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AMAR KANT CHOUDHARY

v.

STATE OF BIHAR & ORS.

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January 3, 1984

[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Natural Justice—rule of—adverse report in confidential roll not to be acted upon to deny promotional opportunities unless communicated and explanation considered—acting otherwise vitiates decision.

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The appellant, a directly recruited Deputy Superintendent of Police in the Police Department of the Respondent State was considered in 1976 for appointment as a member of the Indian Police Service under the provisions of the Indian Police Service (Recruitment) Rules, 1954 read with the Indian Police Service (Appointment by promotion) Regulations, 1955. The Selection Committee did not include the appellant in the select list because of an adverse entry in his confidential roll of 1973-74. The appellant was communicated the said adverse entry only in 1977 which was later on expunged by the State Government in December 1980. There were also adverse entries in the confidential roll of the appellant for the year 1974-75 which were communicated to him in 1976 and which were also later on expunged by the State Government in February, 1978 and October 1980. The Selection Committee met again in March 1981, but this time also did not include the appellant in the select list while some of his juniors were included. The appellant questioned the validity of the decision of the Selection Committee in a writ petition before the High Court. The High Court dismissed the writ petition at the stage of admission. Hence this appeal. In this appeal the appellant urged that the Selection Committee was wrong in relying upon the adverse entries which had been made in his confidential rolls which had not been either communicated to him or against which he had made representation which had remained undisposed of and which had been subsequently expunged.

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Allowing the appeal,

HELD: The principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. [302 F]

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Gurdial Singh Fijji v. *State of Punjab & Ors.*, [1979] 3 S.C.R. 518; referred to.

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In the instant case, the case of the appellant for promotion to the Indian

A Police Service Cadre had not been considered by the committee in a just and fair way and his case has been disposed of contrary to the principles laid down in the *Gurdial Singh Fijji's* case. The decisions of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant. The appellant has made out a case for reconsideration of the question of his promotion B to the Indian Police Service Cadre of the State of Bihar as on December 22, 1976. The Selection Committee has now to reconsider the case of the appellant accordingly. [104 E-G]

R.L. Butail v. *Union of India & Ors.*, [1971] 2 S.C.R. 55. distinguished.

In order to avoid a contingency, as arose in this case, the Government may C consider the introduction of a system in which the officer who has to make entries in the confidential roll may be required to record his remarks in the presence of the Officer against whom remarks are proposed to be made after giving him an opportunity to explain any circumstance that may appear to be against him with the right to make representation to higher authorities against any adverse remarks. Another system which may be introduced is to ask the officer who records the confidential remarks to serve a copy of such remarks on the officer concerned before D the confidential roll is submitted to the higher authorities so that his respresentation against the remarks may also reach the higher authority shortly after the confidential roll is received. This would curtail the delay in taking action on the representaiton. [105 E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8491 of 1983.

E From the Judgment and Order dated 5th October, 1982 of the Patna High Court at Patna in C.W.J.C. No. 1420 of 1982.

P.R. Mridul, and *M.P. Jha*, for the Appellant.

B.B. Singh, for the Respondents

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The Judgment of the Court was delivered by

VENKATARAMIAH, J. This is an appeal by special leave against the order dated October 5, 1982 in C.W.J.C. No. 1420 of 1982 on the file of the High Court of Patna dismissing the petition filed by the G appellant under Article 226 of the Constitution.

The facts of the case are these : The appellant was directly recruited and appointed as a Deputy Superintendent of Police in the Police Department of the State of Bihar in the year 1964. In 1973 H he was eligible to be considered for appointment as a member of the Indian Police Service under the provisions of the Indian Police Service

(Recruitment) Rules, 1954 (hereinafter referred to as 'the Rules') read with the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'the Regulations') framed under sub-rule (1) of Rule 9 of the Rules. His case was placed before the Committee constituted under Regulation 4 of the Regulations for the purpose of preparation of the list of suitable officers for promotion to the Indian Police Service Cadre of the State of Bihar in 1973, 1974, 1975 and 1976. In the years 1973, 1974 and 1975, he could not be included in the select list as he was junior to those who were included in the select list. In the year 1976 his name was not included in the select list as there was an adverse entry in his confidential roll of 1973-74. The reasons given by the Committee for superseding the appellant based on the confidential roll were these :

> "Delayed disposal of pending papers and supervision notes. Inadequate control over office, judgment, initiative, sense of responsibility and management reported to be just fair. Censured by State Govt. order dt. 20th Oct., 1975."

The Selection Committee took the decision to supersede the appellant at its meeting held on December 22, 1976 in view of the above entry in the confidential roll of the appellant. It is not disputed that the said adverse entry was communicated to the appellant in the year 1977 after the above meeting was over. It appears that there were also adverse entries in the annual confidential roll of the appellant for the year 1974-75. They were communicated to the appellant in the year 1976. The appellant made representations in respect of both the adverse entries in time. His main grievance was that they had been made by his official superior who was biased against him. The adverse entry made in the confidential roll for the year 1973-74 was expunged by the State Government on December 3, 1980 and the adverse entries in the confidential roll for the year 1974-75 were expunged by two orders dated February 21, 1978 and October 7, 1980. There was no meeting of the Selection Committee from 1977 to 1980. It, however, met on March 11/12, 1981. On this occasion the appellant represented to the Committee that the adverse entries in his confidential rolls had been removed by the State Government by various orders and requested them to consider his case for promotion to the Indian Police Service Cadre. On this occasion the Committee did not look into the confidential rolls of the appellant for the years 1979-80 and 1980-81 which contained entries very favourable to the appellant for no fault of the appellant. The Committee, however,

A classified him as 'good' but did not include him in the select list while some of his juniors were included. The appellant represented to the Committee and the State Government against the decision taken by the Committee. The Committee again met on October 14, 1981. When nothing came out of the representations made by him, the appellant filed a writ petition questioning the validity of the decisions B of the Selection Committee before the High Court of Patna. The petition was dismissed at the stage of admission. This appeal is filed by special leave against the order of the High Court.

The main point urged before us is that the Selection Committee had committed an illegality in rejecting the claim of the appellant for C being included in the select list in the year 1976 by relying upon the adverse entries which had been made in his confidential rolls which had not been either communicated to him or against which he had made representation which had remained undisposed of and which had been subsequently expunged.

D The true legal position governing such cases is laid down by this Court in *Gurdial Singh Fijji* v. *State of Punjab & Ors.*[1] which was a case arising under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which more or less correspond to the Regulations applicable to the Indian Police Service. In the above case Chandrachud, C.J. has observed thus :

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> "The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or F to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of G any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances it is difficult to support the non-issuance of the integrity certificate to

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(1) [1979] 3 S.C.R. 518.

the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him."

It is not disputed that the classification of officers whose cases are taken up for consideration into 'outstanding', 'very good', 'good' or 'bad' etc. for purposes of promotion to the Indian Police Service Cadre is mainly based upon the remarks in the confidential rolls. On December 22, 1976, when the Selection Committee met, the adverse remarks in the confidential roll for 1973-74 had not been communicated and the appellant's representation regarding adverse remarks in the confidential roll for the year 1974-75 and censure against him had not been disposed of although it is alleged that one Shri Yamuna Ram against whom also adverse remarks had been made was included provisionally in the select list. When the Selection Committee met on March 11 and 12, 1981 despite State Government's *suo motu* decision not to retain adverse remarks for the year 1976-77 on records, the same had not been removed from the confidential roll. This must have influenced the decision of the Selection Committee. It is also seen that the confidential rolls of the appellant for the year 1979-80 and 1980-81 which contained entries favourable to the appellant were not placed before the Selection Committee. On October 14, 1981 when the Selection Committee met, it does not appear to have considered the representation made by the appellant against his non-selection. In addition to all these, the State Government has expunged the adverse remarks by its orders made from time to time. These facts are not controverted by the respondents.

The facts of this case are distinguishable from the facts involved in the decision of this Court in *R.L. Butail* v. *Union of India & Ors.*[1] which is relied on by the respondents. In that case the confidential report of the appellant therein for the year 1964 contained an adverse entry and he had made a representation regarding it. When the Departmental Promotion Committee met in March, 1966, the appellant's representation regarding the adverse entry of 1964 was not placed before it and a decision adverse to the appellant was taken by the Committee without reference to the said representation. The

(1) [1971] 2 S.C.R. 55.

A appellant contended before this Court that the omission to consider his representation before the date of meeting of the Committee vitiated its decision. The Court held that the omission either to place the said representation before the Committee or its non-consideration before the date of the meeting had no effect on the decision of the Committee as the representation had actually been rejected subse-
B quently with the result that the confidential report for the year 1964 remained unchanged. The position in the case before us is different. Here the adverse entries in question have in fact been expunged by the State Government subsequently. It may be pertinent to state here that the practice of the Departmental Promotion Committee referred to in *Butail's* case (supra) was that if in such a case a rep-
C resentation were to be accepted and in consequence the confidential report was altered or the adverse entries were expunged the Committee would have to review its recommendations in the light of such a result. The appellant in the present case has pressed before us for a similar relief as the adverse entries made against him have been since expunged.

D After giving our anxious consideration to the uncontroverted material placed before us we have reached the conclusion that the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair way and his case has been disposed of contrary to the principles laid down in *Gurdial Singh Fijji's* case (supra). The decisions of the Sele-
E tion Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant and its order is, therefore, liable to be set aside. We accordingly set aside the order of the High Court. We hold that the
F appellant has made out a case for reconsideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar as on December 22, 1976 and if he is not selected as on that date for being considered again as on March 12, 1981. If he is not selected as on March 12, 1981 his case has to be considered as on October 14, 1981. The Selection Committee has now to reconsider
G the case of the appellant accordingly after taking into consideration the orders passed by the State Government subsequently on any adverse entry that may have been made earlier and any other order of similar nature pertaining to the service of the appellant. If on such reconsideration the appellant is selected he shall be entitled to the
H seniority and all other consequential benefits flowing therefrom. We issue a direction to the respondents to reconsider the case of the

appellant as stated above. We hope that the above direction will be complied with expeditiously but not later than four months from today.

Before concluding we wish to state that the Central Government and the State Governments should now examine whether the present system of maintenance of confidential rolls should be continued. Under the present system, entries are first made in the confidential roll of an officer behind his back and then he is given an opportunity to make a representation against any entry that may have been made against him by communicating the adverse entry after considerable delay. Any representation made by him would be considered by a higher authority or the State Government or the Central Government, as the case may be, some years later, as it has happened in this case, by which time any evidence that may be there to show that the entries made were baseless may have vanished. The predicament in which the officer against whom adverse remarks are made is then placed can easily be visualised. Even the authority which has got to pass orders on the representation of the officer will find it difficult to deal with the matter satisfactorily after a long interval of time. In the meanwhile the officer concerned would have missed many opportunities which would have advanced his prospects in the service. In order to avoid such a contingency, the Government may consider the introduction of a system in which the officer who has to make entries in the confidential roll may be required to record his remarks in the presence of the officer against whom remarks are proposed to be made after giving him an opportunity to explain any circumstance that may appear to be against him with the right to make representation to higher authorities against any adverse remarks. This course may obviate many times totally baseless remarks being made in the confidential roll and would minimise the unnecessary suffering to which the officer concerned will be exposed. Another system which may be introduced is to ask the officer who records the confidential remarks to serve a copy of such remarks on the officer concerned before the confidential roll is submitted to the higher authorities so that his representation against the remarks may also reach the higher authority shortly after the confidential roll is received. This would curtail the delay in taking action on the representation. Suspensions, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving a reasonable opportunity to the officer concerned and such actions surely result in the demoralisation of the services. Courts can give very little relief in such cases. The

A Executive itself should, therefore, devise effective means to mitigate the hardship caused to the officers who are subjected to such treatment. These questions require to be examined afresh in the light of the experience gained in recent years and solutions should be found to eliminate as far as possible complaints against misuse of these powers by official superiors who may not be well disposed towards the officer
B against whom such action is taken. It is needless to state that a non-disgruntled bureaucracy adds to the efficiency of administration.

The appeal is accordingly allowed with costs.

H.S.K. *Appeal allowed.*