Whether the action of the 3rd and 4th respondents was mala fides?

(6) To what relief?

Point 1

23. This point deals with the validity of the 'censure' order passed by the State Government on 8-4-80 in the fourth disciplinary case. This censure was taken into consideration by the State Government for denying promotion to the appellant and by the Central Government while rejecting his appeal., We have already stated that the fourth disciplinary case was dropped by the Governor, during President's Rule on 28-6-77 itself. Question is as to whether, the case could have been kept pending and without dropping it forthwith on the plea that the question of punishment had already been referred to the UPSC.

24. In our opinion, the order of the Governor dropping all the four disciplinary cases including the one which was treated as pending, was passed during President's rule and that order must have been treated as final so far as the State was concerned. In fact it dropped the three cases but treated the fourth case as pending, even though that was also dropped by the Governor. Inasmuch as the Governor's orders are final, a serious question as to jurisdiction of the subsequent proceedings in the fourth case resulting in 'Censure' arises. Merely because the matter had gone to the UPSC before Govenor dealt with the issue, the Governor's orders dated 28-6-77 could not have been ignored. By the date the State received the letter of the UPSC and passed the final order of censure on 8-4-80, the Governor's orders dated 28-6-77 were already there and therefore Government should have refrained from passing the order of 'censure'.

25. When an elected Government is not in office, the orders of the Governor under Article 356(1)(a) as an agent of the President of India are equivalent to the orders that might have been passed by an elected Government in office and the Governor's orders had to be given effect fully and could not have been ignored either by the executive or by the Union Public Service Commission.

26. Under sub-clause (a) of Article 356(1) of the Constitution of India, the President may assume to himself all or any of the functions of the Government of the state and all or any of the powers vested in our exercisable by the Governor or any body or authority in the State other than the Legislature of the State. Where the President, after assumption of the powers of the State Executive, chooses to exercise those powers through the State Government, the latter acts as the agent of the President, acting on the advice of the Union Ministry, instead of the State Cabinet. In short, when the President vests the Governor with the powers of the State Government, the Governor can exercise all the powers of the State Government, without the advice of his Council of Ministers. The

Governor becomes responsible to the President i.e. the Union Government which has its responsibility to the Union Parliament. The Governor can exercise the Statutory power exercisable by the State Government. (See Basu, 11th Ed. Shorter Constitution, p. 1192). Once that power was exercised by the Government on 28-6-77, all the consequential proceedings leading to the censure fall to the ground.

27. This flows from the general principle of applicable to 'consequential orders'. Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime-like the recommendation of the State and by the UPSC and the action taken thereon - would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order.

28. The note file of the State Govt. too notes this aspect (see p. 36, note dated 24-8-79) when it states that "when the State was under President's rule, the present Governor 'ordered' on 28-6-77 that the action against the officer be dropped. The UPSC has not agreed to this course of action." The UPSC could not override the action of the Governor acting as the delegate of the President of India.

29. We have, therefore, to hold that the earlier Committee dated 28-6-77, the Central Government in its remand order dated 5-6-79 and the present Committee which met on 30-8-78 and the State of Tamil Nadu and the Central Government, in their various orders ought to have ignored the order of punishment of censure dated 8-4-80 in the fourth case as null and void and of no effect. They were all wrong in treating the fourth case as pending and in relying upon the 'censure' order passed in a non-pending matter. This was wholly without jurisdiction. In fact, if no disciplinary case could be said to be pending in the eye of the law, the question of following the sealed cover procedure would not arise. Nor would any question of Sri C.V.R. Panikar deciding the impose a punishment of censure in his order dated 8-4-80 (after receipt of the UPSC's letter) arise. Nor could it have been considered as a relevant fact while deciding his promotion to the super-time scale on 30-8-79 and the same could not have also been relied in the subsequent order of the State Government dated 25-4-80 and Central Government dated 7-8-80. This is one aspect of the matter.

30. Even on merits of the fourth disciplinary case relating to the "furnishing", we shall point out, by the application of Wednesbury principles, that the order of censure dated 8-4-80 must be held to be vitiated.

31. It will be noticed that in the charge dated 30-10-75 there was no allegation that the expenditure

for the office room in a sum of Rs. 20,807/- was wasteful or unnecessary. The only charge was about lack of prior approval. The appellant, on his explanation dated 19-11-75 pointed out that while prior sanction was necessary, the factual position was that the post of Commissioner of Archives and Historical Research was created and he found that some civil works etc. were necessary for (i) security of the Archives, (ii) firefighting equipment and (iii) renovation of the research hall. The expenditure in this behalf was made with full knowledge of the senior officials of the Government though formal sanction was not obtained. He pointed out that in March 1973, just few weeks before he took over as Commissioner, he mentioned to the then Chief Secretary, Mr. Sabanayagam, the Head of the Archives Department about the routine repairs that were being done to the Commissioner's room. This was followed by a formal letter (No. 50/Commr./73-1) dated 22-8-73, requesting the Government to ratify his having bought the furniture from TANSI for the Commissioner's room. The Government ratified this in GO Rt. 864 Public (political) Dept. dated 14-3-74. Since the bill of repairs for the other works was not received from TANSI until 22-2-74, the Government could not be addressed as regards that item. Later on, due to pressure of work the matter was not taken up by him till 1975, when a further letter was written.

32. The appellant also pointed out that the PWD was entrusted with the work of 'security' for Archives. They took up the work in anticipation of formal sanction of Government was given. In fact, there was the letter GO. D-8/15450/73 dated 22-11-73 from the S.E., PWD and there was GO No. 3182 Public (Civil Defence) for the fire-fighting equipments from which he had placed an order after consulting the Director of Fire Services. He kept the Government informed on what was being done. He referred to his official letter No. 94/Commr/74-II dated 23-4-74 to the Dy. Secretary (Public). He stated that these arrangements and his plans to renovate the research hall were discussed also with the Chief Secretary when the latter visited the Archives on 5-3-1974. He conveyed minutes recorded by him about the said visit to the Chief Secretary in his demi-official letter No. 134/74-I dated 23-5-1974. He also wrote two subsequent letters No. 134/74-2 dated 3-5-74 and 134/74-3 dated 24-6-74. The minutes were extracted in his explanation in extenso. He pointed out that expenditure for fire-fighting equipment was ratified by Government in GOMs. No. 1906 (Ed.) dated 16-11-74. This order of Government is part of the record before us.

33. According to the appellant, in the above circumstances, there was indeed no serious lapse on his part which warranted a charge. Remaining bills as regards repairs to the room were sent to the Government on 24-5-75 for similar ratification (see p. 188, Vol. 2, appellant's letter dated 10-2-78). Appellant made it clear that the then Chief Secretary permitted him to in cur the minor expenditure awaiting formal sanction. There was no regular inquiry thereafter. The Government referred the matter to the UPSC with a proposal to award censure. Appellant pointed out that procedure under Rule 10 of the All India Services (Discipline and Appeal) Rules, 1969 was not followed and that in the case of other officers, Sri V. Sankar, Sri C. Ram Das, Sri M. Vaithlingam, even who incurred expenditure on furnishing their offices, ran to much bigger amounts - without formal sanction- no such action as was taken against him, was taken. (see p. 190 Vol. 2 of the paper book).

34. Go. 859 Public (Special A) dated 8-4-80 is the order passed by the Government under signature of Sri C.V.R. Panikar (4th respondent) imposing 'censure'. Though, the order refers to the letters of

the appellant including the letter dated 24-5-75 seeking ratification, no reference at all has been made to the minutes recorded as to what the then Chief Secretary stated to him. No reference is made to the vast correspondence referred to in the explanation. The action was described only as 'irregular' in the order dated 8-4-80. It was but natural that the Governor felt on 28-6-77 that the whole thing was such an insignificant item of want of prior sanction - while none disputed its need for a newly created office of Commissioner of Archives. Part of the expenditure was ratified and the balance awaited ratification. Some officers of the Government were obviously making a mountain out of a mole-hill.

35. This Court considered in extenso in Union of India v. G. Ganayutham, (1997) 7 SCC 463 : (1997 AIR SCW 3464 : AIR 1997 SC 3387 : 1997 Lab IC 3341) the applicability of Wednesbury rules while judging the validity of punishments inflicted in disciplinary actions and the principle of 'proportionality' as applicable to such cases. The case on hand comes within the narrow limits of interference mentioned in the said judgment.

36. In our view, therefore, even on merits, the action of the Government awarding censure is, apart being without jurisdiction is also one made by not taking into account the various facts stated in the appellant's long explanation. The action is, in our opinion, arbitrary. At the most, the officer could have been told that, in future, he should be careful in obtaining in advance sanction. So much about the "censure" in the forth disciplinary inquiry - both on jurisdiction and on merits. We hold that the order of censure was bad in law and that the State and Central Governments erred in relying on the same for rejecting his plea for super-time scale. Point 1 is decided in favour of the appellant.

Points 2 and 3

37. These points raise certain important issues relating to 'fairness' in the matter of consideration of an officer for promotion under Article 16 and as to the manner in which 'adverse remarks' can be taken into consideration.

38. Normally, this Court does not enter into question of the correctness of assessment made by Departmental Promotion Committees (or Joint Screening Committees).

39. But the case before us appears to be a very exceptional one as it has serious overtones of legal bias (to which we shall refer in detail when we come to Points 4 and 5).

40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, Courts and Tribunal cannot interfere with assessments made by

Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material - and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision, - then the powers of Judicial review under Article 226 of the Constitution are not foreclosed.

41. While the Courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committees, the executive is also to bear in mind that, in exceptional cases, the assessment of merit made by them is liable to the scrutinised by Courts, within the narrow Wednesbury principles or on the ground of mala fides. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that Courts or tribunals may not by quoting this case as an easy precedent - interfere with assessment of merit in every case. Courts and Tribunals cannot sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the Courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precendent only in rare cases.

42. With the above words of caution, we shall now deal with the case of the appellant.

43. The appellant had placed voluminous material before this Court and made very elaborate submissions on the question as to what went wrong with the assessment made by the Joint Screening Committee on 30-8-79 and its acceptance by the State and Central Governments. We have also read the note-files. When we read the note - files of the Central and State Governments it was clear that something had fundamentally gone wrong in the decision making process in regard to the appellant. The Governor of the State and the Advisor to the Governor during the President's Rule had to come to his rescue. This hostile attitude towards him is revealed for example from the following. At one time, a favourable assessment was made (as the one dated 12-4-1977) by Sri Viswanathan, First Member, Board of Revenue, a senior Officer. That was in high praise of the appellant's intelligence and his good work. But the Chief Secretary, Sri V. Karthikeyan (against whom mala fides and bias are alleged) could not allow the remarks to remain as such. On the other hand he described them as 'too rosy'. Mr. Dave, the Advisor to the Governor, did not like this remark and he made the following significant observations on 14-6-77 :

"A bright Officer gone wrong, party I felt owing to unsympathetic handling, should be given a chance oustide the State."

44. The unsympathetic attitude of certain officials of the State of Tamil Nadu also came for adverse comment by the Central Government. We note that the Central Govt. in its assessment about the earlier report of the Screening Committee dated 7-6-77 and 28-6-77 remarked on 1-5-79 that the

attitude of the State was 'unsympathetic' towards the appellant.

45. The proceedings before the Joint Screening Committee dated 30-8-79 presided by Sri V. Karthikeyan falls to be examined in the above background. After the remand order was passed by the Central Government, the Joint Screening Committee met on 30-8-79. It was presided over by Sri V. Karthikeyan, Chief Secretary against whom the appellant had sought sanction for prosecution for a defamatory statement made in the Indian Express. The writ petition was filed in 1978. Though, it was dismissed on 23-1-79 by the learned single Judge the writ appeal came to be allowed in favour of the appellant, and was later confirmed by the Supreme Court. The writ appeal was pending on 30-8-79, when Sri V. Karthikeyan sat as Chairman of this Committee.

46. The assessment was made on 30-8-79 in two phases, first for the period upto 31-3-77 and was kept in a sealed cover while another assessment was made for the period from 1-4-77 to 30-8-79 and kept in another sealed cover. There are various infirmities in this assessment and we shall refer to them later and we shall see if the Wednesbury principles can be applied to the assessment. Before we do so, we have to refer to certain basic principles of 'fairness' in assessment for promotion.

47. Every officer has a right to be considered for promotion under Article 16 to a higher post subject to eligibility provided he is within the zone of consideration. But the question is as to the manner in which his case is to be considered. This aspect is a matter of considerable importance in service jurisprudence as it deals with 'fairness' in the matter of consideration for promotion under Article 16. We shall therefore refer to the current legal position.

48. We shall start with State of Punjab v. Dewan Chunilal, (1970) 1 SCC 478 : (AIR 1970 SC 2086). There a two Judge Bench of this Court was considering the question whether the adverse remarks prior to the date of crossing efficiency-bar could be relied upon. This Court clearly held (see p. 484, para 14) that the confidential reports earlier than 1944 should not have been considered at all inasmuch as the officer was allowed to cross the efficiency bar in that year.

49. Again, in Brij Behari Lal Agarwal v. High Court of M. P., (1981) 1 SCC 490 : (AIR 1981 SC 594 : 1981 Lab IC 137) a two Judge Bench observed in regard to earlier adverse remarks in the career 'as follows (Para 6 of AIR, Lab IC) :

"What we would like to add is that when considering the question of compulsory retirement, while it is no doubt desirable to make overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time, he may have so greatly

improved that it would be of advantage to continue him in service upto a statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance."

50. A three Judge Bench considered this question in J. D. Srivastava v. State of M. P., (1984) 2 SCC 8 : (AIR 1984 SC 630 : 1984 Lab IC 337). In that case, Venkataramaiah, J. observed that reference on very old adverse remarks relating to the earlier part of an officer's career are "not quite relevant and that" it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer. The following observations are significant (Para 7 of AIR, Lab IC) :

"It is true that in the early part of his career, the entries made do not appeared to be quite satisfactory. They are of varied kinds. Some are good, some are not good and some are of a mixed kind. But being reports relating to a remarks period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981, as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer."

51. The matter was examined in depth by a three Judge Bench in Baikunth Nath Das v. Chief District Medical Officer, (1992) 2 SCC 299 : (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945). There the issue was whether uncommunicated adverse remarks could be relied upon. That case also considered the question of the relative strength of old remarks and also relevance of remarks made before an earlier promotion. Jeevan Reddy, J. speaking for the Bench laid down several important principles and we are however concerned with principles (iv) in para 34 of that judgment. The proposition was that firstly more importance would have to be attached to record of later years. Adverse remarks made before granting the earlier promotion (in a case of selection or merit promotion) must be considered to have lost the 'sting in them'. The relevant para reads as follows (Para 32 of AIR, Lab IC) :

"(vi) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority."

52. In that case, the three Judge Bench overruled two earlier judgments of this Court. One of them is Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188 : (AIR 1987 SC 948 : 1987 Lab IC 694). There were two separate points emanating from the two Judge judgment in Brij Mohan Singh Chopra's case. They were referred to by the three Judge Bench Baikunth Nath Das (1992 AIR SCW

793 : AIR 1992 SC 1020 : 1992 Lab IC 945) as follows :

"(1) It would not be reasonable and just to consider adverse entries of remote part and to ignore good entries of recent part. If entries for a period of more than 10 years past and taken into account, it would be an act of digging out past to get some material to make an order against the employee.

(2) In . . . . . , it was held that unless an adverse report is communicated and representation, if any, made by the employee is considered, it may not be acted upon to deny the promotion. The same consideration apply where the adverse entries are taken into account in retiring an employee prematurely from service."

53. We are not here concerned with the second point in the present case. That point deals with the use of uncommunicated adverse remarks. In fact on the second point the three Judge bench overruled the two Judge Bench judgment in Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188 : (AIR 1987 SC 948 : 1987 Lab IC 694) and also another judgment in Baidyanath Mohapatra v. State of Orissa, (1989) 4 SCC 664 : (AIR 1989 SC 218 : 1989 Lab IC 2089). It was held that the view taken in these two latter cases decided by two Judge Benches that uncommunicated adverse remarks could not be relied upon if no opportunity for a representation was given or no decision was taken on the representation, was not correct. This aspect is covered by paras 24 to 30 of the judgment of the three Judge Bench.

54. We are however concerned with the first point stated in Brij Mohan Singh Chopra's case (AIR 1987 SC 948 : 1987 Lab IC 694) as explained and accepted in principle (iv) of para 34 of the three Judge Judgment in Baikunth Nath Das, (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945). We have already extracted this passage in principle (iv) of para 34. It reaffirms that old adverse remarks are not to be dug out and that adverse remarks made before an earlier selection for promotion are to be treated as having lost their 'sting'. This view of the three Judge Bench, in our view, has since been not departed from. We shall, therefore, refer to the two latter cases which have referred to this case in Baikunth Nath Das. The second of these two latter cases has also to be explained.

55. In the first of these latter cases, namely, Union of India v. V. P. Seth, AIR 1994 SC 1261 : (1994 AIR SCW 604) the point related both to adverse remarks of a period before an earlier promotion but also to uncommunicated adverse remarks. It was held that the Tribunal was wrong in holding in favour of the officer on the ground that uncommunicated adverse remarks could not be relied upon for purposes of compulsory retirement. So far as the remarks prior to an earlier promotion this Court did not hold that they could be given as much weight as those in later years. The Court, in fact, relied upon Baikunth Nath Das case (1992 (2) SCC 299 : 1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945) decided by three Judge Bench which had proposition (iv) in para 34 (at pp. 315-316) (of SCC) : (Para 32 of AIR; Lab IC) has clearly accepted that adverse remarks prior to an

earlier promotion lose their 'sting'.

56. The second case is the one in State of Punjab v. Gurdas Singh, (1998) 4 SCC 92 : (1998 AIR SCW 1425 : AIR 1998 SC 1661 : 1998 Lab IC 1401). The facts there were that there were adverse remarks from 1978 prior to 1984 when the officer was promoted and there were also adverse remarks for the period 18-6-84 to 31-3-85. The compulsory retirement order was passed on 3-9-87. The said order was quashed by the Civil Court on the ground that his record prior to his promotion i.e. prior to 1984 could not have been considered and two adverse entries after 1984 were not communicated and could not be relied upon. The three Judge Bench, while clearly setting out proposition (iv) in para 34 (at pp. 315-316) (of SCC) : (Para 32 of AIR; Lab IC) of Baikunth Nath Das, (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945) which said that adverse remarks prior to promotion lose their sting, held that they were following the said judgment and they allowed the appeal of the State. Following Baikunth Nath Das, the Bench felt that uncommunications adverse remarks could be relied upon and in that case these entries related to the period after an earlier promotion. That ground alone was sufficient for the case. There is a further observation (at p. 99, para 11) that an adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during the whole tenure of service.

57. The above sentence in Gurdas Singh (1998 AIR SCW 1425 : AIR 1998 SC 1661 : 1998 Lab IC 1401) needs to be explained in the context of the Bench accepting the three Judge Bench ruling in Baikunth Nath Das, (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945). Firstly, this last observation in Gurdas Singh's case does not go against the general principle laid down in Baikunth Nath Das to the effect that though adverse remarks prior to an earlier promotion can be taken into account, they would have lost their 'sting'. Secondly, there is a special fact in Gurdas Singh's case, namely, that the adverse remarks prior to the earlier promotion related to his "dishonesty". In a case relating to compulsory retirement therefore, the sting in adverse remarks relating to dishonesty prior to an earlier promotion cannot be said to be absolutely wiped out. The fact also remains that in Gurdas Singh's case there were other adverse remarks also even after the earlier promotion, regarding dishonesty though they were not communicated. We do not think that Gurdas Singh is an authority to say that adverse remarks before a promotion however remote could be given full weight in all situations irrespective of whether they related to dishonesty or otherwise. As pointed in the three Judge Bench case in Baikunth Nath Das, which was followed in Gurdas Singh they can be kept in mind but not given the normal weight which could have otherwise been given to them but their strength is substantially weakened unless of course they relate to dishonesty.

58. Learned senior counsel for the State of Tamil Nadu, Sri C. S. Vaidyanathan has however relied upon the following observations of a two Judge Bench in D. Ramaswami v. State of Tamil Nadu, (1982) 1 SCC 510 : (AIR 1982 SC 793 : 1982 Lab IC 443) (Para 4) :

"The learned counsel for the State of Tamil Nadu argued that the Government was entitled to take

into consideration the

entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct."

The above-said observation cannot help the respondent inasmuch as, though such remarks need not be altogether omitted from consideration, they must be treated as sufficiently weakened and as having lost their sting. The case in D. Ramaswami's case (AIR 1982 SC 793 : 1982 Lab IC 443) on facts goes against Mr. Vaidyanathan's contentions. There the appeal of the officer was allowed by this Court. In that case, the officer started as Lower Division Clerk and rose to the position of a Dy. Commissioner of Commercial Taxes. His entire service record contained only one single adverse entry in 1969 which referred to taking money from business people. The inquiry into that complaint ended in his favour, the government dropping the charges in Nov. 1974. In May, 1975 he was offered the selection post of Dy. Commissioner. In September, 1975, he was compulsorily retired. It was held that while his previous record should not be completely ignored, there was nothing in the present conduct casting any doubt on the wisdom of the promotion and there was therefore no justification for needless digging into the past. It was held that the basis of the adverse entry of 1969 was knocked out by the order of the government in November, 1974 and the effect of the entry (of 1969) was blotted out by the promotion of the appellant in that case by his promotion as Deputy Commissioner. In the light of the other observations, the said ruling in fact supports the case of Sri Badrinath rather than go against him. Two other cases cited in this connection are not relevant on this aspect and we are not referring to them.

59. From the above judgments, the following principles can be summarised :

(1) Under Article 16 of the Constitution, right to be 'considered' for promotion is a fundamental right. It is not the mere 'consideration' for promotion that is important but the consideration must be 'fair' according to established principles governing service jurisprudence.

(2) Courts will not interfere with assessment made by Departmental Promotion Committees unless the aggrieved officer establishes that the non-promotion was bad according to Wednesbury Principles or was it mala fides.

(3) Adverse remarks of an officer for the entire period of service can be taken into consideration while promoting an officer or while passing an order of compulsory retirement. But the weight which must be attached to the adverse remarks depends upon certain sound principles of fairness.

(4) If the adverse remarks relate to a distant past and relate to remarks such as his not putting his maximum effort or so on, then those remarks cannot be given weight after a long distance of time,

particularly if there are no such remarks during the period before his promotion. This is the position even in cases of compulsory retirement.

(5) If the adverse remarks relate to a period prior to an earlier promotion they must be treated as having lost their sting and as weak material, subject however to the rider that if they related to dishonesty or lack of integrity they can be considered to have not lost their strength fully so as to be ignored altogether.

(6) Uncommunicated adverse remarks could be relied upon even if no opportunity was given to represent against them before an order of compulsory retirement is passed.

60. On the basis of the above principles, we have to consider whether the Joint Screening Committee applied the correct legal principles of 'fairness'. We have also to apply Wednesbury rule and consider whether relevant facts were not considered and irrelevant facts were considered.

61. In our view, the Committee has not conformed to the standards set in Baikunth Nath Das, (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945) as to the manner in which old adverse remarks have to be treated and also as to the manner in which adverse remarks before a previous promotion on merit, should be viewed. The question also is whether trivial matters were exaggerated and positive material in favour of the officer was ignored. We shall now proceed with our reasons as to why the consideration by the Committee which met on 30-8-79 is not fair and why it is liable to be set aside on Wednesbury principles.

(i) Firstly, the assessment starts with a reference to the period in 1957 when appellant was in IAS Training School, before he actually started working. This reference is rather unusual and it appears to us to be wholly warranted and clearly amounts to "digging up into very old record" not strictly relevant at this distance of time.

(ii) Secondly, due importance was not given in the eleven page report of the Screening Committee to the list of favourable commendations which were compelled to be incorporated in his CRs by the Government of India's letter No. 11018/5/78-AIS (III) dated 29-6-78. These were in fact incorporated in his service record as per Mr. C.V.R. Panikar's letter dated 17-3-79 (Public) (Special A) Dept. (D. O. No. 4894/78-I) (P. 108 of Central Govt.'s file).

These aspects which were directed to be incorporated to the (service records) by the Central Government are :

"(1) His visits to West Germany in 1965 and 1970

(2) His visit to U. K. as guest of the British Government in June, 1970

(3) Award of Homi Bhabha Fellowship and visit to Heidelberg University in May, 1979

(4) Appreciation letter dated 15-11-64 by Sardar Ujjan Singh, the then Governor of Tamil Nadu in connection with the Flag Day in 1968."

Only a passing reference is made in the proceedings dated 30-8-79 to these remarks,

(iii) Thirdly, several of the adverse remarks recorded during 1973-1977 whether they were general in nature or were particular, were based upon the allegations contained in the four charges which were dropped by the Governor on 28-6-77. Once the charges were dropped, it was obligatory on the part of the Government to delete those adverse remarks which were made prior to 28-6-77 covering the aforesaid period. Unfortunately, these adverse remarks were allowed to continue in the Service Record and were taken into account by the Joint Screening Committee on 30-8-79. These remarks were deleted on 29-6-80 long after the Committee's decision dated 30-8-79. But by that time the damage was done.

In this connection, we are aware of the decision of this Court in Air Vice Marshall S. L. Chhabra, VSM (Retd.) v. Union of India, 1993 Suppl (4) SCC 441. In that case, the officer was denied promotion in the years 1987 and 1988 because of adverse remarks in the appraisal report of 1986. Later, the adverse remarks were expunged in 1989. He was cleared for promotion in 1989. The officer's claim for consideration for promotion from 1988 was accepted by the High Court. That was set aside by this Court. But the difference between that case and the present case is that long before the meeting of the Screening Committee dated 30-8-79, the four charges were dropped by the Governor on 28-6-77 and the adverse remarks for the period from 1973 to 1977 automatically lost their sanctity and should have been selected even before 30-8-79. The deletion was made in 1980 long after the meeting of the Screening Committee. The above decision is clearly distinguishable.

Here, we may also refer to the important analysis made by the Central Government in its note-file. In the office note date 1-5-79, on the file of the Central Government, which dealt with the earlier recommendation of the Committee presided over by Sri C.V.R. Panikar on 9-6-77 and 28-6-77 the Central Government had made a very critical analysis of the adverse remarks. It said that some of the adverse remarks were closely linked up with the disciplinary cases that were dropped and once the cases were dropped, the adverse remarks which were based on the same allegations, had no legs to stand. It said :

"Most of the adverse remarks in CRs of Shri Badrinath during the period from 1974 to 1978 were based on the same ground on which various charges were framed against him. Now that those charges have been dropped, his case needs fresh consideration."

It was again observed in the note dated 19-5-79, that there was direct nexus between the general adverse remarks and the four charges. It said :

"Those cases have a bearing on the adverse entries found in the confidential reports of Sri Badrinath for the period between 7-2-73 to 31-3-74, 21-7-75 to 31-3-76 and 3-5-76 to 31-3-77."

The Central Government went further referred to the attitude of the State of Tamil Nadu towards the appellant,- as follows :

"It is unfortunate that Sri Badrinath who had represented against these adverse remarks and whose representations were rejected by the State Government did not come up to the Government of India with a memorial under Rule 25 of the AIS (Discipline and Appeal) Rules, 1955 which is the only way open for having those remarks, expunged. Instead of doing so, Sri Badrinath made a request for expunction of the adverse remarks contained in these three reports in the present appeal. The present appeal is only against the three orders wherein the State Govt. had promoted Sri Badrinath's juniors to the super time scale of the service. It may still not be late for Sri Badrinath to come up with a memorial to President. . . . . ."

The note further said :

"However, I suggest that while remanding the case to the State Government, as proposed, we may suggest that as the basis for the adverse entries contained in these three reports is not any longer valid by virtue of the decision taken by the State Govt. to drop certain inquiries against him, the Selection Committee may not take into account these adverse remarks found in the aforesaid confidential reports while evaluating his performance."

The above comments of the Central Government are a sad commentary on the attitude of the State of Tamil Nadu towards the appellant.

A perusal of the above assessment by the Central Government in its note on the earlier Committee's

recommendations shows that in the opinion of the Central Government also, the adverse remarks right from 7-2-73 to 31-3-77 ought not to have been considered as they were made keeping in mind the allegations in the pending disciplinary proceedings and once the proceedings were dropped, it was necessary to expunge these remarks. (This was not done, till after the adverse assessment by the Committee was made on 30-8-79.) In fact, the Central Govt. even went to the extent of saying that if the officer had sent up a petition for expunging them - they would have readily acceded to his request.

(iv) Fourthly, the Joint Screening Committee in its decision dated 30-8-79 relied upon very old adverse remarks or comments. Some were made when the appellant was in Training School and in the initial years of his service. Some were made before 1-11-72 on which date the appellant was promoted to selection grade. This was not a fair assessment and is in breach of the principles laid down in Baikunth Nath Das case (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945).

62. Thus, the Committee gave greater importance - in its decision dated 30-8-79 to the events relating to the period when the appellant was under training at the Institute in 1957 and during the early years of his appointment and till he was given selection grade promotion in 1972, the Committee committed serious errors of law affecting the fundamental right to be considered 'fairly' for promotion under Article 16 of the Constitution of India. As stated earlier, not only the favourable aspects of his career were dealt with casually in passing and without being given due importance, but undue overemphasis was given to events at his Training School and early years of his service and to the pre-1972 remarks before promotion to select grade without realising that they must be treated as having lost their sting or strength. So far as post 1972 remarks were concerned, they were mostly based on the charges dropped by the Governor in 1977 later on. That happened much before the meeting of the Committee on 30-8-79. Their expunction was unduly delayed till after the Committee met. Wednesbury principles were therefore directly attracted.

63. There is yet another important aspect. The appellant had produced various Reports which showed his academic qualities and he repeatedly requested the Government to give weight to these reports. The State had benefited therefrom and even the Supreme Court appreciated these reports in K. Chandru v. State of Tamil Nadu, AIR 1988 SC 204. But the respondents 1, 3 and 4 were extremely, adamant and were not inclined to give any credit to the appellant for these reports saying that that was "voluntary work" done, and that these reports were produced outside his 'official duties'. The appellant pointed out that if an officer produced important Reports extremely useful to the State such work would be extra work and could not be ignored as 'voluntary work'. He claimed he had to be given credit for his good work and that that work could not be ignored as if it was done for his personal benefit. It is worthwhile referring to a summary of these reports and how they became useful to the State :

"1957 While working as Dy. Secretary (Labour)

(i) The Draft Labour Policy framed by the appellant was accepted by the State Govt. without any change. This labour policy was appreciated by late Sh. C. Rajagopalachari in a letter which he wrote to the Minister of Labour Shri S. Madhavan.

(ii) As Collector of Madras he devoted attention to the students and their problems. Services appreciated by the Min. of Education, Govt. of India, New Delhi in D.O. letter No. JS(A)/PA/89 dated 14-5-1969.

(iii) Headed the Chairmanship of a Standing Committee for organising the State-wide publicity for Flag Day 1968. The then Governor appreciated the services of the appellant and wrote to him personally on 15-11-69 about his commendable performance.

(iv) Wrote 3 reports- (1) The Urban Development of Greater Madras (1970); (ii) Report on Tenancy and Land Reforms (1971) written vide Director of Tenancy Records; (iii) Report on Tamil Nadu Archives (1974), written as Commissioner of Archives.

Various recommendations made in these three reports were accepted and implemented by the State Govt. Regarding the slum report it was favourably noticed by this Hon'ble Court in a Constitution Bench of five Hon'ble Judges, where Chandrachud, C. J. spoke for the Bench, (AIR 1986 SC 204, K. Chandru v. State of T. N.). Para 4 of the judgment in that case referred to the report (by name). Appellant was then the Collector of Madras. Reference was again made to the Report in para (9) of the judgment.5-10-1972

(v) Submitted a note to the Chief Minister requesting him to promote study of modern history of Tamil Nadu, and create a post of Commissioner of Archives and Historical Research. On 6-2-1973 a post of Commissioner Archives and Historical Research was created and the appellant assumed charge of that post on 7-2-1973. This was the first posting of the appellant after his promotion to the selection grade. During tenure as Commissioner Archives and Historical Research the appellant made the following notable among other contributions :

(a) On 17-12-73 the Tamil Nadu Council of Historical Research was created on the appellant's suggestion (vide) GOMS No. 2090 Education Department.

(b) On the appellant's recommendation the State Government agreed to liberalise the rules governing public access to records. The 50 year limit within which the Government records in Tamil Nadu remained close to research was reduced 30 years on appellant's suggestion vide GO(P)

No. 904 Public (Political Deptt.) dated 15-3-74.

(c) The appellant stopped (in January, 1974) the utterly thoughtless and shocking destruction of some extremely valuable and historical documents. It was wholly on appellant's initiative that in Memorandum No. 61434/N1/74-1 Rev. dated 26-4-74 the Govt. ordered that no pre-1974 records be destroyed.

(d) In January, 1975 the Indian Historical Records Commission, at its 43rd Session at Lucknow, passed a resolution regarding preservation of the important historical document. This resolution was passed upon appellant's report to the Government. The then Education Minister, Prof. Nurul Hasan, wrote to all the Chief Ministers urging them to ensure that until a suitable policy is formulated no pre-1974 records should be destroyed.

(e) It was on the appellant's suggestion that MS No. 3703, Rev. Deptt. dated 28-10-74 was issued mentioning the note dated 7-8-74 prepared by the appellant as the basis on which Distt. Gazetteers should hereafter be written in Tamil Nadu.

(f) On 8-5-74 submitted a special report to the State Govt. containing several concrete suggestions to reorganise the Tamil Nadu Archives, Dr. Malcom S. Adiseshiah, former Dy. Director General of UNSSCO and later Vice-Chancellor of the Madras University, highly appreciated the Archives report of the appellant."

64. These valuable contributions by the appellant were ignored. It is rather unfortunate that the respondents 1, 3 and 4 refused to give credit to the appellant for these Reports and, on the other hand, went to the extent of digging out something of 1957 from the days the appellant was in the IAS Training School long before he entered on his career.

65. For the aforesaid reasons, it must be held, on merits that the assessment done by the Joint Screening Committee on 30-8-79 and its acceptance by the State and the Central Government were illegal and arbitrary and liable to be set aside even within the narrow limits of Wednesbury principles. Inadmissible material was relied upon, a censure which was issued on a charge dropped was relied upon, adverse remarks which were liable to be expunged soon after the Governor's orders on 28-6-77 were continued and relied on 30-8-79 and were expunged only in 1980, undue weight was given to old remarks by deliberately digging them up and even to those before his selection grade promotion even though they had lost their sting, due weight was not given to some very good work done by him which was even commended by the Supreme Court and which resulted in beneficial administrative action. The assessment does not answer the test of 'fair' consideration under Article 16 for promotion. It must accordingly be quashed applying Wednesbury principles.

We direct accordingly. Points 2 and 3 are decided in favour of the appellant.

Points 3 and 4

66. These points raise questions relating to bias and the doctrine of necessity in administrative law and the plea of mala fides against respondents Nos. 3 and 4.

67. Sri V. Karthikayan (3rd respondent) was the Chief Secretary of the State of Tamil Nadu and his name figures in several of the earlier adverse remarks made against the appellant. He also happened to be Chairman of the Joint Screening Committee which met on 30-8-79 and found the appellant not fit for promotion to selection grade. In connection with his role as Chairman two aspects have to be borne in mind. Sri C. S. Vaidyanathan, learned senior counsel appearing for him argued that it does happen in every State that a person who ultimately becomes Chief Secretary and presides in meetings of Screening Committees, might have passed adverse remarks against other officers earlier as part of his duties as a Collector or Commissioner or Member, Board of Revenue and he cannot be treated as disqualified when he sits in the Screening Committees for considering the cases of promotion of such officers.

68. This contention raised by Sri C. S. Vaidyanathan for the respondents is well founded. This Court has held that, in such situations, no question of bias can be raised. In State of M. P. v. Ganekar Motghare, 1989 Suppl (2) SCC 703, a Deputy Director was compulsorily retired on the recommendations of the Screening Committee. The Director, being head of the Department, had earlier awarded adverse remarks to the officer and later he also sat in the Screening Committee. It was held that there was nothing wrong with the presence in the Committee and neither bias nor malice in law could be imputed to him. The High Court's reliance on A. K. Kriapak v. Union of India, (1968) 2 SCC 262 : (AIR 1970 SC 150) was not accepted. Similarly, in State of Uttar Pradesh v. Raj Kishore Bhargava, 1992 Suppl (2) SCC 92, the Chief Engineer who had given adverse entries against the officer in one year was appointed a member of the Screening Committee for deciding about the compulsory retirement of the officer. It was held that no allegation of bias can be made against the Chief Engineer.

69. In the light of the two precedents, we hold that from the mere fact that the Chief Secretary who had earlier made certain adverse remarks against the appellant was the Chairman of the Screening Committee, no bias can be imputed from that fact alone.

70. But that is not the end of the matter. If the above facts stood alone, there would have been no case for imputing bias to Sri V. Karthikeyan. But there are other important facts which clearly make out a case of real likelihood of bias on the part of Sri V. Karthikeyan. We shall refer to those facts.

71. The appellant had delivered a speech at a public function on 7-9-73 criticising the 'time capsule' buried in the precincts of the Red Fort at Delhi and said that it was full odd distortions of historical facts. The Government of Tamil Nadu started a disciplinary inquiry but later dropped the same on 25-8-77. However on 24-8-

77, a news item appeared in Indian Express stating that a Government spokesman charged the appellant as trying to 'sabotage the civil services from within'. The appellant issued notice to the press correspondent and it was ultimately revealed that the statement was made by the 3rd respondent, Sri V. Karthikeyan. The appellant applied for sanction to prosecute the 3rd respondent for defamation and sought permission on 28-12-77. The Government refused permission on 7-2-78. The appellant filed a writ petition in 1978 and the learned single Judge dismissed the writ petition on 23-1-79 on the ground that the refusal to grant permission was justified. The appellant filed an appeal before the Division Bench in 1978 which was allowed on 20-12-84 holding that the refusal to grant sanction was not justified and ought to have been given in public interest. The State of Tamil Nadu filed appeal to the Supreme Court. This Court held in Government of Tamil Nadu v. Badrinath, AIR 1987 SC 2381 that, no sanction was necessary inasmuch as the speech was not made by the appellant in discharge of his official functions. This Court held that appellant could go ahead with his suit already filed against Mr. V. Karthikeyan without seeking permission of Government. Bias and Reasonble likelihood of bias:

72. It is in this background of the special facts that the question of likelihood of bias arises in this case, on the date of the meeting of the Joint Screening Committee on 30-8-79, Sri V. Karthikayan was, as seen above, defending the writ appeal preferred by the appellant wherein the appellant was contending that the refusal of the State Government to sanction prosecution of Sri V. Karthikeyan was not justified.

73. Question arises whether, in such a situation, Sri V. Karthikeyan's presence vitiated the recommendations of the Committee and whether he should have 'recused' himself from the Committee, when it took up the case of the appellant for promotion to super-time scale on 30-8-79?

74. Two cases directly in point may now be referred to. In Mahadevan v. D. C. Agarwal, 1993 Suppl (4) SCC 4 : (1994 AIR SCW 1020 : AIR 1994 SC 961 : 1994 Lab IC 761) the respondent was seeking promotion. He had filed a contempt case against certain senior officers of the State Bank of India for denying him promotion. But the Bank constituted a Selection Committee in which the two persons against whom the contempt case was filed were members and the Committee did not find the respondent fit for promotion. It was held that the said two persons ought not to have been members of the Selection Committee and the Committee's decision was invalid. This Court observed (at p. 6) (of Supp SCC) : (Para 3 of AIR, Lab IC) :

"From the records produced by the learned Additional Solicitor General, we find that the Committee which interviewed, comprised two of the persons against whom the respondent had filed contempt petition in the High Court. . . . . .This, in our opinion, was neither proper nor fair. Those officers occupying very high position in the bank in all propriety should have withdrawn from the Committee constituted for this purpose. We may not be understood as imputing any bias to them. But, in our opinion, the principle of fairness required that they should not have sat on the Board."

This Court quashed the selection and directed a fresh selection by a Committee of which those two officers were not to be members.

75. The second case in which the facts were similar is the one in Tilak Chand Magatram Obhan v. Kamala Prasad Shukla, 1995 Suppl (1) SCC 21. There the Prinicipal of a school who was a member of the Inquiry Committee "was deeply biased against the delinquent. He had given notice to the delinquent for initiating defamation proceedings against him." It was held that the presence of the Principal on the Committee had vitiated the atmosphere for a free and fair inquiry. It was also observed that the entire inquiry was bad and the fact that there was an appeal, did not cure the defect. It was stated :

"Where the lapse is of the enquiry being conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void, the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry Committee has a strong hatred or bias against the delinquent of which the other members know not or the said member is in a position to influence the decision making, the entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Besides where a delinquent is asked to appear before a Committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room. Justice must not only be done but must also appear to be done. Would it so appear to the delinquent if one of the members of the Enquiry Committee has a strong bias against him."

As to whether the appeal cured the defect, this Court considered the decision in Calvin v. Carr, (1979) 2 All ER 440. We are of the view that a pending case of defamation in the High Court in this case againstSri V. Karthikeyan is afortiori stronger than the above case where there was only a notice issued to alleging defamation.

76. The leading case on the question of reasonable likelihood of bias is the one of Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School, (1993) 4 SCC 10 : (1993 AIR SCW 2400 : AIR 1993 SC 2155 : 1993 Lab IC 1808). This Court held in that case that the test was one of 'real likelihood' of bias even if such bias was not in fact the direct cause. It was held there a real likelihood of bias means at least substantial possibility of bias. The

question depends not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all circumstances, would feel a serious apprehension of bias. It was stated (at p. 21) (of SCC) : (at p. 2162, Para 11 of AIR) :

"The test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

77. The above ruling is an authority also for the view that though the plea is not raised during the inquiry proceedings, if it is raised in the High Court, it is sufficient as it goes to the root of the question and is based on "admitted and unconstroverted facts" and does not require any further investigation of facts. Para 31 of the writ petition in the present case contains the allegations regarding the defamatory item published in the Indian Express and various other acts attributed to Sri Karthikeyan as evidence of his bias. This theme runs through the entire writ petition spanning more than 50 pages and in the written submissions filed in the Tribunal running into more than 60 pages.

78. In our view, Sri V. Karthikeyan must have'recused'himself from the Committee. As he did not do so and as he participated in the decision making process and disqualified the appellant, the entire recommendations dated 30-8-79 of the Screening Committee must be treated as vitiated and invalid.

79. In the light of the above finding, we do not think it necessary to refer to the various other allegations against Sri V. Karthikeyan as regards actualmala fidesand we feel that it is sufficient to go by the principle of 'real likelihood' to quash the report of the Joint Screening Committee.

Doctrine of necessity:

80. We shall next deal with the doctrine of 'necessity' raised by learned Senior Counsel for the respondents 1, 3 and 4, Sri Vaidyanathan. It was argued that under G.O. 793 Public (Special A) Dept. dated 10-3-1976, the Screening Committee for promotion to supertime scale was to consist of (i) the Chief Secretary to Government, (ii) the First Member, Board of Revenue and (iii) the Second Secretary to Government and that, therefore, the doctrine of 'necessity' applies.

81. It may be noticed that where a statute or a statutory rule constitutes a designated authority to take administrative or quasi-judicial decisions and where the person concerned is disqualified to take a decision on the principle of likelihood of bias, then the law (in certain circumstances explained below) makes an exception in the situation and the said person is entitled to take a

decision notwithstanding his disqualification for otherwise no decision can be taken by anybody on the issue and public interest will suffer. But the position in the present case is that there is no statute or statutory rule compelling the Chief Secretary to be a member of the Screening Committee. If the Committee is constituted under an administrative order and a member is disqualified in a given situation vis-a-vis a particular candidate whose promotion is in question, there can be no difficulty in his 'recusing' himself and requesting another senior officer to be substituted in his place in the Committee. Alternatively, when there are three members in the Committee, the disqualified member could leave it to the other two - to take a decision. In case, however, they differ, then the authority which constituted the Committee, could be requested to nominate a third member. These principles are well settled and we shall refer to them.

82. This Court had occasion to deal with identical situations and these rulings go against the respondents. In J. Mohapatra and Co. v. State of Orissa, (1984) 4 SCC 103 : (AIR 1984 SC 1572), the official members as well as non-official members of a Committee were, having regard to their interest, disqualified for being on the Committee. It was argued that the Government having appointed the Committee by resolution, the doctrine of necessity applied. The said contention was rejected. It was held that it was not difficult for those disqualified members to be substituted by other members. This Court held (At p. 1577, para 12 of AIR) :

"It is true, the members of this Sub-Committee were appointed by a Government Resolution and some of them were appointed by virtue of the official position they were holding, such as, the Secretary, Education Department of Government of Orissa, and the Director, Higher Education etc. There was, however, nothing to prevent those whose books were submitted for selection from pointing out this fact to the State Government so that it could amend its Resolution by appointing a substitute or substitutes, as the case may be. There was equally nothing to prevent such non-official author-members from resigning from the Committee on the ground of their interest in the matter."

83. Again, in Institute of Chartered Accountants v. L. K. Ratna, (1986) 4 SCC 537 : (AIR 1987 SC 71), this Court held that in the absence of statutory compulsion, the principle of 'necessity' does not apply. This Court observed that :

"In the Regulations there was nothing to suggest that decision could not be taken by the other members of the Disciplinary Committee who were not disqualified."

84. In Election Commission of India v. Dr. Subrahmanyan Swamy, (1996) 4 SCC 104 : (1996 AIR SCW 2100 : AIR 1996 SC 1810), it was observed that in a multi-member Commission, when the Chief Election Commissioner is found to have likelihood of bias, his participation is not mandatory, and that the doctrine of necessity will not apply. The proper course for him was that he could call for a meeting and withdraw from the meeting leaving it to the other members to decide. In case there was a difference then the doctrine of necessity would apply. We may state that there the matter was governed by statute. In case the Committee is constituted by an administrative order, the Chief Secretary could withdraw, leaving it to the remaining two to decide and in case of difference, he

could ask the Government to substitute a third member in the Committee. The doctrine of necessity would not apply even if there was difference between the other two.

85. For the aforesaid reasons, we reject the plea of the respondents based on the doctrine of necessity.

86. We have already held that the very presence of Sri V. Karthikeyan in the Joint Screening Committee has vitiated the entire recommendations and this defect is not also cured because of the remedy of an appeal. The recommendation of the Committee dated 30-8-79, the decision of the State Government dated 22-5-80 accepting and sending the same to the Central Government, and the decision of the Central Government dated 7-8-80 on appeal are all liable to be quashed in view of the legal position referred to above.

87. This reasoning of ours is independent of any need to go into the other allegations of mala fides alleged against respondents 3 and 4. This conclusion is also reached independent of our finding on points 2 and 3 quashing the recommendation and the orders of the State and Central Governments on Wednesbury unreasonableness. Points 4 and 5 are decided accordingly in favour of the appellant.

Point 6 :

88. The effect of our decision on point 1 is that the censure order dated 8-4-80 on the fourth disciplinary case must be held to be without jurisdiction and also illegal on merits. Under Points 2 and 3, the old adverse remarks and in particular all these adverse remarks prior to the promotion of the appellant on 1-11-72 to the selection grade have become weak and have lost their sting; the adverse remarks which have been expunged, though long after the impugned recommendation dated 30-8-79, have to be treated as non-est and the adverse remarks from 1973 up to the date of promotion of the appellants immediate junior on 16-11-77, - insofar as they are based on the four disciplinary cases that have been dropped - must be treated as non-existent.. Further, the remarks in his favour throughout his career, and the good work recorded in his service book and in addition the various other reports on various aspects e.g. Labour Policy, Urban Development, Tenancy and Land Reforms, Modern History, Public Access to records, Preservation of historical records. Archives etc.; including the one which was noticed by the Supreme Court in K. Chandru v. State of Tamil Nadu, AIR 1986 SC 204, have to be given their due weight. Further, the appellant's case for promotion to super-time scale is to be judged afresh by applying the same standards which were applied to other officers promoted to that scale. The appellant in his writ petition has given specific instances of cases of other officers who have been promoted to super-time scale in spite adverse remarks of a comparatively graver nature having been recorded against the said officers. We do not propose to list them. They are already part of the record. All that we are saying is that if certain standards have been applied in the case of other officers, the appellant is entitled to be judged by the same yardsticks. We are making these remarks in the light of the long and unfortunate history of this case.

89. Learned Senior counsel appearing for the respondents, however, contended that it is not the province of this Court to issue a mandamus to promote the appellant to the super-time scale nor to assess his grading. See Union of India v. Lt. Genl. Rajinder Singh Katyan, 2000 (5) Scale 327 : (2000 AIR SCW 2692). This Court, it is true, does not normally make any such assessment on its own nor does it ordinarily issue a mandamus to promote an officer to the super-time scale. This is the general principle.

90. We may, however, point out that it is not as if there are no exceptions to this general principle. The occasions where the Court issued a writ of certiorari and quashed an order and had also issued a mandamus at the same time to the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In Comptroller and Auditor General of India v. K. S. Jagannathan, (1986) 2 SCC 679 : (AIR 1987 SC 537 : 1987 Lab IC 262) such a power on the part of this Court was accepted by a three Judge Bench. Madon, J. referred to the observations of Subba Rao, J. (as he then was) in Dwarkanath v. ITO, (1965) 3 SCR 536 : (AIR 1966 SC 81) wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to 'reach justice wherever found necessary' and 'to mould the reliefs to meet peculiar and complicated requirements of this country'. Justice Madon also referred to Mayor of Rochester v. Regina, 1858 EB and E 1024, King v. Revising Barrister for the Borough of Hanley, (1912) 3 KB 518; Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997 and to a passage from Halsbury's Laws of England, 4th Ed. Vol. 1, p. 59. Finally Madon, J. observed (Para 20 of AIR and Lab IC) :

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

We emphasise the words underlined in the above passage to the effect that the Court may in some rare situations itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion. The same view was expressed by another three Judge Bench in B. C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : (1995 AIR SCW 4374 : AIR 1996 SC 484 : 1996 Lab IC 462) even regarding disciplinary cases. Verma, J. (as he then was) observed (at p. 782, para 18) as follows :

". . . . . The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

The underlined words reiterate the powers of this Court in rare and exceptional cases.

91. De Smith also states in his Administrative Law (5th Ed. para 6.089) that normally, the proper form of mandamus will be one to hear and determine according to law, though by holding inadmissible the considerations on which the original decision was based, the Court may indirectly indicate the particular manner in which the discretion has to be exercised. (R. v. Manchester, JJ), (1899) 1 QB 571 (576); R. v. Flintshire County Council Licensing (Stage Plays) Committee (1957) 1 QB 350; Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997 and R v. Lord (City of) Licensing JJ exp. Stewart (1954) 1 WLR 1325.

92. In the light of the above precedents, we have considered whether this is a fit case where this Court should issue a mandamus or remit the matter back to the State Government. After giving our anxious consideration to the facts of the case, we are of the view that having regard to our findings on Points 1 to 5 and to the continuous unfair treatment meted out to the appellant by the State of Tamil Nadu - even as accepted by the Central Government in its comments - this is a pre-eminently fit case requiring the issue of a mandamus. We are, therefore, constrained to exercise all the powers of this Court for rendering justice and to cut short further proceedings. The consideration of the appellant's case for the said promotion has been hanging fire and going up and down for the last twenty five years. Disgusted with the delays, the appellant has also taken volunatry retirement. In the light of our decision on Points 1 to 5, we declare the censure on the fourth case as void and without jurisdiction and in the alternative also as liable to be quashed under Wednesbury principles. The adverse remarks of by-gone years prior to 1972 have lost all their sting. The positive factors in the appellant's favour both recorded (at the compulsion of the Central Government) and others to which we have referred to earlier as meriting consideration are, in our opinion, sufficient to entitle him for promotion to the super-time scale. The appellant's case is, in our view, no less inferior to the cases of the other officers who were conferred the similar benefit of super-time scale by the State of Tamil Nadu, details of which have been profusely given in the writ petition. For the aforesaid reasons, we quash the punishment of censure, the assessment made by the Joint Screening Committee, the orders passed by the State and Central Government refusing to grant him super-time scale and in rejecting the appeal of the appellant and we further direct as follows.

93. In the special and peculiar circumstances of the case, we direct the respondents to grant the

appellant the benefit of the super-time scale from the date on which the appellant's junior Sri P. Kandaswamy was granted super-time scale. The respondents are accordingly directed to pass an order in this behalf within eight weeks of the receipt of this order and to give him all consequential benefits attendent thereto. The said benefits shall also be reflected in his pension and other retiral benefits. They shall be worked out and paid to him within the time aforementioned.

94. The Civil Appeal is allowed and disposed of in terms of the above directions. We also award costs of Rs. 10,000 in each of the two writ petitions to be paid by the State of Tamil Nadu.

Appeal allowed.