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when the evidence was not yet completed as the witnesses were not cross-examined, allowed the application and summoned the accused. On these facts the summoning order was quashed by a Single Bench of the Gujarat High Court. But, with due respect, I am unable to concur with the same view. Recently, in *Raj Kishore Prasad v. State of Bihar* (11), the Apex Court has held as under :—

“Addition of an accused by summoning or resummoning a discharged accused, and that too without hearing the accused, has only been permitted in the manner provided by Section 319 Cr. P.C. on evidence adduced during the course of trial, and in no other way.”

Thus it is apparent that the petitioners till they are summoned by the trial Court under Section 319 of the Code they had no right to cross-examine the witness Bal Krishan.

(27) Thus, in view of the above judgment of the Apex Court it is no more *res-integra* that such an accused against whom an order under Section 319 of the Code is passed has no right of hearing before that order is passed.

(28) Accordingly, finding no merit in the petition, it is dismissed.

(29) Copy of the order be conveyed to the trial Judge so that he may proceed with the trial.

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S.C.K.

*Before Arun B. Saharya, C.J. & H.S. Bedi, J*

STATE BANK OF INDIA & ANOTHER,—*Appellants*

*versus*

D.C. AGGARWAL,—*Respondent*

L.P.A. No. 364 of 1998

The 9th March, 1999

*Constitution of India, 1950—Art. 226—Letters Patent Appeal, 1919—Cl. X—Promotion policy of the Bank dated 8th June, 1982 as modified by the policy dated 23rd February, 1984—*

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*Reconsideration of claim for promotion under orders of Hon'ble Supreme Court—Respondent's claim negated following interview to adjudge his suitability for promotion to Top Executive Grade Scale VII (General Manager)—Officer obtained only 25.7% marks in the interview which was far below the prescribed 60% qualifying marks—Respondent challenging only jurisdiction of Committee to take interview.—Court finding respondent never intended to submit to the interview but only to filibuster and scuttle it—The officer cannot be permitted to assail interview cut short by the departmental promotion committee—Finding of learned Single Judge that promotion case between 1st August, 1984 and 1st August, 1988 required to be examined in TEG Scale VII—Learned Single Judge deciding case on the basis of Policy of 1989 that it could not be retrospectively applied—1984 policy escaping notice of learned Single Judge—Finding, therefore, set aside—Respondent's claim for salary from November, 92 to June, 93 denied on the ground that he had not joined duty on transfer to Hyderabad—Supreme Court in respondent's own case held that the respondent's posting to Hyderabad was not fair and that he has been re-transferred to Chandigarh—Direction by the learned Single Judge with regard to respondent's claim to the payment of salary was fully justified.*

*Held* that the respondent had never intended to submit to the interview but to filibuster and ultimately to scuttle it. The Supreme Court had found the respondent to be "excitable" by temperament, an observation with which we heartily concur, but, in addition, after having heard him out over several days, we find him to be an extremely articulate and intelligent person as well. We are convinced, therefore, that the respondent was acutely aware of the consequences of his actions. The interview committee was, therefore, fully justified in cutting short the interview on account of his obduracy.

(Para 11)

*Further held* that it is true as has been contended by the respondent that the questions asked of the respondent did not adequately conform to all the 14 stipulated parameters, but we are of the opinion for reasons already recorded that the respondent himself was responsible for this state of affairs.

(Para 11)

*Further held* that the respondent having raised frivolous objections at the time of the interview apparently was in no mood

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to submit to its proceedings and in this eventuality he cannot now complain that the interview committee had not fairly assessed him. It is equally significant that the committee was of three Deputy General Managers of the State Bank of India and no allegations of personal animus has been made against any of them. We have also gone through the actual assessment made with regard to the 14 indicias and find that marks for each individual parameter have been given. The finding of the learned single Judge that the evaluation had not been made in accordance with various indicias enumerated in the policy of 8th June, 1982, is, therefore, not correct.

(Para 11)

*Further held* that we find from a reading of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4213 of 1992 decided on 13th October, 1992 [State Bank of India and others v. D.C. Aggarwal and another, 1993 (1) S.C.C. 13] that although various issues had been raised by the Bank, the Supreme Court had based its decision only on the limited issue with regard to the consequences of the non-supply of the report of the Central Vigilance Commission to the respondent during the course of the inquiry. It is, therefore, not open to the respondent to urge that the finding of bias which had been recorded by the learned Single Judge stood endorsed by the Hon'ble Supreme Court. We cannot be oblivious to human frailties, and the respondent's irreverent behaviour towards his seniors in the Bank, more particularly towards those he perceived as being hostile and others who may have been his juniors at some stage, could have influenced their attitude towards him and it was for the purpose of ensuring fair treatment that had prompted the Hon'ble Supreme Court to make orders in the respondent's favour in this as also the connected appeal. We are further of the opinion that as the respondent's case for promotion had been considered by some of the senior members of the Bank and as none of them has been made a party, a broad allegation of institutional bias is not acceptable.

(Para 12)

*State Bank of India (Supervisory Staff) Service Rules, 1975-Rl. 20—State Bank of India Officers Service Rules, 1992-Rl. 19—Extension in service beyond 58 years—Review Committee—Learned Single Judge declaring recommendation of Review Committee arbitrary for the reason that Controlling authority while forwarding recommendations painted incorrect picture of respondent's record—Respondent not raising any objection to the Constitution of the two*

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*member Review Committee and the competent authority—No violation of guidelines found in refusing extension—Discretion to grant extension in service vests in the competent authority—No evidence that discretion exercised unfairly—No case for interference made out—Appeal dismissed and order of Single Judge set aside.*

*Held* that the respondent appears to have accepted this position for the reason that he had raised no objection to the constitution of the two member Review Committee and the competent authority in the course of his pleadings and even before the learned Single Judge and it was on account of the questions raised by us in this appeal that appear to have prompted him to take up this plea for the first time.

(Para 26)

Ashok Aggarwal, Sr. Advocate with Sanjay Kapur, Ashok Gupta and O.P. Sadana, Advocates for Appellants

D.C. Aggarwal, respondent, in person

### JUDGMENT

*Harjit Singh Bedi, J.*

(1) These appeals arise out of the following facts :

(2) Shri D.C. Aggarwal, the respondent herein, joined the service of the appellant-State Bank of India on 15th January, 1960 and after receiving various promotions from time to time was promoted to the Top Executive Grade Scale VI (TEG) with effect from 27th July, 1980 and on the basis of this promotion was posted as Deputy General Manager, Incharge of the State of Haryana and the Union Territory of Chandigarh with headquarters at Chandigarh. He was, however, placed under suspension on 11th July, 1981 in contemplation of a departmental enquiry for misconduct pertaining to the period when he had been posted as the Branch Manager of the Bank of Dhanbad. One Shri R.K. Rastogi, an officer of the Indian Administrative Service from the Tamil Nadu Cadre, was accordingly appointed to hold the enquiry. He submitted his report dated 30th May, 1985 exonerating the respondent of the charges levelled against him with the finding that they were a mere fabrication and an attempt to denigrate the respondent's conduct and for that purpose the Investigating Officials had tried to create evidence to implicate him. The competent authority, however, disagreed with the findings recorded by the

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enquiry officer and imposed penalty of reduction in rank by two stages, whereupon the respondent was reverted to the Middle Management Grade Scale-IV. This action was challenged by the respondent in C.W.P. No. 15874 of 1989 and a learned single Judge of this Court in a judgment, dated 9th April, 1991 (and reported as *D.C. Aggarwal v. State Bank of India and others* (1)), allowed the writ petition holding that the punishment imposed on the respondent was very harsh and not warranted by the facts on the file. The order impugned was accordingly quashed and certain consequential benefits ordered in his favour. Aggrieved by the order of the learned Single Judge, the Bank filed Letters Patent Appeal No. 553 of 1991 which was dismissed by a Division Bench on 15th May, 1991. A Special Leave Petition No. 10198 of 1991 was also filed and leave was granted but after hearing the parties the appeal was dismissed on 13th October, 1992 *vide* judgment reported as *State Bank of India and others v. D.C. Aggarwal and another* (2). The Hon'ble Supreme Court held that as the competent authority had relied upon the report of the Central Vigilance Commission and as a copy thereof had not been supplied to the respondent, he had been prejudiced in his defence and, as such, the order reducing him in rank could not be sustained. The respondent was, thereafter served with a notice dated 28th December, 1992 for the initiation of a fresh departmental enquiry. The respondent filed C.O.C.P. No. 1098 of 1992 against Sarvshri V. Mahadevan and P.V. Subba Rao, two Managing Directors of the appellant-Bank and rule *nisi* was ordered. This order was challenged by the contemners in S.L.P. No. 1707-08 of 1993 and, on leave being granted, Civil Appeal No. 4017-18 of 1993 was disposed of with the following directions :—

- (i) The statement of the learned Additional Solicitor General is accepted that no fresh enquiry shall be held against the respondent for the act or commission for which action was taken against him which resulted in reduction from rank in 1987. Notice dated 28th December, 1992 shall stand withdrawn.
- (ii) The State Bank of India shall reconsider the claim of promotion of the respondent to higher scale in accordance with rules. *We do not express any opinion on the question if interview for higher scale is necessary and if there was any valid justification for not promoting the respondent*

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(1) 1991 (2) S.L.R. 578

(2) J.T. 1992 (6) S.C. 673

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*whose record prior to these proceedings is unblemished but if under the policy framed by the bank and followed in other cases constitution of a committee and interview is necessary then the committee be constituted but the Managing Director, State Bank of India, Central Office, Bombay and Managing Director (Personnel), State Bank of India, Central Office, Bombay who are appellants in this Court may not be its members.*

- (iii) The committee shall be constituted within three weeks from today which shall decide if respondent was entitled to be promoted to higher scale in which his juniors are working as we are informed that the respondent is reaching his age of superannuation. In case the committee does not find the respondent suitable for promotion it shall give reasons for the same.
- (iv) In view of these facts and circumstances the contempt proceedings in the High Court shall stand dropped.”

(3) In compliance with these directions, the General Manager (Operations) stationed at the Local Head Office of the Bank at Chandigarh issued letter Annexure P-7, dated 26th August, 1993 calling upon the respondent to attend an Interview so as to adjudge his suitability for promotion to the TEG Scale VII (General Manager) Post. The respondent appeared before the Interview Committee on 1st September, 1993 and on assessment was awarded only 25.7% marks, on which his claim for promotion was rejected *vide* Annexure P-8, dated 8th September, 1993. The respondent made a representation against this order *vide* Annexure P-9, dated 15th September, 1993, to the Chairman of the appellant-Bank protesting against the proceedings of the Interview Committee. He also approached the Hon'ble Supreme Court by filing C.R. No. 324—93 in C.A. No. 4017-18/1993 for initiation of proceedings against the Bank but withdrew the same on 17th September, 1993 with liberty to move the High Court against the order Annexure P-8. Civil Writ Petition No. 15245 of 1993 was accordingly filed by the respondent-writ petitioner impugning Annexure P-8, dated 18th September, 1993 as also Annexure P-5, dated 27th May, 1993, whereby his claim to the payment of salary for the period November 1992 to 16th June, 1993 had been denied on the ground that though

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he had been posted at Hyderabad, he had not joined at that place and had remained absent without leave. In the writ petition the learned single Judge noted the points in issue between the parties and came to the conclusion that as the respondent-writ petitioners case for promotion had first to be considered on four different dates between 1st August, 1984 to the 1st August, 1988, this assessment was to be made under the promotion policy of the bank Annexure P-1, dated 8th June, 1982, which provided for an informal interview with the Managing Director and some other Officers, but as a Departmental Promotion Committee had, on 1st September, 1993, evaluated the respondent's merit in accordance with the promotion policy, Annexure P-2, dated 11th March, 1989, which was later in point of time and provided for interview by a Departmental Promotion Committee, the assessment was bad in law and, therefore, wholly unjustified. The learned Single Judge also held that the failure of the Interview Committee to assess the respondent's merit in the light of the various indicia enumerated in the policy Annexure P-1, dated 8th June, 1982, supported the inference that the respondent had been dealt with in an arbitrary and unjustifiable manner. The learned single Judge also found that the respondent's case was to be considered twice over again on 24th April, 1989 and 3rd September, 1992, for promotion to the same post and though his case to this extent had been rightly considered under the promotion policy circulated on 11th March, 1989, (Annexure P-2), the Departmental Promotion Committee had again gone wrong as the respondent's case had been assessed in a cloistered manner without making a proper appreciation of the record separately, for each year, with reference to the relevant dates and the evaluation had, in fact, been done at one and the same time for both the years. The learned single Judge, however, refused to accept the respondent's argument that an interview was not envisaged in his case and for arriving at this conclusion relied upon the explicit wording of the policy Annexure P-1. The learned single Judge then went on to hold that the withholding of the respondent's salary for the period November, 1992 to 16th June, 1993 was unjustified and in the light of the fact that even the Hon'ble Supreme Court had, while disposing of S.L.P. No. 1707-08 of 1993, opined that the respondent's posting to Hyderabad was not fair and needed to be reviewed. It was accordingly held that it could not be said that the

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respondent had been absent from duty from 8th November, 1992 to 16th June, 1993 without justification. This claim was allowed as well, and Annexures P-5 and P-8 were accordingly quashed. The present appeal has been filed against this judgment of the learned Single Judge, whereas Cross-Objections have been filed by the respondent as well impugning the verdict of the learned Single Judge on the questions decided against him.

(4) We have heard Mr. Ashok Aggarwal, the Senior Advocate, for the appellant-Bank and the respondent, Mr. D.C. Aggarwal, in person, at very great length. Mr. Ashok Aggarwal has argued that the finding of the learned single Judge that the respondent's case for promotion to the Top Executive Scale Grade VII (TEG VII) on four dates between 1st August, 1984 and 1st August, 1988 under the promotion policy of the bank Annexure P-2, dated 11th March, 1989, could not have been made retrospectively was based on a factual error. In this connection he has pointed out that promotions to senior positions in the appellant-bank, including the respondent's case, were to be considered in terms of the policy Annexure P-1 as modified by the policy dated 23rd February, 1984, appended as Annexure A-2 with C.M. No. 1142 of 1998 and as the assessment had, in fact, been made in terms of the policy Annexure A-2 the finding of the learned single Judge was wrong. He has in this connection also urged that though a copy of the policy Annexure A-2 was in the voluminous record that had been produced before the learned single Judge, it appears to have escaped notice. On the other hand the respondent has pointed out that this policy had for the first time been put on the record *vide* the civil miscellaneous application afore-mentioned and, as such, it could not now be looked at. We have heard the parties on this score as well. It is true that the policy of 1984 (Annexure A-2) was not adverted to in the pleadings of either of the parties, but the fact that this policy does exist and does govern the respondent's case for promotion has not been denied. We are, therefore, of the opinion that it would be in the interest of justice to take it into account. Mr. Ashok Aggarwal's argument would have to be examined in this background. It is to be noted that the respondent's case for promotion to the TEG Scale VII had to be examined with reference to four different dates, viz., 1st August, 1984, 20th February, 1986, 8th June, 1987 and 1st



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August, 1988 and thereafter as on 24th April, 1989 and 3rd February, 1992. It is, therefore, apparent that the first four assessments were to be made under the terms of the policy Annexure A-2, dated 23rd February, 1984. The learned single Judge has found that the respondent's case for promotion had been considered by a Departmental Promotion Committee which was envisaged for the first time under the policy of 1989. We are of the opinion, however, that this finding of the learned single Judge cannot be sustained. A perusal of the policy of 1982 Annexure P-1 shows that in paragraphs 1 to 4 the existing procedure for promotion provided under the instructions dated 28th November, 1975, 13th September, 1978, 8th September, 1978 and 14th August, 1981 for promotion to scale V and scale VI (subsequently revised as scales VI and VII) had been recapitulated wherein it had been pointed out that the official's past performance would be determined on the basis of his ACRs and his potentiality for handling higher responsibilities would be assessed on the basis of an informal interview to be conducted by the Managing Director, and any one or more of the members of the Central management Committee of the Bank. Paragraph 5 onwards, however, postulated a new procedure envisaging that these two aspects would now be separately assessed by the Central Committee and as promotions to grade V and grade VI were very senior level promotions and a high degree of efficiency was required, it was appropriate that an officer who was unable to get a minimum score of 60% either in the appraisal of the past performance or in the interview, would not be considered for promotion. It was also suggested that instead of the informal interview, envisaged earlier, a structured interview would be held in which suitable questions would be asked with regard to the (eight) or ten indicias mentioned in the policy. This policy was modified by the policy dated 23rd February, 1984 (Annexure A-2) and while maintaining the system of a structured interview, now suggested 14 indicias instead of 8, and that promotions to TEG Scale V and above would be made by a Departmental Promotion Committee consisting of the Chairman, the Managing Director and nominees of the Central Board of Directors of the bank and that it was this body which would recommend the names for promotion to the final body, i.e. the Executive Committee of the Central Board of the Bank. This procedure was broadly retained even under the 1989 policy

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(Annexure P-2) with the rider that an officer who was unable to score 70% in the appraisal of his past performance would not be called for interview. It is evident from the resume of the facts given above that the respondent's case for promotion between 1st August, 1984 and 1st August, 1988 was to be considered in the light of the parameters laid down in the promotion policy of 1982 (Annexure P-1) as modified by the policy of 1984 (Annexure A-2). In this view of the matter, the finding of the learned single Judge that the policy of 1989 could not be retrospectively applied, though legally correct, is based on an incorrect appreciation of the facts.

(5) The question that now arises is as to whether the respondent's case had, in fact, been considered under the 1982 and the 1984 policy and, if so, whether the assessment was in accordance with the parameters provided thereunder. We have in this connection perused Annexure A-3 dated 4th September, 1993, the minutes of the meeting held on that date with regard to the promotion of the respondent to T.E.G. Scale VII. The Committee noted that the qualifying percentage of marks in the interview and past performance was 60% marks in each sphere and that as the respondent had been under suspension from 21st July, 1981 to 12th November, 1987, the reports up to 21st July, 1981 only would be taken into consideration in appraising his past performance in the same manner as had been done for other eligible officers. The Committee then made the assessment for each individual year. The Committee first considered the case of the respondent for promotion as on 1st August, 1984 and observed that it was necessary to obtain a minimum of 60% marks separately under the heads "performance appraisal" and "interview for assessment of potential" and whereas he had got 60% marks under the head "performance appraisal" he had obtained only 25.7% marks in the interview which was far below the prescribed 60% qualifying mark. It was further pointed out that of the 52 officers, who had been interviewed for promotion with effect from 1st August, 1984, nine officers had failed to secure 60% marks in the interview whereas the officer lowest in merit who had, in fact, been promoted had secured 70% marks in the "performance appraisal" and 66% marks in the interview making an aggregate of 136 marks out of 200. The committee also made a similar assessment with regard to the promotions contemplated on 20th February, 1986,

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8th June, 1987, 1st August, 1988, 24th April, 1989 and 3rd February, 1992. We also find that in the very nature of the situation in which the appellant-Bank and the respondent were placed, the interview committee had absolutely no option but to consider the respondent's case at one and at the same time. It bears reiteration that the Hon'ble Supreme Court had in its order dated 17th August, 1993 (*V. Mahadevan and others v. D.C. Aggarwal* (3)), clearly directed that the case for promotion would be considered by a Committee which would be constituted within three weeks from that date. It was in this situation that the Interview Committee had made its appraisal in its meeting held on 1st September, 1993 (Annexure R-2) and that these recommendations had also been endorsed by the Directors Promotion Committee on 7th September, 1993 (Annexure R-3) and approved by the competent authority on the same date. Faced with this situation, the respondent has turned to his cross objections and has argued that as he had been promoted to the TEG Scale VI, with effect from 27th July, 1980 he could not have been interviewed for the same post in the year 1993. He has also urged that as he had been under suspension from 1981 to 1987, a proper assessment of his record could not have been made for the purpose of promotion. Mr. Ashok Aggarwal, has however, urged that the respondent had nowhere pleaded that he could not be subjected to an interview and had, in fact, only made a challenge to the jurisdiction of the Committee to take the interview. He has also pointed out that the interview had been held in accordance with the directions of the Hon'ble Supreme Court given on 17th August, 1993 reported as *Mahadevan and others v. D.C. Aggarwal* (Supra), we have heard the parties on this score as well. The respondent had earlier been promoted to TEG Grade VI, whereas the promotion now under consideration was to TEG Grade VII. It is also significant that there is no challenge to the promotion policies of 1982, 1984 and 1989. As already indicated above, the policies afore-mentioned specifically provided for the assessment of a candidate's past performance on the basis of his ACRs and his potential for higher responsibility on the basis of his performance in an interview which prior to 1982 was to be an informal one, and

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(3) A.I.R. 1994 S.C. 961

after 1982, a structured and formal interview before a Committee to be held on the basis of eight (1982 policy) and thereafter 14 (1984 policy) indicia, laid down therein. Moreover, in its judgment dated 17th August, 1993 the Hon'ble Supreme Court (and quoted on page 3) had clearly observed in sub-para (ii) of paragraph 3 that the bank would consider the respondent's case for promotion under the relevant policies, in the manner in which the other officers had been assessed

(6) The respondent has, in this situation, argued that even assuming for a moment that an interview was envisaged under the rules, no interview could be held in his case for the reason that he had been under suspension from 1981 to 1987. We are of the opinion that this argument has no basis as the Supreme Court in the order referred to above, had clearly observed that the respondent was to be treated at par with those, amongst his colleagues, who had been promoted earlier.

(7) It has then been argued by Mr. Ashok Aggarwal that the respondent had obtained 25.7% marks in the interview and as this was well below the 60% qualifying marks stipulated under the policies for promotion, the respondent could not succeed in any case. He has also pointed out that the finding of the learned single Judge that the failure of the Interview Committee to make a fair evaluation of the respondent's merit in the light of the various indicia enumerated in the policies of 1982 and 1984 was incorrect. He has urged that the respondent had made a deliberate attempt to frustrate the interview and, as such, the committee was fully justified in asking only three questions of the respondent. He has also emphasised that there were no allegations of personal animus against any member of the interview committee and in the face of this situation, no adverse finding could be drawn qua these proceedings. The respondent has, however, laid much stress on the fact that though the policy provided for an interview on 14 different indicia laid down, the questions asked of the respondent satisfied hardly any of them. We have gone through the minutes of the interview held on 1st September, 1993 between 4.40 p.m. and 5.45 p.m. and appended as Annexure R-2 with the reply. The Committee took note that the respondent was to be assessed on the 14 parameters enumerated below :—

1. Knowledge of corporate goals and objectives.
2. Awareness of social, economic, political environment.
3. Adaptability to changing needs of the organisation.

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4. Self confidence.
  5. Achievement motivation.
  6. Emotional stability
  7. Concern for productivity and efficiency
  8. Initiative and creativity
  9. Analytical skills and decision making abilities.
  10. Planning and Organisation abilities.
  11. Inter-personal and team building skills.
  12. Public relations skills.
  13. Effectiveness in communication
  14. Development of staff.

(8) In paragraph 2 of the proceeding, it has been observed that after an exchange of pleasantries, the members of the Committee had attempted to initiate the formal interview but the respondent had been insistent that he should be given certain clarifications on his case and the judgment given by the Hon'ble Supreme Court and that he had not permitted the Committee Members to proceed with the interview by raising irrelevant points. The Committee had then asked three questions and received answers thereto. These are reproduced below :—

- “(i) What are his present areas of responsibility and specific achievements’ as Deputy General Manager, Chandigarh, Main Branch for the last 2/3 months ?

Shri Aggarwal did not give any direct answer and was trying to evade the question by bringing in irrelevant points. .

- (ii) What are the basic recommendations of Narasimham Committee ?

Shri Aggarwal could not give, despite repeated enquiry, any specific point, except mentioning about SLR as one of the items. But he could not state to what extent and within what time frame, SLR was recommended to be reduced. Incidentally, he mentioned that Narasimham Committee recommendations were on tax reforms.

- (iii) What are the salient features of the last credit policy announced by Reserve Bank of India ?

Shri Aggarwal failed to give any answer.”

(9) The Committee then recorded that the respondent had wanted to bring in certain papers and submit some letters to the Committee, which had no relevance and finally concluded that he had not been serious about the interview and that his level of understanding and awareness as also his potential for promotion was far below the desired level. We are of the opinion that the course of the interview as recorded in the minutes suggests two possibilities : firstly, that the respondent, was, despite having served for more than 30 years in the Banking Industry, totally unaware of its fundamentals and, secondly, that he had made a deliberate attempt to forestall the interview. To our mind, either of these two possibilities, destroys the respondent's case, but the second one looks to be more plausible. Our view finds support from the documents produced and relied upon by the respondent himself. The respondent has put on record a note date 1st September, 1993, which he had prepared for the members of the Review Committee (though they had refused to accept it) and which he had then handed over to the Private Secretary to the Chief General Manager (Personnel) and a Telex Message dated 15th September, 1993 sent by him to the Chairman of the State Bank of India, Central Office, Bombay. As the interview had also been held on 1st September, 1993, the first note is, therefore, a contemporaneous document made by the respondent himself. We reproduce here the two documents :—

“From

D.C. Aggarwal, Dy. General Manager (SBI)  
Camp : SBI, Central Office, Bombay.

1st September, 1993

Note for the Hon'ble Interview Committee members

**Subject** : Consideration for promotion to General Manager's  
Grade (VII)

This has a reference to the informal discussions with the  
Hon'ble members.

2. As submitted I received on 30th August, 1993, Central Office reply to my Fax message of 25th August, 1993 (enclosed copy handed over personally) calling me for interview for General Manager's Grade whereas my case before the Supreme Court of India and High Court is for

promotion and appointment to Chief General Manager's Grade in which my juniors are working since January, 1992.

3. With great respect I submit to you herewith a copy of the recent judgment of the Hon'ble Supreme Court of India dated 17th August, 1993 for your kind perusal. In particulars I draw your attention to directions No. ii and iii :—

**Direction (ii)**—We do not express any opinion on the question if interview for higher scale is necessary and if there was any valid justification for not promoting the respondent whose record prior to these proceedings is unblemished". But if the rules permit then the committee be constituted.

**Direction (iii)**—The (said) committee shall be constituted within three weeks from today which shall decide if respondent (i.e. D.C. Aggarwal) was entitled to be promoted to higher scale in which his juniors are working.

4. *From the above you will observe that since my juniors are already working as Chief General Managers with effect from 30th January, 1991 therefore, this Hon'ble committee has to decide my entitlement to C.G.M's. scale i.e. Top Executive Grade (Special Scale-I) and not for TEG VII for which no formal interview is prescribed in rules.*
5. *It would appear that once again there is a misinterpretation of the judgment and directions of the Hon'ble Supreme Court in the same way in which the bank guided by its able legal luminaries decided upon the "revival of disciplinary proceedings" ,—vide notice dated 28th December, 1982. This step was not an innocent error but a deliberate attempt to over reach the High Court and the Supreme Court and achieve the objective which they failed to succeed before the Courts. The bank was fully aware that the prayer before the High Court and the Supreme Court for being granted the liberty to "revive" the disciplinary action had been rejected in the Letters Patent Appeal by the High Court and the Special Leave Petition had been rejected by the Supreme Court (Kindly refer to grounds of appeal in LPA and SLP). It was this action of the bank which was taken strong exception to by the High Court which was constrained to pass an interim order that a *prima facie* case of contempt had been made*

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out and rule *nisi* was issued to both the Managing Directors later when the two M.D.s. went in appeal to Supreme Court, the Apex Court had once again to strike down the said revival notice of the bank.

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| 6.  | XX  | XX  | XX  |
| 7.  | XX  | XX  | XX  |
| 8.  | XX  | XXX | XX  |
| 9.  | XXX | XX  | XX  |
| 10. | XX  | XX  | XXX |
| 11. | XX  | XX  | XX  |

D.C. Aggarwal,  
Dy. General Manager,  
TEG VI

I may add that the members of the interview board advised me through the Chief General Manager (Personnel) Shri Dandekar that I shall not be allowed to take in my brief case containing important papers of achievements made by me etc.

The members also advised me that the mandate to them from the top management was to interview me for TEG Scale VII only and they did not know about the Supreme Court order as also the date with effect from which the promotion even as TEG VII was to be considered. The Hon'ble members refused to accept the note as well as the Fax Message which I had earlier sent to Dy. M.D. (Personnel).

Sd/-

D.C. Aggarwal"

(10) It is apparent that this document, as originally drafted, ended at Paragraph 11 but a postscript was apparently added by the respondent after it had not been accepted by the members of the interview committee. The Telex Message dated 15th September, 1993 is equally clear as to the manner in which the respondent had conducted himself before the interview committee. This document is reproduced below in extenso :

TELEX MESSAGE DATED 15th September, 1993



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“To

Shri D. Basu, Chairman,  
State Bank of India,  
Central Office, Bombay.

From :

Shri D.C. Aggarwal,  
Dy. General Manager,  
State Bank of India,  
Sector 17, Main Branch,  
Chandigarh.

Sir,

I shall be failing in my duty if I do not thank you for sparing your valuable time by granting me an audience on the 2nd September, 1993. *I had apprised you briefly that on the previous day i.e on the 1st September, 1993, the interview by the three Deputy Managing Directors, could not take place for want of certain clarifications, which were required regarding the grade for which I was to be interviewed as per Supreme Court directions.* The Committee members had told me that they were only concerned with the interview for TEGS-VII and that they were not aware of the directions of the Hon'ble Supreme Court of India. Even the learned members were not aware of the date with effect from which, the promotion for TEGS-VII was being considered. At this stage, the Chief General Manager (Personnel) Shri M.N. Dandekar, was called in who also stated that he would not be able to give clarifications desired by me. Then, the Chairman of the Committee Shri Supriya Gupta, Deputy Managing Director (Commercial Banking) observed “all right we will state that the interview could not be held for want of clarifications needed by D.C. Aggarwal”. The other member Shri N.M. Choridia made another observation, “We will say that you did not participate and interview could not be held. The third member merely said we are not aware of the legal position”. So interview did not take place. A letter to this effect was given by me to the P.S. to the Chief General Manager (Personnel) duly acknowledged.

2. Also on the same day when I met Deputy Managing Director (Personnel), Shri N.G. Pillai, I had informally mentioned to him that interview could not take place for the same reason. I also brought to his notice the *mala fide* treatment being given to me by the Controlling Authority with a view to somehow build up some record against me so that it could be used against me by the Committee which was considering my case for extension in service. I also brought to your notice a D.O. letter No. GMO/83, dated the 25th August, 1993 received from the General Manager (Operations) the tenor of the language and contents of which had shocked me immensely.
3. However, from Bank's letter No. GMO/CBC/11276, dated 8th September, 1993, I am shocked to note that I secured 25.7% marks in the interview, instead of 60% qualifying marks. This position is not correct. I am swearing an affidavit to this effect. If I can get 25.7% without interview, then most humbly I would get near 100% marks if interview had really taken place.

I do (sic) it proper to bring the above facts to your knowledge.

With best regards,

D.C. Aggarwal.”

(11) These documents clearly reveal the respondent's mindset and when read along with minutes of the meeting, it will be clear that he had never intended to submit to the interview but to filibuster and ultimately to scuttle it. The Supreme Court had found the respondent to be "excitable" by temperament, an observation with which we heartily concur, but, in addition, after having heard him out over several days, we find him to be an extremely articulate and intelligent person as well. We are convinced, therefore, that the respondent was acutely aware of the consequences of his Actions. The interview committee was, therefore, fully justified in cutting short the interview on account of his obduracy. It is also evident that the document dated 1st September, 1993 had been prepared by the respondent before he had gone for the interview and his perception of what was required at that time is clearly reflected in it. To our mind, the minutes are a faithful record of what had transpired. The Committee had nevertheless awarded marks on the 14 indicias laid down. It is true, as has been contended by the

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respondent, that the questions asked of the respondent did not adequately confirm to all the 14 stipulated parameters, but we are of the opinion for reasons already recorded, that the respondent himself was responsible for this state of affairs. Mr. Ashok Aggarwal's reliance on a judgment of the Hon'ble Supreme Court in *Bank of India v. Apurba Kumar Saha* (4), is thus fully justified. This too was a case of a bank employee who had refused to avail of several opportunities provided to him to defend himself in a disciplinary proceeding. The Hon'ble Supreme Court held that such an employee had forfeited his right to claim at a later stage that the disciplinary proceedings stood vitiated as being in violation of the principles of natural justice. The observations of the Supreme Court apply to the facts of the present case. The respondent having raised frivolous objections at the time of the interview apparently was in no mood to submit to its proceedings and in this eventuality he cannot now complain that the interview committee had not fairly assessed him. It is equally significant that the committee was of three Deputy General Managers of the State Bank of India and no allegations of personal animus has been made against any of them. We have also gone through the actual assessment made with regard to the 14 indicia mentioned above and find that marks for each individual parameter have been given. The finding of the learned single Judge that the evaluation had not been made in accordance with various indicia enumerated in the policy of 8th June, 1982, is, therefore, not correct.

(12) The respondent has also laid great emphasis on the fact that the officers of the appellant-bank were prejudiced against him for having had the temerity to take the bank and its officials to Court repeatedly and that this institutional bias was reflected in the assessment of his case for promotion. In this connection, reliance has been placed on the judgment of this Court in C.W.P. No. 15874 of 1989 decided 9th April, 1991 (reported as *D.C. Aggarwal v. State Bank of India*) (Supra), as also the inquiry report submitted by Shri Rastogi on 30th May, 1985 in which severe strictures had been made against the officials of the Bank. It has accordingly been urged by the respondent that as the Letters Patent Appeal as also the Special Leave Petition against the order of the learned single Judge had been dismissed, these observations stood as being final. Mr. Ashok Aggarwal has however pointed out that the finding of

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(4) 1994 (1) S.L.R. 260.

bias and unfair treatment that had rendered by the inquiry officer had been accepted by the learned single Judge and no further and reliance has been placed on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4213 of 1992 decided on 13th October, 1992, *State Bank of India and others v. D.C. Aggarwal and another* (5), the S.L.P. filed by the Bank against the order of the learned single Judge and the Letters Patent Bench of this Court. We find from a reading of this judgment that although various issues had been raised by the Bank, the Supreme Court had based its decision only on the limited issue with regard to the consequences of the non-supply of the report of the Central Vigilance Commission to the respondent during the course of the inquiry. It is, therefore, not open to the respondent to urge that the finding of bias which had been recorded by the learned single Judge stood endorsed by the Hon'ble supreme Court. We cannot be oblivious to human frailties, and the respondent's irreverent behaviour towards his seniors in the Bank, more particularly towards those he perceived as being hostile and others who may have been his juniors at some stage, could have influenced their attitude towards him and it was for the purpose of ensuring fair treatment that had prompted the Hon'ble Supreme Court to make orders in the respondent's favour in this as also the connected appeal. We are further of the opinion that as the respondent's case for promotion had been considered by some of the senior members of the Bank and as none of them has been made a party, a broad allegation of institutional bias is not acceptable.

(13) It has finally been argued by Mr. Ashok Aggarwal that the finding of the learned single Judge that the respondent was entitled to the payment of salary from November, 1992 to 16th June, 1993 despite the fact that he had not joined duty on being transferred to Hyderabad was also wrong as the respondent had disobeyed orders given to him. This argument, however, does not commend itself to us. The Hon'ble Supreme Court while disposing of S.L.P. No. 1707-08 of 1993. (*V. Mahadevan and another v. D.C. Aggarwal* (6), had already observed that the respondent's posting to Hyderabad was not fair and it was on that account that he had been re-transferred to Chandigarh. In this view of the matter, we are of the opinion that the respondent's claim to the payment of salary was fully justified. We are, therefore, of the opinion that no fault can be found with this finding of the learned single Judge.

(5) 1993 (1) S.C.C. 13.

(6) J.T. 1993 (4) S.C. 571.

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(14) The L.P.A. No. 364 of 1998 is, therefore, partly allowed, the judgment of the learned single Judge quashing the order Annexure P-8, dated 8th September, 1993, is set aside, where it is maintained *qua* the finding with regard to Annexure P-5, dated 27th May, 1993. The Cross objections/Appeal registered as L.P.A. No. 80 of 1999 are also dismissed.

*Letters Patent Appeal No. 365 of 1998 and Cross Objection/  
L.P.A. No. 81 of 1999*

(15) The facts relating to the respondent's career in the appellant-bank have been given above and need not be entirely recapitulated.

(16) After the learned single Judge of this Court had quashed the order of punishment made by the bank in C.W.P. No. 15874 of 1989 on 9th April, 1991 *D.C. Aggarwal v. State Bank of India* (Supra), the matter was taken to the Letters Patent Bench by the Bank which too dismissed the appeal on 15th May, 1991 and to the Supreme Court which allowed the S.L.P. but ultimately dismissed the appeal on 13th October, 1992 *State Bank of India and others v D.C. Aggarwal and another* (Supra), After the decision of the Supreme Court the respondent was served with a notice dated 28th December, 1992 for initiation of a fresh departmental inquiry. The respondent then filed C.O.C.P. No. 1098 of 1992 in this Court in which notice was issued to the contemners Sarvshri *v. Mahadevan and P.V. Subha Rao*, Managing Directors of the appellant-bank. The issuance of the notice was challenged by way of S.L.P. No. 1707-08 of 1993 and on leave being granted Civil Appeal No. 4017-18 of 1993 was disposed of with the direction that no fresh enquiry would be held against the respondent and that a committee be constituted for considering his claim to promotion. The matter thus far has been dealt in L.P.A. No. 364 of 1998 above. During the pendency of the bitter litigation shuttling before this and the Supreme Court the appellant-bank granted extension in service to the respondent from 10th March, 1991 to 9th September, 1993 i.e. upto the age of 58 years. *vide* letterdated 9th September, 1993 (Annexure P-5) however the Chief General Manager informed the respondent that the Review Committee had not recommended further extension of his service in terms of Rule 19 of the State Bank of India Service Rules and that he would superannuate on 30th September, 1998. The respondent preferred an appeal before

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the Chairman of the bank, the Appellate Authority, which was dismissed. He thereafter filed C.W.P. No. 12062 of 1993 which too was dismissed by a Division Bench on 5th October, 1993. This order was challenged by the respondent by way of Special Leave Petition No. 17752 of 1993 and on leave being granted the resultant Civil Appeal No. 1609 of 1994 was allowed on 11th March, 1994 *D.C. Aggarwal V. State Bank of India and others* (7), with the following observations :—

“That there appears to be no love lost between the department and the appellant. It further cannot be disputed that the appellant was posted to work at a place where his juniors were working at higher post. The reaction of the appellant who by temperament appears to be excitable as he had appeared earlier in person, to orders passed by those who were once his junior can very well be visualised. The appellant who is a senior officer and has crossed the age of 58 must realise that this is contrary to service culture. He was duty bound to follow the orders and obey them. Nor there was any justification at his part to proceed on leave without obtaining permission. We may also observe that the conduct of the appellant in attempting to seek interview with the Governor by declaring that he was Chief General Manager of the Bank was unbecoming of a Senior Officer. At the same time the extension of service of an employee had to be decided collectively on material on record to find out if the appellant was entitled to extension when it is not disputed that very few officers have been refused extension in the category of appellant from 58 to 60 years. We may not be understood as expressing an opinion on the matter. But what has persuaded us to agree with the learned counsel for appellant is that the matter of extension had to be considered by a committee consisting of Managing Director who are mentioned by designation. Admittedly none of them were members of the Committee. The respondents, despite our instructions, could not place any material to satisfy that the appellant had made any allegation against them. Be that as it may, the final authority which had to pass the order under the rules was

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not the committee but a different person higher in rank than the members who constituted the committee. The Review Committee appears to be recommending body only. The final order had to be passed by the competent authority on recommendation of the committee. Such officer, it is stated, it always higher in rank than the Deputy Managing Director. Unfortunately, in this case the final order has been passed by a person who was a member of the Review Committee. This, in our opinion, was in gross violation of the procedure and the guide-lines provided. It is also violative of fairplay. The Review Committee was only a recommendatory body. The final order was to be passed by the competent authority. And this does not appear to have been done. We are conscious that the appellate authority had examined the record. But the appellant authority did not apply its mind to this aspect which was basic and fundamental. We are, therefore, of the opinion that the decision taken by the respondents was vitiated by violating the rules and the guide-lines provided by extension of service.

In the result, this appeal succeeds and is allowed. The orders passed by the High Court, the appellate authority and the Review Committee are quashed. The respondents are directed to constitute a fresh committee of the personnel mentioned in the rule itself. In case the appellant had made any allegation against any of those Deputy Managing Directors then the Committee shall comprise of Deputy Managing Directors other than those who are mentioned in the rules. The earlier Deputy Managing Directors who were the members of the new committee. The recommendation of the committee shall be placed before the competent authority who shall be different and higher in rank than the members who shall constitute the committee. Such committee shall be constituted within two weeks from today and the decision by the competent authority shall be taken within two weeks thereafter."

(17) As it was found that the order of the Supreme Court could not be complied with in toto for reasons that would soon be evident,

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the appellant-bank filed I.A. No. 3 of 1994 for clarification of this order. This too was disposed of on 13th May, 1994 in the following terms :—

“I.A. No. 3/94 is taken on board.

In this application the respondents have sought for clarification of modification of the order dated 11th March, 1994 and for extension of time for compliance of the order dated 11th March, 1994. It is stated in the petition that the Chairman and the Managing Director is the appellant authority and as a consequence he cannot deal with the matter sitting as a member of the committee to consider the case of the appellant. It is further stated that as regards Mr. N.G. Pillai and Mr. R. Sinha, Deputy Director (Personnel) and Deputy Managing Director (Corporate Operations and Service) respectively, they having dealt with the matter, the appellant has some reservation about them. Under those circumstances, they are unable to be nominated as Members of the committee as directed earlier by this Court.

Since this Court has directed that the Managing Director of the Bank would be the member of the Committee, instead of Dr. M.K. Sinha of the Bank, we direct the respondent State Bank of India to nominate any of the Managing Directors of any other nationalised bank as a Chairman/member. In the petition they have given the names of six persons, two of them may be nominated as members of the committee. For that the petitioner has no objection for appointment of Mr. Kathuria, Deputy Managing Director (Treasury & Investments Management). *Since it is desirable that a committee of three would be feasible to decide the matter, we direct that Mr. R. Vishwanathan, Deputy Managing Director (Commercial Banking) be nominated as third Member. This three members Committee would consider and decide the claim of the appellant for extension of the terms in the light of the directions issued by this Court's order dated 11th March, 1994 according to rules.* It is made clear that it is not open to the parties to challenge the constitution of the committee as per the directions of this Court in any of the proceedings thereafter. Three weeks time is granted to constitute the committee



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for consideration of the claim for extension. Thereafter, two weeks time is granted to the competent authority to take the decision.”

(18) In compliance with the time bound directions of the Hon'ble Supreme Court, a meeting of the Executive Body of the bank was held at Bangalore on 27th May, 1994 and it was decided to formally constitute a three member committee headed by Shri S. Doreswamy, Chairman-cum-Managing Director, Central Bank of India, as Chairman member, and Sarvshri V. Vishwanathan and G. Kathuria, Deputy Managing Director (Commercial Banking) and Deputy Managing Director (Treasury and Investment Management), respectively, as the other two members. Shri S. Doreswamy was also appointed as the competent authority. Sarvshri R. Vishwanathan and G. Kathuria after two meetings held on the 6th and 9th June, 1994 made their recommendation dated 16th June, 1994, Annexure P-7 to the Chairman/competent authority, Shri S. Doreswamy, recommending that it was not in the interest of the bank to give an extension in service to the respondent beyond 58 years. This proposal was examined and accepted by the competent authority on that very day,—*vide* order Annexure P-8. All three members of the committee thereafter met and recorded the minutes of the proceedings held on 18th June, 1994 which had culminated in the recommendation Annexure P-7 and the order Annexure P-8 dated 16th June, 1994. Aggrieved by the order Annexure P-8 the respondent filed C.O.C.P. No. 4 of 1995 before the Hon'ble Supreme Court which was dismissed as withdrawn leaving it open to him to seek his remedy against the decision of the committee. It is in this background that the respondent filed C.W.P.No. 5567 of 1995 out of which the present appeal has arisen.

(19) The learned single Judge found that the respondent-writ petitioner could not challenge the constitution of the Review Committee as it had been so ordered by the Hon'ble Supreme Court, but held that the Review Committee had not made an objective assessment of his record as Annexure R-1 on which it had been based, the recommendation made by the Chief General Manager, did not give an accurate picture of his service record, and that the litigation pending between the bank and the respondent had clouded the objectivity of the members of the Review Committee. In particular, the learned single Judge noted that the reference to disciplinary proceedings made in para (d) of Annexure R-1 was

wholly unjustified as in the report rendered by Mr. A.R. Rastogi a finding had been recorded that the evidence against the respondent had been fabricated with an intention to denigrate his conduct and that this finding stood endorsed by the Court in C.W.P. No. 15874 of 1989 *D.C. Aggarwal v. State of India* (Supra), and by the Supreme Court in *State Bank of India v. D.C. Aggarwal* (Supra), with the result that the observations of the enquiry officer had received judicial approval at the highest level. It was also observed by the learned single Judge that reference to the frequent litigation, in which the respondent - writ petitioner stood involved with the appellant-bank and in his three A.C. Rs. (all being recorded on one day by the same officer) just four days before he was to be interviewed for promotion to T.E.G. Scale VII supported the inference that a concerted attempt had been made to prejudice the respondents case before the Review Committee. The learned single Judge also sought some support for this view from the fact that two officers of the Bank, namely, Sarvshri Harbhajan Singh and J.K. Jain whose performance had been rated poor and had been overlooked for promotion several times had yet been given extension in service up to 60 years on 5th February, 1992 and 17th February, 1993, respectively, whereas the respondent with a far better record had been ignored. The Court accordingly held that the action of the Review Committee and thereafter the competent authority was arbitrary and liable to be struck down as being opposed to Articles 14 and 16 of the Constitution of India. Having held as above, the learned single Judge allowed the writ petition and quashed Annexures P-7 and P-8. The present appeal has been filed against this judgment whereas cross objections have also been filed by the respondent-writ petitioner. The appeal as also the cross-objections/ appeal registered as L.P.A. No. 81 of 1999 are being disposed of by this judgment.

(20) Mr. Ashok Aggarwal has urged that the finding of the learned single Judge on the various issues raised before him were contrary to the facts and the law on the subject. He has pointed out that the finding of the learned single Judge that a deliberate attempt had been made by the Chief General Manager while forwarding his recommendation Annexure R-1 for consideration of the Review Committee was biased was, in fact, wrong for the reason that the recommendation Annexure R-1 which was on a prescribed proforma pertained to a faithful reproduction of the respondent's record. He

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has, in particular, pointed out that the various factors that were in the respondent's favour had been equally noted as those against him. He has also argued that the finding of the learned single Judge that the observations of Shri A.K. Rastogi and of the learned single Judge in C.W.P. No. 15874 of 1989 had been endorsed by the Supreme Court was not correct as the Supreme Court decision had been rendered exclusively on the ground that the punishment order stood vitiated as some material which ought to have been supplied to the respondent had not been supplied to him in the course of the inquiry. It has also been urged that the service record of Shri Harbhajan Singh and Shri J. K. Jain (which appears to have tilted the balance in favour of the respondent) was in fact far superior to that of the respondent and attention has been drawn to this record which is on the file. It has finally been pleaded that the Hon'ble Supreme Court which construing an identical rule in *State Bank of Bikaner and Jaipur and others v. Jagmohan Lal* (8), had observed that an officer had a right to remain in service upto superannuation i.e. 58 years but beyond that age he had no such right unless his tenure was extended by the bank under its sole discretion and that there was no scope for complaining of arbitrariness in the matter in giving or refusing extension. Mr. Aggarwal has accordingly urged that despite the observations of the Supreme Court noted above, and quoted in extenso in the judgment, it had been held that the action of the appellant-bank declining extension in service to the respondent was vitiated by arbitrariness.

(21) The respondent has, however, raised certain additional issues. It has first and foremost been urged that the policy of the appellant bank governing extension had not been followed in the respondent case as there was an obvious bias and discrimination against him in the institution. It has also been urged that the Hon'ble Supreme Court had clearly held in its called orders that a member of the Review Committee could not act as a competent authority and in that eventuality the appointment of Mr. S. Doreswamy in both capacities was bad. It has also been greatly emphasised that as the Supreme Court had directed that the Review Committee would consist of three members, the recommendation Annexure P-7 dated 16th June, 1993, rendered by Sarvshri R. Vishwanathan and G. Kathuria, being contrary to the directions of the Supreme Court, was bad in law. It has also been finally argued that the action of the competent authority i.e. Shri S. Doreswamy was even otherwise actuated by *mala fides* and, as such, could not be sustained.

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(8) A.I.R. 1989 S.C. 75.

(22) We have given careful consideration to the points raised by the parties. We first address ourselves to the arguments addressed by Mr. Ashok Aggarwal with regard to the findings of the learned single Judge. We first deal with the question as to the objections raised with regard to the recommendations Annexure R-1 made by the Chief General Manager, Chandigarh Head Office. We are of the opinion that the document Annexure R-1 must be read as a whole. In Annexure B thereto while detailing the respondent's suspension for some mis-conduct during his stint at Dhanbad, a clear reference has also been made to the fact that he had been restored to his original cadre in TEG Scale VI in terms of the order of the Supreme Court. It cannot, therefore, be said that Annexure R-1 related to a fact which was wrong. The learned single Judge also appears to have been deeply influenced by the fact that creation of evidence recorded by Mr. Rastogi and that the opinion rendered by Mr. A. K. Rastogi that the respondent had been victimised by the Bank and that of unfairness and bias recorded by the learned single Judge in the earlier writ petition had been endorsed by the Supreme Court while disposing of the matter reported as *State Bank of India v. D.C. Aggarwal* (Supra). This view is also not entirely accurate for the reason that the Hon'ble Supreme Court observed that though many issues had been raised in the appeal yet the same was being disposed of on the limited ground that the non-supply of the report of the Central Vigilance Commission which had been relied upon by the punishing authority, had not been supplied to the respondent leading to prejudice to him in the course of the inquiry.

(23) The learned single Judge has also to some extent relied upon the comparative service record of the respondent *vis-a-vis* Sarvshri Harbhajan Singh and J. K. Jain who had been granted extension upto 60 years and a finding has been recorded that the service record of both these officers was poor whereas the record of the respondent was far better. We have gone through the pleadings and find that no details have been furnished with regard to the service record of Sarvshri Harbhajan Singh and J. K. Jain in the writ petition but in the rejoinder to the reply a comparative chart has been given at page 6 thereof, and in the course of arguments the respondent has furnished yet another chart showing the allegedly poor record of these two officers. When called upon to disclose the source of his information, the respondent clearly admitted that this chart had been prepared by him on an inspection of the record while it lay in the court of the learned single Judge

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and that the assessment reproduced by him was in his own words. We are of the opinion that the details given by the respondent, therefore, have no sanctity as only the adverse features have been selectively picked up and could not have, therefore, formed an accurate basis for this finding of the learned Single Judge. Although this Court cannot act as an appellate authority over the action of the Review Committee in making a comparative assessment of the service record of the respondent *vis-a-vis* the other two officers yet we have chosen to undertake this exercise so as to meet the reasons that weighed with the writ Court. The service record of both the officers is before us as Annexures A-1 and A-2 filed along with C.M. No. 1147 of 1998 in the present appeal. This record pertains to the proceedings leading to the grant of extension of service up to 60 years in which three years record prior to the date of extension has to be taken into account. In the document Annexure A-1 the overall performance of Shri J.K. Jain has been rated as Good with excellent grading in some of the parameters. The Controlling Authority accordingly suggested that he be granted extension up to 60 years. Like-wise, we have gone through Annexure A-2 pertaining to Shri Harbhajan Singh in which case the ACRs for the three previous years have also been appended and we find that the overall assessment is at least good. It is clear to us that every officer has a right to a fair consideration of his case for promotion or extension in service and if this exercise is fairly made, no officer can complain of arbitrariness. We are of the opinion that this exercise has been fairly carried out in the present case.

(24) It has been argued by the respondent that the procedure envisaged for the grant or refusal of extension in service up to 60 years had not been followed by the Review Committee and for this additional reason the orders impugned were bad in law. It has been highlighted that as per the policy for the grant of extension Annexure P-2 the bank was obliged to bring a poor or average record to the notice of the respondent before any adverse orders were passed and as this had not been done, the presumption was that his record had been good all along. It has been urged that though it was the discretion of the bank to refuse or to grant extension, the discretion could not have been exercised against him on account of the above factor. Mr. Ashok Aggarwal has, however, controverted the respondents assertion and has pointed out that it was for the bank to take a decision on the suitability of retaining the respondent in service up to 60 years at its discretion and that the sole consideration was as to whether the continuance of the respondent

was in its interest or not. In this connection Mr. Aggarwal has placed reliance on Rule 20 of the State Bank of India (Supervisory Staff) service Rule 1975 (here-in-after called the "Rules of 1975") and Rule 19 of the State Bank of India Officers Service Rules, 1992 (here-in-after called the "Service Rules"), as well as paragraphs 4 and 6 of the Guidelines, Annexure P-2 to the petitioner. Rule 20 of the Rules of 1975 and 19 of the Service Rules, which provide that an officer of the bank shall superannuate on attaining the age of 58 years, although extension in service could be granted by the competent authority in its discretion beyond 58 years if it finds that the extension is desirable in the interest of the Bank. Paragraphs 4 and 6 of the Guidelines give the criteria for the grant of extension in service or its refusal and postulate *inter alia*, that an officer who performs well, is efficient and possesses good health should be considered suitable for the grant of extension in service and, contrarily, an officer whose performance is poor or whose integrity is not beyond doubt or who is inefficient or in poor health should not be granted extension in service. It has also been stipulated that the guiding factor for considering an officer suitable for the grant of extension or otherwise was his utility and usefulness to the Bank. Paragraph 6 of the guidelines further stipulates that particulars relating to the officer performance arising out of his annual confidential reports should be filed by the Controlling Authority in the prescribed proforma to be put up for consideration before the Review Committee. While dealing with an identical situation in Jagmohan Lal's case (*supra*), the Hon'ble Supreme Court observed as under :—

"In the scheme provided herein the respondent or any other officer of the Bank has a legitimate right to remain in service till he attains the age of superannuation. But beyond that age, he has no such right unless his service is extended by the Bank. The further rights of parties are regulated by the proviso to Regn. 19(1). It reads :—

Provided that the competent authority may at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service as the case may be, should such extension be deemed desirable in the interest of the Bank.....

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The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally, the extension may benefit retired officials. But it is a conferment of benefit of privilege on officers. The officers upon attaining the age of superannuation of putting the required number of years of service do not earn that benefit or privilege..... If the bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma .....

The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility (ii) good health and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of respondent was considered and he did not fit in the said guide-lines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that decision.

The bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all, in a subsequent year, it may not give extension to any one of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser work load in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

(25) The learned single Judge has found the recommendations of the Review Committee to be arbitrary for the reason that the controlling authority i.e. the Chief General Manager, Chandigarh, while forwarding his recommendation Annexure R-1 had painted an incorrect picture of the respondents record. We are of the opinion for the reasons, already recorded, that the recommendation Annexure R-1 was a faithful reproduction of his service career and as the proposal had been forwarded on the prescribed proforma, the controlling authority had absolutely no discretion in the matter to leave certain matters out of consideration.

(26) The respondent has also laid a serious challenge to the constitution of the Review Committee and to the powers of the competent authority and has urged that in the light of the judgment of the Hon'ble Supreme Court in *D. C. Aggarwal v. The State Bank of India and others* (9), as clarified by the order, date 13th May, 1994 made on I.A. No. 3 of 1994 it was incumbent that the Review Committee consist of three members with yet another person higher in rank being the competent authority and as his case has been considered by a two member committee consisting of Sarvshri G. Kathuria and R. Vishwanathan the recommendations made violated the Supreme Court order and was, therefore, bad in law. Mr. Ashok Aggarwal has, however, controverted this stand and has urged that it had been specifically directed by the Hon'ble Supreme Court in the clarificatory order that the Review Committee would decide the matter according to the rules and as a quorum of two was provided by the rules, the decision taken being in accordance with the rules was fully in order. In this connection, reliance has been placed by both the parties on Annexure P-2 dated 4th January, 1998. These Guide-lines have to be interpreted in the respondents case in the light of the Supreme Courts orders in the two matters listed above in this paragraph and which have been reproduced in extenso in the earlier part of the judgment in the present appeal. (pages 34-41 of this judgment) It is true that there are frequent references to the fact that it would be desirable and feasible that a Three Member Committee should consider and decide the respondents claim but it has further been directed in the order dated 13th May, 1994 that his claim for extension would also be decided according to rules. The rules in question are the Rules of 1975, the service Rules and the instructions Annexure P-2 with the latter specifically providing that the review should be under taken by a Review Committee in a



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meeting especially convened for the purpose where at least two of the members of the Committee are present. Admittedly, the recommendation Annexure P-7 was made by two members of the Review Committee. The respondent has also laid great stress on the fact that Mr. S. Doreswamy who was the competent authority could not have acted as such as he had been inducted as a member of the Review Committee and not as the competent authority by the Hon'ble Supreme Court. This argument is also unacceptable for the reason that the Supreme Court was well aware of the situation in which the parties stood placed at the time when they made the two orders. It has to be borne in mind that the Court had specifically provided that the competent authority would be a person higher in rank than the members constituting the Review Committee and for that reason had left it open to the appellant-bank to nominate a Managing Director of any other nationalised bank as Chairman/Member of the committee. Admittedly, Shri G. Kathuria, who was acceptable to the respondent, and Shri R. Vishwanathan who had been nominated by the Hon'ble Supreme Court, were Deputy Managing Directors of the State Bank whereas Shri S. Doreswamy who was nominated as the competent authority by the Executive Committee of the State Bank of India in its resolution of 27th May, 1994 was the Managing Director cum-Chairman of the Central Bank of India and thereby higher in rank to the members of the Review Committee. It is also true that Annexure P-2 provided that the Review Committee in the case of officers in T.E.G. Scale VI and above was to consist of the Managing Director, Deputy Managing Director (Personnel and Management) and Deputy Managing Director (Corporate, Operation and Service) by designation whereas the competent authority was to be the Managing Director of the State Bank of India, but we are of the opinion that as a consequence of the orders of the Hon'ble Supreme Court the Review Committee and the competent authority envisaged under the Guide-lines Annexure P-2 had been substituted, as a fair arrangement to deal with the respondents case on account of the fact that there was a long and bitter history of litigation, spreading over almost two decades and there being no other officer acceptable to the respondent who could be designated as the Managing Director and therefore, the competent authority to pass the final order. The respondents case was to be considered otherwise according to the rules with Shri S. Doreswamy replacing the competent authority and Sarvshri Kathuria and R. Vishwanathan replacing the two other designated Deputy Managing Directors as members of the Review Committee. In the light of all that has been narrated above, we are of the opinion

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that the orders when read together lead to the conclusion that we have arrived at. It is also significant that even the respondent appears to have accepted this position for the reason that he had raised no objection to the constitution of the two member Review Committee and the competent authority in the course of his pleadings and even before the learned single Judge and it was on account of the questions raised by us in this appeal that appear to have prompted him to take up this plea for the first time.

(27) The respondent has also raised a plea challenging the appointment of the competent authority and the members of the Review Committee. He has, in particular, raised serious objection to the appointment of Shri S. Doreswamy on the plea that he was greatly indebted to Mr. Basu, the Chairman of the State Bank of India for his appointment as the Managing Director-cum-Chairman of the Central Bank of India. We find this plea wholly untenable as there is no material on record to sustain it. Moreover, the Hon'ble Supreme Court in its order dated 13th May, 1994 in I.A. No. 4 of 1994 had clearly stated that the parties would not be at liberty to challenge the Constitution of the Review Committee that had been formed under the orders of the Court itself.

(28) We are, therefore, of the opinion that the judgement of the learned single Judge cannot be sustained. This appeal accordingly succeeds, the judgment of the learned single Judge is set aside, with the result that the writ petition stands dismissed. *Ipsa facto* the Cross-objection registered as L.P.A. No. 81 of 1999 also stands dismissed.

(29) During the pendency of these appeals, both the parties have filed a large number of documents in Court. In the interest of justice, we have taken all on record. without being tied down by legal procedure.

(30) The Hon'ble Supreme Court in its order dated 16th November, 1998 had directed that the appeals be disposed off in any event by 1st March, 1999. This time schedule could not be adhered to primarily for the reason that the respondent had sought time to get certain directions from the Supreme Court as would be clear from the orders made by this Court on 13th January, 1999, 1st February, 1999 and 2nd February, 1999. The appeals were ultimately taken up for day to day hearing on 15th February, 1999 and the arguments were concluded and judgment reserved on 24th February, 1999.

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(31) The above noted appeals are disposed of accordingly with no order as to costs.

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**R.N.R.**

*Before Jawahar Lal Gupta & N. C. Khichi, JJ.*

V. K. KHANNA,—*Petitioner*

*versus*

UNION OF INDIA & OTHERS,—*Respondents.*

CWP No. 8150 of 1998

21st December, 1998

*Constitution of India, 1950—Art. 226—Writ petition to stall an enquiry or to even quash a charge sheet—Maintainability of such writ petition.*

*Held* that a writ Court does not normally intervene to stall an enquiry or to even quash a charge sheet. However, in the present case we are satisfied that silence shall not be the right option. When things are ill done, silence is a sin. The present case falls in the category of the rarest of the rare cases where the court should intervene to prevent infliction of injustice.

(Para 103)

*Constitution of India, 1950—Art. 226—Jurisdiction of State Government to initiate disciplinary proceedings against an IAS Officer—Inquiry against the petitioner—Documents claimed not provided to the petitioner—Whether denial of reasonable opportunity.*

*Held* that the State Government had power to initiate disciplinary proceedings against a member of the Indian Administrative Service under the rules.

(Para 103)

*Further held* that there was a denial of reasonable opportunity to the petitioner as he was not given copies of the documents or permission to inspect the record. The action was violative of the principles of natural justice. The respondents have not followed the basic rules and norms for a just and fair enquiry. They have violated the minimum guarantee that the officer shall be given an effective