

Before : G. R. Majithia, J.

MUKHTIAR SINGH BAL,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 9046 of 1988.

9th April, 1991.

*Punjab Agricultural Service (Class I) Rules, 1974—Rls. 3, 8, 9 & 11—Constitution of India, 1950—Art. 226—Promotion—Appointment to selection posts—Expression ‘selection’ connotes specific meaning—Merit should be the sole consideration while appointing persons to such posts—Recommending a person for promotion to selection post possessing outstanding merit barring a person much senior to him with an average order is fair—Principal object of promotion system is to secure best possible incumbent for the highest position—Assessment of service record—Reports in the Annual Confidential Reports—Assessment thereof cannot be characterized as an assessment made merely on subjective basis but on objective basis—Predated adverse remarks in A.C.Rs. after allowing public servant to cross the efficiency bar can be taken into account while making such selections—Petitioner’s claim for promotion to selection post—Service record making him unsuitable for the post—Adverse remarks in his A.C.Rs. conveyed—Representations against such remarks duly considered and rejected by appropriate authority—Not challenged in Court—Claim liable to be rejected—Words and phrases—‘Seniority-cum-merit and ‘Selection’ are two different analogies.*

*Held*, that the expression ‘selection’ appearing in Rule 11(i) has attained a specific meaning in the administrative circles. According to Oxford Dictionary, the expression ‘selected’ means chosen out of a large number, on account of excellence or fitness; best or containing the best choice or most desirable. Therefore, this expression used in rule 11 of the Rules is not an expression which is capable of being used itself. It is implicit in the very expression that the authority which is entrusted with the duty of recommending a person for promotion should bear in mind that having regard to the conditions prevailing in the concerned service, a person possessing outstanding merit alone should be recommended and persons of average record should not be recommended.

(Para 11)

*Held*, that what weighs with the appropriate authority is the positive merit of respondent which ought to have been the sole consideration for making the selection. Assessment of the worth of the selected on the basis of the reports in the annual confidential

report cannot, therefore, be characterised as an assessment made merely on subjective basis and not an assessment made on objective basis. Principal object of promotion system is to secure the best possible incumbent for the highest position while maintaining the morale of the whole organization. The main interest to be served is the public interest; not the personal interest of the members of the official group concerned. The facts on the file clearly establish that the selection for the post of Director, Marketing was fair and was made on the sole basis of merit.

(Para 12)

*Held further*, that the adverse entry which is not considered as deterrent for crossing the efficiency bar cannot be treated to have been obliterated and can be taken into consideration for negating the claim for promotion to the next higher rank.

(Para 16)

*Held*, that when the petitioner filed representation against the adverse entry recorded in the annual confidential report for the year 1980-81 which was duly considered by the appropriate authority and rejected, the petitioner felt satisfied with the final order passed by that authority and did not challenge it in this Court although he had approached this Court on two occasions after his representation against the adverse remarks had been rejected. The submission of the learned counsel for the petitioner that the petitioner's claim was rejected on *mala fide* grounds is, thus, devoid of merit.

(Para 17)

*Held*, that the words 'seniority-cum-merit' mean that promotion cannot be claimed merely on the basis of seniority. These words are not without significance. If these words were not used in the Rules, then the seniority-cum-merit would mean that giving the minimum necessary merits requisite for efficiency of administration, the senior, though the least meritorious, shall have priority. But the language of sub-rule (2) of Rule 9 suggests that seniority is not the sole criterion for determining the suitability. If in spite of seniority a person junior to them could be promoted if they were unfit to discharge the duties of the post. Promotion could not be claimed as a matter of right by virtue of seniority alone. Rule 9(2) of the Rules applies to all posts in the Service except those where specific provisions have been made. The promotional posts other than the one mentioned in Rule 11 have to be filled in conformity with sub-rule (2) of Rule 9. Rule 11 will serve as a proviso to Rule 9. Posts mentioned in Rule 11 are selective posts and have to be filled in accordance with the criteria laid down in *Guman Singh's case* and *Janki Prasad Parimoo's case*.

(Para 13)

*Amended Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:—*

- (a) *a writ in the nature of certiorari, quashing the appointment of Shri S. S. Bains, respondent No. 3 as Director, Marketing, Punjab may be issued;*

- 
- (b) a writ in the nature of mandamus directing the State Government to promote the petitioner as Director Marketing being the seniormost Joint Director, Agriculture, Punjab may be issued;
- (c) and or any other writ, order or direction, which this Hon'ble Court may deem fit in the circumstances of the case be issued;
- (d) filing of certified copies of Annexures P-1 to P-11 may be dispensed with;
- (e) issuing notice of motion may also be dispensed with;
- (f) issue of advance notices on the respondents may also be dispensed with;
- (g) special costs may be awarded;
- (h) record of the case may also be summoned.

J. S. Kehar, Advocate, for the petitioner.

Rajiv Raina, A.A.G. Pb., for respondents No. 1 & 2.

Rajiv Atma Ram, Advocate with Puneet Kansal, Advocate, for respondent No. 3.

#### JUDGMENT

G. R. Majithia, J.

This judgment disposes of CWP No. 9046 of 1988 and CWP No. 4294 of 1989 since common questions of law and facts arise for determination therein. In both these petitions, the petitioners have challenged the promotion of Dr. S. S. Bains to the post of Director, Marketing, Punjab.

(2) A Reference to the relevant facts has been made from the pleadings in CWP No. 9046 of 1988.

(3) The petitioner was selected as a Lecturer in College of Agriculture, Ludhiana and joined as such on October 31, 1962; that respondent No. 1 gave option to the persons working as Lecturers in the College of Agriculture either to continue in the field of education or join in the Department of Agriculture; that the

petitioner joined the Department of Agriculture in August, 1964 and worked as Inspector, Agriculture Development Programme, Ludhiana; that he was selected through the Punjab Public Service Commission as Subject Matter Specialist (Soils Science) Gazetted Class-II and joined on July 19, 1966 in the Intensive Agriculture Development Project, Ludhiana and worked there till January 6, 1970; that he was selected there till January 6, 1979; that he was selected through Punjab Public Service Commission in P.A.S. Class II and joined as District Agricultural Officer at Bhatinda on January 7, 1970; that he was selected through Punjab Public Service Commission in P.A.S. Class I and joined as Chief Agricultural Officer at Bhatinda on October 6, 1972 and worked at different District Headquarters till May 27, 1979; that during this period, different Deputy Commissioner of the Districts assessed his work as 'good' to 'excellent'; that Shri Pritam Singh Hoshiarpuri, the then Director of Agriculture, Punjab was extremely inimical towards the petitioner and harassed him time and again; that a post of Joint Director of Agriculture fell vacant with effect from January 1, 1978 on the 7th point of the roster for which the petitioner was eligible to be promoted; that Shri Pritam Singh Hoshiarpuri, the then Director of Agriculture intentionally got ignored the right of the petitioner and one Shri Ajaib Singh Bains was promoted as Joint Director of Agriculture on January 6, 1978; that Shri Pritam Singh Hoshiarpuri got a fake enquiry started against the petitioner on January 27, 1978 regarding certain allegation that the Government jeep was used by him and the amount at the rate of 0.60 paise per KM. instead of Rs. 1.50 KM, as enjoined by the rules, was deposited by him; that the petitioner challenged the promotion of Shri Ajaib Singh Bains as Joint Director of Agriculture in this Court through Civil Writ Petition No. 4987 of 1978; that the said writ petition was disposed of,—vide order dated April 25, 1979, on the statement of the State counsel, who stated thus :—

“The Government has decided to promote the petitioner against the seventh vacancy reserved for the Scheduled Castes. In view of this, Mr. Kuldip Singh does not press the petition. The same is dismissed accordingly.”

(4) The Petitioner was promoted as Joint Director of Agriculture on *ad hoc* basis, which was in utter violation of the statement made by the State counsel before this Court; that the petitioner is working as a Joint Director of Agriculture since May 28, 1979; that his work on the post of Joint Director of Agriculture was appreciated

by the Directors of Agriculture with whomsoever he worked, Shri Pritam Singh Hoshiarpuri, and he was given good to excellent reports by them; however, these reports were reduced at Secretary's level; that there was no provision for promotion as Joint Director of Agriculture on *ad hoc* basis where regular vacancy is available, but the petitioner was promoted on *ad hoc* basis to frustrate his right for further promotions; that as per the hierarchy in the Directorate of Agriculture, the Director of Agriculture is the highest post and thereafter is the post of Director, Marketing and then there are seven Joint Directors of Agriculture; that the pay scale of the post of Director of Agriculture is Rs. 2,500—2,750, whereas the pay scales of the posts of Director, Marketing and Joint Director of Agriculture are Rs. 2,200—2,500 and 1,775—2,100 (unrevised) respectively; that the Director, Marketing is a promotional post from the post of Joint Director; that the petitioner is the seniormost Joint Director in the Department of Agriculture; that Shri S. S. Bains (respondent No. 3) was junior to the petitioner even at the time when he and respondent No. 3 were selected to P.A.S. Class-I; that in the seniority list prepared by the Punjab Public Service Commission at the time of selection to P.A.S. Class I. the petitioner was placed at serial No. 6 whereas respondent No. 3 was placed at serial No. 12; that the petitioner was promoted as Joint Director of Agriculture in 1979, whereas respondent No. 3 was promoted in 1984; that the petitioner filed Civil Writ Petition No. 3651 of 1981 in this Court against the Director of Agriculture Shri Pritam Singh Hoshiarpuri for his removal from the post on the allegations of corruption and malpractices; that on the basis of the oral statement of the State counsel that Shri Pritam Singh Hoshiarpuri had been relieved of the post of Director of Agriculture, Punjab, the writ petition was dismissed as having rendered infructuous; that Shri Pritam Singh Hoshiarpuri changed the headquarters of the petitioner to Bhatinda since he was inimical towards him; that the petitioner made several representations to the Development Commissioner and higher authorities that Shri Pritam Singh Hoshiarpuri was going to record adverse remarks in his annual confidential reports; that due to enmity, Shri Hoshiarpuri gave adverse remarks in the annual confidential report for the year 1980-81 showing performance of the petitioner as "below average", which were conveyed to him; that the petitioner continued to work as Joint Director, but the enquiry against him was not concluded; that when the question of promotion to the post of Director Marketing rose, hurriedly the enquiry was concluded and the petitioner

was censured on November 6, 1987; that the petitioner had unblemished record of service as a Joint Director of Agriculture; that the petitioner filed representation for review of the order by which he was censured, but the same was rejected by a non-speaking order conveyed to him,—*vide* Memo No. 16/89-79-21-CH(4)/9425, dated September 14, 1988 from the Under Secretary, Vigilance, Department of Vigilance (Vigilance Branch), Punjab; that in the year 1985-86, the work of the petitioner with regard to the supply and distribution of fertilizers in Punjab was appreciated by the Joint Secretary, Fertilizers, Government of India, New Delhi; that the Director of Agriculture, Punjab, also recommended to the State Government for issuance of appreciation letter in favour of the petitioner with regard to the supply and distribution of fertilizers; that the petitioner's work was appreciated for submitting a document on Technology Mission with the Mission Objectives and Achievements of Oilseeds in Punjab; that the petitioner was appointed as Nodal Officer, Punjab, in June, 1988 to carry out the work and this post is equivalent to the post of Additional Director under the Technology Mission on Oil Seeds in Agriculture Department and his work was appreciated by the Punjab Government as well as by the Government of India; that the post of Nodal Officer is equivalent to Additional Director of Agriculture, which post is equivalent to Director, Marketing; that the petitioner, however, was victimised time and again by the Government of Punjab and was ignored for appointment by promotion to different posts; that the post of Managing Director, Punjab Land Development and Reclamation Corporation fell vacant and the petitioner's name was recommended by the Director of Agriculture for appointment against the resultant vacancy, but respondent No. 1, ignoring the petitioner's claim, appointed one Jaswant Singh Khokhar who was several steps junior to him; that when the post of Director, Marketing fell vacant, the Director Marketing sent a panel of three names, namely, Shri M. S. Bal, Shri Prem Singh Gill and S. Bharpoor Singh Virk. but respondent No. 1 selected Dr. S. S. Bains, respondent No. 3, as Director, Marketing, ignoring the petitioner's claim despite the fact that he was the senior-most Joint Director of Agriculture and had meritorious record of service; that the petitioner was promoted as Joint Director of Agriculture against the 7th point reserved for the members of the Scheduled Castes on regular basis with effect from May 28, 1979,—*vide* order dated January 31, 1989; that respondent No. 1 also declared in this very order that the petitioner had completed the period of probation satisfactorily with effect from May 27, 1982 (Afternoon) in terms of Rule 12 of the Punjab Agricultural

Service (Class I) Rules, 1974 (for short, the Rules); that,—*vide* order dated March 28, 1989, the petitioner was allowed to cross the efficiency bar with effect from May 1, 1983; that the petitioner was granted one additional increment of Rs. 125 in the form of proficiency step up with effect from May 28, 1987, by an order dated July 14, 1989; that respondent No. 1 illegally did not select the petitioner for the post of Director Marketing.

(5) Separate written statements have been filed—one on behalf of respondents No. 1 and 2 and the other by respondent No. 3 Dr. S. S. Bains.

(6) Respondents No. 1 and 2 in their written statement admitted that the petitioner's record of service as Inspector Agriculture Development Programme, Ludhiana during the years 1962-63, 1963-64 and 1964-65 was satisfactory, satisfactory and good respectively; that the petitioner was appointed in P.A.S. Class-II in the year 1966 and in P.A.S. Class-I in the year 1972 on the recommendations of the Punjab Public Service Commission; that he worked as Chief Agricultural Officer in various districts from October 6, 1972 to July 27, 1979; that the petitioner did not earn even a single 'excellent' report from the concerned Deputy Commissioners; that for the year 1971-72, the Deputy Commissioner, Bhatinda, while rating him on the whole as 'good' also observed that he should show improvement; that for the period from July 18, 1973 to February 22, 1974, the then Deputy Commissioner, Ferozepur, recorded the following remarks in his annual confidential report :—

"He laid more emphasis on touring with the result that his office work suffered a great deal. In spite of warnings, he could not improve himself."

For the remaining period, the concerned Deputy Commissioners rated him from 'satisfactory' to 'good' and 'very good'; it is, however, admitted that the Deputy Commissioner is not the final authority in recording the annual confidential reports of the Chief Agricultural Officers; that while working as Chief Agricultural Officer during the year 1972-73, the petitioner was rated just as an average officer and it was also observed that the petitioner was not too bright, yet he was trying to pick up work and these remarks were duly conveyed to the petitioner; that on the basis of the service record, the petitioner was not found suitable for promotion to the post of Joint Director

of Agriculture falling at point No. 7 reserved for the members of Scheduled Castes/Scheduled Tribes and accordingly Shri Ajaib Singh Bains, a non-Scheduled Caste, was promoted as Joint Director of Agriculture on January 1, 1978; that the matter was subsequently referred to the Department of Wellare for dereserving the 7th point, but the latter did not agree and advised that the case of the petitioner be reconsidered in view of the latest instructions; that on reconsideration, the petitioner was promoted as Joint Director of Agriculture on *ad hoc* basis,—*vide* order dated April 25, 1979, without prejudice to the enquiries pending against him; that in the enquiry registered by the Vigilance Department against the petitioner on January 27, 1978, the allegation for misusing the Government vehicle by the petitioner had been proved and the Vigilance Department which is enjoying concurrent powers of all Administrative Departments, imposed the punishment of 'Censure' upon him,—*vide* their order dated November 6, 1987; that besides this, Rs. 253.20 had also been recovered from the petitioner for using Government vehicle contrary to the instructions; that petitioner's representation for review of the said punishment was rejected by the Vigilance Department; that the petitioner had been working as Joint Director of Agriculture since May 28, 1979 was admitted; that except the present Director of Agriculture, no other Director of Agriculture had given the petitioner reports more than 'good'; that as per the Government's instructions dated May 3, 1960, the work and conduct of an officer working under a Head of Department whether in the office or in the field should be reported upon by at least two officers; thus reports which are initiated by the Head of Department himself have to be put up to the Administrative Secretary for the recording of his remarks; that the Secretary Agriculture is competent to review the report of the petitioner recorded by the Director of Agriculture; that the post of Director Marketing is filled by selection from amongst the officers of Administrative Cadre in terms of rule 11 of the Rules; that respondent No. 3 was appointed as Joint Director of Agriculture on regular basis with effect from April 25, 1984, whereas the petitioner was appointed as Joint Director of Agriculture with effect from April 25, 1979, on *ad hoc* basis, without prejudice to the enquiries pending against him; that according to note 2 below rule 13 of the Rules, the period of appointment of a member appointed on *ad hoc* basis or in stop gap arrangement against short term vacancy, viz. leave, transfer and pending regular appointment by direct recruitment, will not count towards seniority and, thus, the entire service rendered by the petitioner as Joint Director of Agriculture, at that time, was on *ad hoc* basis, which did



not count towards seniority; that respondent No. 1 had declared that respondent No. 3 had completed the period of probation satisfactorily on the post of Joint Director of Agriculture, whereas no such certificate had been issued in favour of the petitioner as he was still working on *ad hoc* basis at the time when his name was considered for appointment to the post of Director Marketing; that the petitioner was not senior to respondent No. 3 as Joint Director of Agriculture on September 1, 1988 when his name was considered, amongst others, for appointment to the post of Director Marketing; that it is admitted that C.W.P. No. 3651 of 1981 filed by the petitioner in this Court for the removal of Shri Pritam Singh Hoshiarpuri from the post of Director of Agriculture, Punjab, was dismissed as having rendered infructuous since Shri Hoshiarpuri had been appointed as Agricultural Commissioner in the Ministry of Agriculture, Government of India, New Delhi; that the allegation that Shri Pritam Singh Hoshiarpuri was inimical towards the petitioner was denied; that the following adverse remarks were recorded in the Annual Confidential Report for the year 1980-81 of the petitioner, which were duly conveyed to him :—

“Being absent from duty from 1st April, 1980 to 13th May, 1980 and from 17th June, 1980 to 26th November, 1980, did not contribute anything for summer moong, kharif pulses and rabi pulses production. Since joining at Chandigarh, has taken no interest in work, failed very badly in co-ordinating between P.P.S.C. and P.A.U. and field staff in timely arranging seed for summer moong and other activities. Has developed so much ego that on one side he misbehaves with field staff and on the other side uses very harsh and derogatory language for his superiors, trying to cover up his inefficiency and incapability under the garb of casteism. Touring is ineffective. Takes no interest in understanding the office routine.

An inefficient incapable officer who is a liability on Government exchequer.”

The petitioner's representation against these adverse remarks was duly considered and rejected by respondent No. 1. However, it was denied that the Director of Agriculture had ever given the petitioner 'very good' to 'excellent' reports; that it is admitted that the petitioner was ordered to act as Nodal Officer till the upgradation of the new

post of Joint Director to that of Additional Director under the Technology Mission Scheme in respect of Agriculture Department and this interim arrangement does not confer any right upon the petitioner for being considered for promotion to the higher post; that the post of Director Marketing is a selection post and appointment to this post has to be made by selection from amongst the officers of Administrative Cadre and that respondent No. 3 having an exceptional record of service was promoted and appointed as Director Marketing through selection from amongst the Joint Directors of Agriculture of the Administrative Cadre.

(7) Respondent No. 3 in his written statement while denying the allegations made against Shri Pritam Singh Hoshiarpuri, the then Director of Agriculture, took further objection that since Shri Pritam Singh Hoshiarpuri was not made a party respondent to the writ petition, the personal allegations of *mala fide* made against him could only be denied by him. In all other respects, he substantially reiterated the defence pleas taken by respondents No. 1 and 2 in their written statement. He also highlighted his outstanding merits, educational qualifications, experience, etc. which according to him, were taken note of by respondent No. 1 while making the selection for the post of Director Marketing. He also filed written statement to the amended writ petition and appended a copy of the comparative statement of officers considered for the post of Director Marketing in the Department of Agriculture, Punjab.

(8) After filing the writ petition, the petitioner sought amendment to the writ petition to incorporate the plea that under the Government order dated November 31, 1989, the petitioner was promoted as Joint Director of Agriculture against the 7th point reserved for the members of the Scheduled Castes/Tribes on regular basis with effect from May 28, 1979 and that he was allowed to cross the efficiency bar with effect from May 1, 1983,—*vide* order dated March 28, 1989 and was also granted one additional increment of Rs. 125 in the form of proficiency step up with effect from May 28, 1987,—*vide* order dated July 14, 1989. The amendment was allowed. The amended writ petition was filed and reference to the facts has been made from the amended writ petition.

(9) Learned counsel for the petitioner submitted thus :—

- (i) The petitioner being the senior most Joint Director in the Department of Agriculture was eligible for promotion in view of the mandatory provision of sub-rule (2) of rule 9

---

of the Rules. Sub-rule (2) envisages that all appointments to the post in the Service by promotion have to be made on the basis of seniority-cum-merit;

- (ii) Respondent No. 1 should have prepared a slab of three senior Joint Directors for consideration for the post of Director Marketing. Respondent No. 3 was junior to the petitioner and his name could not have been brought on the slab for consideration;
- (iii) Respondent No. 1 while considering the suitability of the petitioner took into consideration the adverse remarks recorded in his annual confidential report for the year 1980-81. He was allowed to cross the efficiency bar with effect from May 1, 1983,—*vide* order dated March 28, 1989. The resultant effect is that the adverse entry in the character roll prior to the crossing of the efficiency bar has to be ignored.
- (iv) Adverse remarks in the annual confidential report of the petitioner for the year 1980-81 were recorded by the then reporting officer Shri Pritam Singh Hoshiarpuri, Director of Agriculture, who was inimically disposed towards the petitioner and against whom serious allegations of *mala fide* were made in the earlier writ petition filed by the petitioner in this Court;
- (v) Punishment of 'censure' imposed upon the petitioner by the Vigilance Department with regard to the irregularity in the use of Government vehicle in the year 1976-77, was not permissible.

(10) Before I deal with the submissions of the learned counsel for the petitioner, it will be appropriate to examine the State plea for upholding the appointment of respondent No. 3 by selection to the post of Director Marketing, Punjab. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab made rules for regulating the appointment and the conditions of service of persons in the Punjab Agricultural Service (Class I). These rules came into force with effect from December 2, 1974 and are called the Punjab Agricultural Service (Class I) Rules, 1974.

'Service' under the Rules means the Punjab Agricultural Service (Class I). Rule 3 of the Rules groups the posts in the Service into three categories, viz., Administrative, Statistical and Engineering, as shown in Appendix 'A' to the Rules. Rule 8 deals with the method of recruitment to the Service. Sub-rule (1) of Rule 9 relates to the qualifications for recruitment by direct appointment to any post in the Service unless he possesses the qualifications specified in Appendix 'B' to the Rules. Sub-rule (2) of Rule 9 says that all appointments to the posts in Service by promotions shall be made on the basis of seniority-cum-merit and no members of the Service shall have any right for promotion merely on the basis of seniority. Clause (i) of Rule 11 provides that the posts of Director of Agriculture, Cane Commissioner, Joint Director of Agriculture and Director Marketing shall be selection posts; appointment to the post of Director of Agriculture shall be made by selection from officers of the rank of Joint Director of Agriculture or above and appointment to the other selection posts shall be by selection from the officers of the Administrative cadre. Clause (ii) of Rule 11 provides that officers of the Administrative, Statistical and Engineering categories shall be eligible for promotion *within their respective categories of service*. In Appendix 'A' with reference to Rule 3 of the Rules, the following are the posts in the Service on Administrative cadre :—

- (1) Director of Agriculture.
- (2) Director of Marketing.
- (3) Joint Director of Agriculture (Cash Programme)
- (4) Joint Director of Agriculture (H.Y.V.P.)
- (5) Joint Director of Agriculture (Multiple Cropping).
- (6) Deputy Directors of Agriculture.
- (7) Deputy Director of Agriculture (Hqrs.)
- (8) Deputy Director of Agriculture (Seeds).
- (9) Deputy Director of Agriculture (Extension).
- (10) Deputy Director (Cotton Extension).
- (11) Deputy Director of Horticulture.
- (12) Deputy Director of Horticulture (Crops).
- (13) Deputy Director (Locust Control and Plant Protection).
- (14) Potato Development Officer.
- (15) Deputy Director of Agriculture (Oilseeds).

- 
- (16) Joint Director of Marketing.
  - (17) Project Officers (Multiple Cropping).
  - (18) District Training Officers.
  - (19) Foreign Training Reserve.

Posts of Engineering cadre are as under :—

- (1) Agricultural Engineer (Implements).
- (2) Agricultural Engineer (Tubewells).

Posts on Engineering cadre are as under :—

- (1) Statistician.
- (2) Statistical Officers.

Indisputably, the post of Director of Marketing is of the Administrative Cadre and appointment to this post has to be made by selection from the officers borne on the Administrative Cadre.

(11) The petitioners in C.W.P. No. 9046 of 1988 and C.W.P. No. 4294 of 1990 are officers from the Administrative Cadre and were entitled for consideration for appointment to the post of Director of Marketing as enjoined by Rule 11(i) of the Rules. The expression "selection" appearing in Rule 11(i) has attained a specific meaning in the administrative circles. According to Oxford Dictionary, the expression "selected" means chosen out of a large number, on account of excellence or fitness; best or containing the best choice or most desirable. The expression "selection" came up for interpretation in *Janki Prasad Parimoo and others v. State of Jammu and Kashmir and others* (1), where the Supreme Court had occasion to consider it when it was used in connection with the promotion of officials from a lower cadre to higher cadre. In para 19 of the said judgment, it was observed by their Lordships of the Supreme Court as follows :—

"The second consideration is the wholly inept way of making selections. Selection means that the man selected for promotion must be of merit. Where promotion is by seniority, merit takes the second place but when it is a

---

(1) A.I.R. 1973 S.C. 930.

---

selection, merit takes the first place and it is implicit in such selection that the man must not be just average.”

The considerations that should weigh with an authority which is empowered to make promotion on the basis of merit are dealt with by the apex Court in *Guman Singh v. State of Rajasthan and others* (2). Dealing with the relevant rule, the Supreme Court observed in paragraph 35 as under :—

“Rule 32 in essence adopts what is stated in Rule 28-B. The latter rule provides for two methods of selection: one based on merit and the other based on seniority-cum-merit. In other words, the rule provides that the promotion based on merit shall strictly be on the basis of merit. The Selection Committee and the Promotion Committee consist of very responsible and senior officers of the State and being persons of experience they can be trusted to evaluate the merits of a particular officer. No doubt the term ‘merit’ is not capable of an easy definition, but it can be safely said that merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters or factors such as his punctuality in work, quality and outturn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public and his rank in the service. We are only indicating some of the broad aspects that may be taken into account in assessing the merits of an officer. In this connection it may be stated that the various particulars in the annual confidential reports of an officer, if carefully and properly noted, will also give a broad and general indication regarding the merit of an officer. Therefore, it cannot be stated that Rules 28-B and 32 are in any manner vague or do not give any guide line for assessing the merit of an officer.”

It is, therefore, clear from the enunciation made by the apex Court that the expression ‘selection’ used in rule 11 of the Rules is not an expression which is capable of being used itself. It is implicit in the

very expression that the authority which is entrusted with the duty of recommending a person for promotion should bear in mind that having regard to the conditions prevailing in the concerned Service, a person possessing outstanding merit alone should be recommended and persons of average order should not be recommended.

(12) I summoned the file pertaining to the selection of Director of Marketing from respondent No. 1. Perusal thereof reveals that respondent No. 1 in conformity with Rule 11(i) of the Rules found the following officers eligible for consideration for promotion to the post of Director of Marketing :—

- (i) Shri Sohan Singh Dhesi, Director Horticulture.
- (ii) Shri Balwinder Singh Gill, Joint Director, Inputs.
- (iii) Shri Avtar Singh Randhawa, Deputy Director Cotton.
- (iv) Shri Sukhdev Singh, Director, Agriculture.
- (v) Shri Prem Singh Gill, Director, Seed Certification Authority.
- (vi) Shri Bharpur Singh Virk, Joint Director, Pulses.
- (vii) Shri M. S. Bal, Joint Director (Cash Crops).
- (viii) Shri G. S. Jossan, Managing Director, Punjab Land Development and Reclamation Corporation.
- (ix) Dr. S. S. Bains, Cane Commissioner.

After considering the merits of each officer, the Special Secretary (Agriculture), while considering the case of respondent No. 3 (Dr. S. S. Bains), in his note dated August 30, 1988, observed thus:—

“He is presently working as Cane Commissioner and has had an experience of working at the National Level as Deputy Commissioner, Director Sugarcane, and Joint Commissioner for 8 years in the Ministry of Agriculture. Taking all aspects in view, it is recommended that Dr. S. S. Bains may be promoted as Director Marketing with effect from 1st September, 1988. He may also hold the *Additional Charge* of the post of Cane Commissioner till further orders.”

The file was submitted to the Additional Chief Secretary, who desired the Special Secretary (Agriculture) to discuss the case with

him. The Special Secretary (Agriculture) discussed the case with the Additional Chief Secretary on September 1, 1988. He summoned the confidential reports of the petitioner (in C.W.P. No. 9046/88) from the Personnel Department and thereafter appointed the following note :—

"The confidential report of Shri M. S. Bal has been obtained from the Personnel Department and it is seen that in the last 5 years the overall record of this officer ranges from 'Average to Good'. On earlier occasions, this officer has earned consistently bad reports, and since he joined Class I Service, adverse remarks have been conveyed to him three times. His performance and his personality assessed in the year 1980-81 indicates that the officer is not only inefficient and incompetent but also has a streak of casteism in him. These remarks were also conveyed to the officer, and his representation against these remarks was rejected by the Government. I have also brought to the notice of A.C.S., that Dr. S. S. Bains is being recommended as a suitable candidate for this post in view of his excellent academic record, vast experience in various assignments, the international training in related fields of agriculture, and his confidential record which appears to be most *outstanding* as compared to all the officers being considered for this post. He has also had specific experience in marketing of foodgrains of commercial crops, as also in the marketing of cotton and jute. Taking all aspects into view, A.C.S. has agreed that Dr. S. S. Bains be promoted as Director, Marketing with effect from 1st September, 1988."

Reference to the notings from the promotion file of the post of Director, Marketing has been necessitated because at the time of arguments, the learned counsel for the petitioner laid considerable emphasis that the claim of the petitioner was not properly considered. In the writ petition or at the time of arguments, no allegation had been made against the senior officers of respondent No. 1 who made the selection. The allegation was only confined to the aspect that the petitioner's claim was not properly considered. Reference to the promotion file belies the accusation made. What weighed with the appropriate authority was the positive merit of respondent No. 3, which ought to have been the sole consideration for making the selection. Assessment of the worth of the selectee



on the basis of the reports in the annual confidential report cannot, therefore, be characterised as an assessment made merely on subjective basis and not an assessment made on objective basis. Principal object of promotion system is to secure the best possible incumbent for the highest position while maintaining the morale of the whole organization. The main interest to be served is the public interest; not the personal interest of the members of the official group concerned. The facts on the file clearly establish that the selection for the post of Director, Marketing was fair and was made on the sole basis of merit.

(13) Now stage is set to deal with the submissions made by the learned counsel for the petitioner in seriatim. The learned counsel reliance on Rule 9(2) of the Rules submits that all appointments by promotion to the posts in the Service have to be made on the basis of seniority-cum-merit. The submission lacks substance. Sub-rule (2) of Rule 9 of the Rules applies to all posts in the Service except those where specific provisions have been made. The promotional posts other than the one mentioned in Rule 11 have to be filled in conformity with sub-rule (2) of Rule 9. Rule 11 will serve as a proviso to Rule 9. Posts mentioned in Rule 11 are selective posts and have to be filled in accordance with the criteria laid down in *Guman Singh's* case (supra) and *Janki Prasad Parimoo's* case (supra). In sub-rule (2) of Rule 9, the words "seniority-cum-merit" means that promotion cannot be claimed merely on the basis of seniority. These words are not without significance. If these words were not used in the Rules, then the seniority-cum-merit would mean that giving the minimum necessary merits requisite for efficiency of administration, the senior, though the least meritorious, shall have priority. But the language of sub-rule (2) of Rule 9 suggests that seniority is not the sole criterion for determining the suitability. If in spite of seniority a person junior to them could be promoted if they were unfit to discharge the duties of the post. Promotion could not be claimed as a matter of right by virtue of seniority alone.

(14) The learned counsel relied upon Circular Letter No. 9129-G-56/3964, dated September 17, 1956, from the Chief Secretary to Government, Punjab, to all Heads of Departments, in support of his second submission. Sub-para (iii) of paragraph 2 of the letter reads thus :—

"Out of the lists so prepared, selection for filling the vacancies which may have arisen will be confined to first three

candidates for each vacancy. For every vacancy a slab of three suitable officers/officials is to be formed and unless a junior among them happens to be of exceptional merit and suitability, the senior-most will be selected. This does not mean that after selection has been made the other two become unsuitable. For the next vacancy another slab of three will be formed and the two who were not selected for the first vacancy will necessarily have to be included in that slab. It is quite possible that one of them may be selected for the second vacancy. In effect, therefore, after one slab has been formed for the first vacancy, every subsequent slab will necessarily contain two candidates of the slab preceding it."

The instructions contained in this sub-paragraph were clarified by respondent No. 1 through Circular Letter No. 4044-5GS-61/23179, dated June 28, 1961 from the Chief Secretary to Government, Punjab, to all Heads of Departments. This letter postulates that a list of eligible officers/officials who fulfil the prescribed experience etc. for promotion is to be drawn up in accordance with sub-paras 2(i) and (ii) of the letter dated September 17, 1956. However, instructions were issued,—vide Circular Letter No. 6468-GS-60/20806, dated June 17, 1960, where promotion by selection has to be made strictly on the basis of merit. Paragraph 2 of the letter reads as under :—

"The executive instructions referred to above provide procedure for considering names for promotion, the general rule being that three names should be considered for each post. Where a service rule lays down that within a particular service, promotion shall be made by selection on the basis of merit and suitability in all respects and no member of the Service shall have any claim to such promotion as a matter of right or mere seniority or has provision somewhat to this effect, namely, making it quite clear that promotions are a matter of merit and not merely of seniority, Government is advised that the Department making the selection is not limited to choosing between three fit persons for a single post. It may apply such criteria for suitable competitive selection as it wishes and considers fair and appropriate and in doing so need not limit itself to three names for each post. In other words, the executive instructions do not override or restrict the provisions of a statutory service rules which

distinctly provide for selection on merit without necessary reference to seniority.”

It was made clear in this paragraph that where promotions have to be made on merit and not merely on seniority, the Department making the selection is not to limit the selection between three fit persons for a single post. In the light of the provisions of this letter, respondent No. 1 prepared list of all eligible officers who fulfilled the requisite qualifications/experience, etc. for the post of Director Marketing and, after examining their individual merits, found respondent No. 3 to be the most meritorious out of all the officers. Apart from this, Rule 11 of the Rules does not say that a slab of 3 officers has to be prepared. It only says that the selection has to be made from the officers of the Administrative Cadre. Assuming that the circular letter dated September 17, 1956 is still in force, the instructions contained therein are in violation of the statutory provisions and have to be ignored and the statutory rule has to be followed. Submissions (i) and (ii) are, thus, devoid of merit.

(15) In support of the third submission, learned counsel for the petitioner placed reliance on the judgments reported as *State of Punjab v. Dewan Chuni Lal* (3), and *Shri Shadi Lal v. The Deputy Commissioner, Gurgaon and others* (4). The precise question whether the adverse report not considered as deterrent for crossing the efficiency bar can be taken into consideration for negating the claim for promotion came up for consideration before a Division Bench of this Court in *Ran Singh Kalson, Deputy Superintendent of Police v. The State of Haryana and others* (5), and the Bench, after considering the observations of the Supreme Court in *Dewan Chuni Lal's case* (supra), observed thus :—

“In *Dewan Chuni Lal's case* (supra), Dewan Chuni Lal, Sub-Inspector, was called upon to answer a charge framed on October 12, 1949, setting forth extracts from his confidential character roll showing his inefficiency and lack of probity while in service from 1941 to 1948 and to submit his answer to the *prima facie* charge of inefficiency as

---

(3) A.I.R. 1970 S.C. 2086.

(4) 1974 (1) S.L.R. 217.

(5) 1978 (1) S.L.R. 450.

envisaged in paragraph 16.25 (2) of the Punjab Police Rules. He was allowed to cross the efficiency bar in the year 1944. With respect to the entries in the years 1941 and 1942, their Lordships of the Supreme Court opined that reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942, they overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. This decision obviously has no bearing on the question as to whether the adverse entries in the character roll of a public servant prior to the date when he was allowed to cross the efficiency bar could be taken into consideration while assessing his suitability for promotion to a higher rank. As held in *State of Orissa v. Sudhansu Sekhar Misra and others*, AIR 1968 SC 647, a decision is only an authority for what it decides. What is the essence in a decision is its ratio and not every observation found there nor what logically follows from the various observations made in it. From the decision in *Dewani Chuni Lal's* case (supra) therefore, it cannot be legitimately inferred that the entries prior to the order allowing the efficiency bar are rendered *non est* for all purposes."

With regard to the decision in *Shadi Lal's* case (supra), the Bench observed thus :—

"So far as the decision of this court in *Shadi Lal's* case (supra) is concerned, the learned Judge simply accepted the contention of the learned counsel that in view of the decision of their lordships of the Supreme Court in *Dewan Chuni Lal's* case, the adverse entries in the service record of the petitioner prior to November 1, 1964, when he was allowed to cross the efficiency bar could not be taken into consideration while considering his case for promotion to the higher post, without ever advertng to the facts in *Dewan Chuni Lal's* case or the purpose for which it was held that the adverse entries could not be taken into consideration. On a proper analysis of *Dewani Chuni Lal's* case, we are unable to hold that the adverse

entries prior to the date when a public servant is allowed to cross the efficiency bar are completely wiped out or cannot be taken into consideration while judging his suitability for promotion to higher rank. We are, therefore, of the considered view that the case of *Shri Shadi Lal* (supra) was not correctly decided and that while considering the case of a public servant for future promotion, it is open to the competent authority to take the entire record of service into consideration for judging his suitability."

The ultimate analysis by the Bench was that the adverse entry prior to the date when a public servant is allowed to cross the efficiency bar is not completely wiped out and can be taken into consideration for judging his suitability for promotion to the next higher rank. *Ran Singh Kalson's* case (supra) was followed in *Shri Satpal Singh v. Deputy Inspector General of Police and another* (6), wherein learned Single Judge of this Court while dealing with the case of premature retirement held that the adverse entries prior to the crossing of the efficiency bar can be looked into for ordering premature retirement of a public servant.

(16) In the light of the decision rendered in *Ran Singh Kalson's* case (supra), the adverse entry which is not considered as deterrent for crossing the efficiency bar cannot be treated to have been obliterated and can be taken into consideration for negating the claim for promotion to the next higher rank. The submission is thus without substance.

(17) The fourth submission of the learned counsel for the petitioner is also devoid of merit. The allegations against Shri Pritam Singh Hoshiarpuri, the then Director of Agriculture, are not sufficient to constitute the averment of *mala fide*. Necessary particulars of the charge making out a *prima facie* case are not given in the writ petition. Mr. Hoshiarpuri has not been made a party respondent to the writ petition. Apart from this Shri Hoshiarpuri was only the reporting authority. The accepting authority was the Secretary (Agriculture). The petitioner did file representation against the adverse entry recorded in the annual confidential report for the year 1980-81, which was duly considered by the appropriate authority and rejected. The petitioner felt satisfied

with the final order passed by the appropriate authority and did not challenge it in this Court although he had approached this Court on two occasions after his representation against the adverse remarks had been rejected.

(18) Coming to the fifth submission of the learned counsel, the official noting on the file relating to promotion to the post of Director of Marketing reveal that the Vigilance Department enjoyed concurrent power of all the Departments in disciplinary matters. The Vigilance Department inflicted punishment of 'censure' on the petitioner after giving him full opportunity. His representation against this punishment was considered and rejected by the Vigilance Department. The petitioner did not challenge the order of the Vigilance Department on the review petition against the Punishment of 'censure' before any Court and it is not open to him to challenge the same in these proceedings.

(19) For the reasons aforementioned, both the writ petitions are devoid of merit and are dismissed, but without any order as to costs.

---

*J.S.T.*

*Before : G. R. Majithia, J.*

MOHINDER SINGH AND ANOTHER,—*Appellants.*

*versus*

RAM NATH AND OTHERS.—*Respondents.*

*Regular Second Appeal No. 3251 of 1986*

16th April, 1991.

*Partnership Act 1932 (9 of 1932)—S. 69—Suit for dissolution of partnership firm and rendition of accounts—Partnership firm not made a party—Not proved that partnership firm registered—However, constitution of partnership not denied—Objection that suit against unregistered firm and firm not been made party to suit—Not maintainable.*

*Held*, that indisputably, the parties to the suit are partners of the firm. The constitution of the partnership firm is not denied. The objection that a suit, against an unregistered firm or that the firm having been not made a party to the suit is not maintainable, cannot be sustained for the reason that the partnership is admitted. The partnership firm is a compendious name for the partners constituting