
Y.V. Thatte Vs State and Maharashtra and another

Writ Petition No. 2161/79

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 7, 1984

Acts Referred:

Constitution of India, 1950 – Article 226, 311, 324

Citation: (1984) 86 BOMLR 285 : (1986) 52 FLR 28 : (1985) 2 LLJ 471 : (1984) MhLj 1019

Hon'ble Judges: M.N. Chandurkar, C.J; V.A. Mohta, J; Dhabe, J

Bench: Full Bench

Judgement

Chandurkar, C.J.

This petition has been placed before this Full Bench because the Division Bench which heard this petition took the view

that there is a conflict between the decision of the Division Bench in Shankar Atram v. Chief Conservator of Forest 1977 M LJ 536 and the other

decision of the Division Bench in Nathu v. Commissioner, Nagpur Division 1983 M LJ 1108 and that this conflict needs to be resolved in the light

of the three decisions of the Supreme Court in Gurdial Singh Fijji Vs. State of Punjab and Others, , Union of India (UOI) Vs. M.E. Reddy and

Another, and Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh and Others, In Shankar's case (supra) the Division Bench

took the view that the absence of communication of adverse remarks to a public servant does not prevent the authorities from taking the

confidential reports into consideration while determining the suitability or otherwise of the Government servant for promotion and that when a

person has been provisionally promoted subject to obtaining the opinion of Public Service Commission and then on proper scrutiny he has been

found unfit and the order of reversion is passed on consideration of confidential reports, it must be presumed that the order of reversion is passed

in due course and is not arbitrary unless the said order is shown to have been made mala fide.

2. In Nathu's case (supra) a Division Bench consisting of two of us (Mohta and Dhabe, JJ) following the decision in Gurdial Singh's case, (supra)

and Brij Biharilal's case (supra) has taken the view that if adverse remarks are not communicated then the claim for promotion cannot be rejected

by taking into account such adverse remarks. Before we refer to what has been described as a conflict and to the relevant decisions of the

Supreme Court and other cases cited before us, it is necessary briefly to set out relevant facts leading to the filing of this petition.

3. The petitioner who holds a Master of Arts Degree in Economics and stood First Class in Nagpur University, held substantively a Class II

Gazetted post having been confirmed on 8th April, 1976 with retrospective effect from 14th January, 1974. He was promoted to Class I post by

an order dated 14th January, 1974 as a stop-gap arrangement, but it appears that he requested the Government for his being continued in Class II

cadre and therefore at his own request, the promotion order was treated as cancelled by Government Resolution dated 21st October, 1975 and

he was allowed to continue in Class II post. The petitioner was again promoted by an order dated 15th April, 1976 to Class I post and this was

also by way of stop-gap arrangement until further orders. The order dated 26th May, 1976 specifies that the petitioner was on trial for a period of

one year from the date he takes over the charge of the post of Deputy Director. The petitioner joined his Class I post on 9th August, 1976, but

immediately he went on leave and was in fact on leave from 16th August, 1976 to 2nd January, 1977. The petitioner's promotion on the trial basis

was on the basis of the minutes of the meeting of the Departmental Promotion Committee held on 13th January, 1976. The Departmental

Promotion Committee took the view that the petitioner and one another person S. B. Yasin should be on trial for a period of one year from the

date of their promotions "as their records are not fully satisfactory". The minute which is filed along with the return as a part of Annexure - 9 reads

as follows :

Special report on the performance of these two officers should be obtained to consider their further continuance in Class I posts.

The Departmental Promotion Committee also indicated that the petitioner had been in Poona for over 4 years and should be transferred on his

promotion out of Poona and posted in the Director's Office. Probably the Departmental Promotion Committee had an inkling that the petitioner

would not accept the promotion and mentioned that even if he does not accept the promotion, he should be transferred from Poona District to

other district.

4. At this stage, it has to be pointed out that the petitioner was informed when he did not accept the promotion earlier that he would lose his

seniority for the purposes of promotion and consequently according to the State a large number of Class II officers who were otherwise junior to

him, had become senior to him. The confidential reports of the performance of the petitioner as now disclosed for the years 1977-78 and 1978-79

were wholly unsatisfactory. His technical ability, organisational ability, ability for executing programme, coordination and maintenance of

programme were considered as poor. Though he was found to be an Intelligent Officer, it was noticed that he did not apply his mind to work and

his capacity to get the work done by his subordinates was poor. Under the head "General Assessment", the report was as follows :

Below average (c). He is an easy going Officer not putting any personal efforts. He heavily depends on his staff. He has failed to provide guidance

to supervise the work of his subordinate officers. He avoids field duties. His contribution to so important an assignment as Economic Census was

negligible due to the above facts of his personality".

5. The confidential remarks for the year 1978-79 did not disclose a very happy state of affairs. Under "administrative ability" the remark was

Heavily depends on subordinates." Under "general assessment", the remark was "He is extremely averse to take up tours. He provided very little

guidance to his subordinates." Under the head "supervision", the remark was : "The impact of his presence was not felt." On 8th September, 1977

the joint Director in the Directorate of Economics and Statistics, Government of Maharashtra wrote to the petitioner, who was then holding the

office of the Regional Deputy Director Regional Office, Nagpur that his performance for six months of his tenure from February 1977 to July 1977

had been reviewed and several short-comings were intimated.

It was found that he had neither visited any site of E.G.S. work, nor contracted any implementing officers of the E.G.S. He had not done anything

for training of agricultural census. He was expected to pay 24 visits and 8 inspections, but he had only visited 2 District Statistical Offices and

inspected two District Statistical Offices. He has also avoided meeting of the Regional Deputy Directors held at Bombay on 26th and 27th July,

1977.

6. With the return there are minutes of the meeting of the Regional Deputy Director held on 17th February, 1978, at which the petitioner was

present, but so far as the working of the Nagpur Division was concerned, it was found to be unsatisfactory and it was noticed that results were not

tabulated and no reasons were given for such nontabulation. It was found that the petitioner had not visited any district during the course of

Economics Census and the ground given was that he engaged in organising the field work of Nagpur City.

7. It appears that a special report on the performance of the work of the petitioner during the trial period was obtained and consequent upon this

special report, the Government decided to revert the petitioner to the post of Class II Officer, which he substantively held. The reversion order is

dated 18th August, 1979 and it states that on the basis of the special report on the performance of his work during the trial period and thereafter,

the Government has decided that the work of the petitioner as Deputy Director of Economics and Statistics is unsatisfactory and he should,

therefore, be reversed. It is this reversion order which is challenged by the petitioner.

8. At the very threshold the substantial and possibly the only argument which is advanced before us on behalf of the petitioner is that the

confidential remarks for 1977-78 and 1978-79 not having been communicated to the petitioner, the reversion order should be set aside without

going any further in the matter. The argument is that if the reversion order is made on material which is not disclosed to the petitioner, the action of

the reverting authority must be treated as arbitrary and unfair and must, therefore, be quashed. The argument is that it must be treated on the same

footing as a reversion of a person holding an officiating post when such reversion is of punitive nature.

9. As already pointed out, this argument is based on the decision in Gurdial Singh's case and Brij Biharilal's case substantially, though a reference

to some other decisions has been made and to which we shall presently refer. At the very outset, it has to be observed that the Division Bench in

Nathu's case has undoubtedly decided that matter in accordance with law laid down by the Supreme Court in Gurdial Singh's case. But Nathu's

case like Gurdial Singh's case was a case of a person being deprived of chances of promotion on the basis of uncommunicated adverse remarks.

Nathu's case was not a case which arose out of a reversion order made in respect of a public servant, who was officiating in the post of

promotion. Unless there was some decision which took the view or unless we hold the law to be that nonconsideration of a person for promotional

prospects on the basis of uncommunicated adverse remarks is to be treated on the same footing as a reversion from an officiating post on the

ground of unsuitability, it would be difficult to say that there was any conflict between the decision in Shankar's case and in Nathu's case. Shanker's

case was expressly a case where a person had been reverted on the basis of his performance which was found to be unsatisfactory and it was not

a case of the person being denied promotion on the ground that uncommunicated adverse remarks indicated that he was not fit for promotion.

Strictly, therefore, there cannot be said to be a conflict between the view in Nathu's case and the view taken in Shanker's case.

10. The question, however, still remains, as it sought to be argued before us, that even in the case of a reversion after taking into account

uncommunicated adverse remarks, the validity of such a reversion order must be determined on the touch-stone of the ratio in Gurdial Singh's

case. It is necessary first, therefore, to refer in some detail to the decision in Gurdial Singh's case. But before we refer to the decision in Gurdial

Singh's case, it is necessary to refer to two decisions; one arising out of a promotional matter and the other arising out of a compulsory retirement

matter, both being decisions of the Constitution Benches of the Supreme Court and on which heavy reliance has been placed by Mr. Jaiswal

appearing on behalf of the respondents. Prakash Chand Sharma v. The Oil and Natural Gas Commission " was a case where promotion was

withheld on the ground that there were adverse remarks against the petitioner in his confidential reports. Admittedly those remarks were not

communicated to the petitioner. The relevant instructions with regard to the writing of the confidential reports and their communication in the case

specifically required that every employee should know what his defects were, so that he could remove the same, if possible, and it was open to an

employee to make representation against adverse remarks. It was contended before the Constitution Bench of the Supreme Court that if the

petitioner had been given an opportunity of making representation against the adverse remarks, he might easily have satisfied the higher authorities

that the remarks were uncalled for and were unjustified. A question of suitability of the petitioner with regard to the matter of promotion was

considered in that case by the Departmental Promotion Committee and holding that the Departmental Promotion Committee was not bound to go

into the correctness of the confidential remarks and pointing out the fact that there was no allegation of mala fide against the members of the

Departmental Promotion Committee, the Supreme Court in paragraph 9 observed as follows :

If the adverse remarks were there in the confidential reports it was the duty of the Departmental Promotion Committee to take note of them and

come to a decision on a consideration of them. The committee could not be expected to make investigation about the confidential reports. It

appears to us that in this case there was no discrimination, purposeful or otherwise, and at the best, the Committee's taking into consideration

confidential reports with respect to which the petitioner had been given no chance to make a representative was merely fortuitous. In such a state

of affairs, we are not satisfied that any interference is called for and the rule will, therefore, be discharged.

11. The above-quoted observations of the Supreme Court will indicate that even according to the Constitution Bench it was not the law that on it

being shown that the adverse remarks were not communicated, the failure to consider for promotion or failure to promote a person automatically

becomes infirm. The matter was decided on a consideration whether interference was called for with the action of the Departmental Promotion

Committee. In other words, the decision of the Supreme Court is, in our view, an authority for the proposition that the question as to whether in

each case discretion under Art. 226 of the Constitution should be exercised or not has to be decided and it is not as if that in very case the

impugned action of the public authority must be struck down merely on it being shown that the confidential remarks were not communicated.

12. The other decision which is also of the Constitution Bench of the Supreme Court is R.L. Butah Vs. Union of India (UOI) and Others, . In that

case, there were adverse remarks in the confidential reports of the appellant for the years 1964 and 1965. He had made representations asking for

specific instances on which adverse information about him had been recorded. These representations were rejected. In both these years he was

overlooked by the departmental promotion committee and the Union Public Service Commission for the post of Director (Selection Grade). The

grievance of the appellant was that the confidential reports were placed before the departmental promotion committee and the Public Service

Commission before they were communicated to him and he was prejudiced thereby. The argument had gone to the length that making of entry

without holding a departmental enquiry and hearing him was contrary to natural justice. The Supreme Court in that case pointed out that making an

adverse entry is not equivalent to imposition of a penalty which would necessitate enquiry or giving of a reasonable opportunity of being heard to a

Government servant. It was pointed out that whenever a Government servant is aggrieved by an adverse entry, he has an opportunity of making a

representation. Such a representation would be considered by higher authority, who, if satisfied, would either amend, correct or even expunge a

wrong entry so that it is not as if an aggrieved Government servant is without any remedy. The Supreme Court took into account the fact that the

representations of the appellant against the reports for 1964 and 1965 had been rejected and there was, therefore, no question of injustice having

been done to the appellant despite the fact that the Committee had before it the confidential report without there being along with it any

representation made by the appellant. According to the Supreme Court a question of breach of principles of natural justice also did not arise.

Referring to the purpose of maintaining the confidential reports, the Supreme Court pointed out that they are intended to be a general assessment

of the work performed by the Government servant and that such reports are maintained for the purpose of serving as data of comparative merit

when questions of promotion, confirmation etc. arise. At page 62 of the report the following observations appear at para 12 of R.L. Butah Vs.

Union of India (UOI) and Others, .

These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant

subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of

promotion, confirmation etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are

made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in

the personal file of the Government servant. In such a case the officer making the order has to give reasonable opportunity to the Government

servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to

the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate

representation and that therefore the confidential reports are vitiated.

This decision of the Supreme Court proceeds on the footing that the mere fact that the reports of 1964 and 1965 were not communicated to the

appellant did not vitiate his non-selection and the fact that his representations in respect of these adverse entries were rejected was a relevant fact

in deciding whether any injustice was caused to the appellant.

13. Now we will come to Gurdial Singh's case (supra). It has to be remembered that the main grievance in that case was the Chief Secretary of

Punjab did not grant an integrity certificate in favour of the appellant because of the adverse report in his confidential roll for the year 1966-1967

and one of the reasons which weighed with the Selection Committee in not putting the appellant's name on the Select List was that the Chief

Secretary had not issued the integrity certificate in his favour. Thus the non-inclusion of the appellant's name in the Select List and the non-issuance

of the integrity certificate were closely linked with the non-inclusion of the appellant's name by the Selection Committee. Now, so far as non-

issuance of the integrity certificate was concerned, it was undisputed in that case that only justification for such non-issuance was the adverse

report in the confidential roll of the appellant for the year 1966-1967. The Supreme Court took the view that the circumstances surrounding

adverse entry may, therefore, bear examination for seeing whether such preponderating importance could, on the facts to which they were to

advert, should be given to a particular entry. After adverting to the facts, it was found that the adverse report was communicated to the appellant

but the representation made against that adverse report was not considered by the Government and the result of that consideration was not

available to the Select Committee. Consequently, the Supreme Court found that non-issuance of the integrity certificate could not be supported.

The observations in paragraph 17 may now be quoted :

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.

Unfortunately, for one reason or another, not arising out of 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 the appellant. The chain 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 undoubtedly true that the instruction as to making available the adverse report is not an empty formality and that representations made in

respect of such adverse reports, have to be considered. But we do not think that this case goes as far as to hold that the moment it is shown that

adverse report is not communicated, automatically the result must follow that the action of the authority concerned in each case must stand vitiated.

It does not appear that Butail's case was considered in Gurdial Singh's case, but Butail's case clearly an authority for the proposition that if at the

material time when the matter is before the Court, it is shown that no justice has been caused, the Court is not bound to interfere in that case. In

Gurdial Singh's case, the course which is adopted by the Supreme Court was that the State Government was directed to dispose of the

representations and then the Selection Committee was directed to consider whether the appellant should be included in the Select List or not and

this had to be decided in accordance with the relevant regulations by applying the test of merit and suitability-cum-seniority. Gurdial Singh's case,

therefore, was not a case of reversion from an officiating post on the ground of unsuitability. The effect of Gurdial Singh's case, therefore, is that

there has to be a reconsideration of the claim for promotion. Undoubtedly, both in the case of reversion from an officiating post and in the case of

promotion, a claim to a higher post is a common factor. But the nature of the action in both the cases is entirely different. Where a person is not

considered for promotion, he can be reconsidered and if necessary, promotion which has been wrongly denied to him can be restored to him and if

a promotion has been wrongly denied to him, the injustice caused by such wrongful denial can be remedied. In our view, a reversion from an

officiating post must stand on a different footing. When a person is appointed in an officiating capacity it is implicit that there will be the loss of that

office consequent upon his being found unsuitable and the consequential deprivation of all the incidental advantages is also a necessary

consequence, (See : State of U.P. and Others Vs. Sughar Singh, . In the case of reversion from an officiating post, it is now well established that

the reversion on the ground of unsuitability does not attract the provisions of Art. 311 of the Constitution of India, because such a reversion does

not amount to penalty, unless of course the reversion arises out of any express misconduct. Therefore, where a reversion is challenged on the

ground that the remarks have not been communicated and yet they have been considered, we see no difficulty in applying the ratio of Butail's case,

where it was held that where a representation against a confidential reports has been made subsequently and has been rejected the confidential

remark can still be taken into account to decide whether the reversion was proper or not. Essentially the decision on the question of unsuitability for

a particular post is a matter for the appropriate authorities to reach. A Court will not sit in judgment under Art. 226 of the Constitution of India and

decide as to whether the conclusion of unsuitability is correct or not except of course in a case where reversion is challenged on the ground of mala

fides or the conclusion of unsuitability is also challenged on the ground of mala fides.

14. Now we may go to the third decision, Brij Biharilal v. High Court of M.P. (supra). That decision did not arise out of a matter for promotion

nor out of the matter for reversion, but it arose out of order or compulsory retirement, which it has now been repeatedly said, does not entail any

penal consequences. Brij Biharilal's case (supra) refers to Gurdial Singh's case and reiterates that it is necessary to communicate adverse entries

made in the confidential reports to the Government servants concerned. But it is pointed out that when considering the question of compulsory

retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be

attached to the confidential reports pertaining to the years immediately preceding such consideration. It is pointed out that though the Government

servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it

would be of advantage to continue him in service upon the statutory age of superannuation and whatever value the confidential reports of earlier

years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance. Brij Biharilal's case,

therefore, was mainly concerned with the question as to which were the confidential reports which have to be taken into account for the purpose of

deciding whether a person should be compulsorily retired or as has often been said, he should be treated as dead wood which needs to be

chopped off. If the facts of the decision are carefully read, it will be noticed that the result of the decision turned mainly on the conflict between the

two reports of two successive Chief Justices against and in favour of the appellant in that case. That decision did not merely turn on whether the

compulsory retirement was bad because the confidential reports were not communicated, though admittedly in that case no confidential reports

were not communicated, though admittedly in that case no confidential reports for 31st March, 1966 were communicated. The Supreme Court

pointed out that the circumstances in which it is necessary to communicate adverse entries made in confidential reports to the Government Servant

concerned have been considered in Butail's case and in Gurdial Singh's case and also in M. E. Reddy's case (supra). The reasons on which the

order of compulsory retirement was set aside, however, are those which are found in paragraphs 7, 8 and 9.

15. In paragraph 7, the Supreme Court pointed out that the Division Bench of the High Court had recorded serious criticism of the manner in

which the appellant who was a District and Sessions Judge in Madhya Pradesh had disposed of the Sessions case and copy of the remarks made

in the order-sheet although placed on the personal confidential file of the appellant was never communicated to him. Then in paragraph 8, the

Supreme Court refers to two confidential reports made by two successive Chief Justices for overlapping periods and those two reports ex facie do

not agree with each other and it was found that this inconsistency had "escaped the attention of the High Court when it considered the question

whether the appellant should be compulsorily retired." The compulsory retirement order was, therefore, set aside, but liberty was left to the High

Court to consider the case again and take a fresh decision on the question. Brij Biharilal's case takes note of the fact that Gurdial Singh's case

arose out of a matter of promotion.

16. We must now refer to the decision in M. E. Reddy's case (supra), in which the Supreme Court had in paragraph 27 positively observed that

the relevant rule excludes the principle of natural justice. The relevant Rule 16(3) in that case reads as follows : at Para 7 of Union of India (UOI)

Vs. M.E. Reddy and Another, .

16(3). The Central Government, in consultation with the State Government, may require a member of the Service who has completed 30 years of

qualifying service or who has attained the age of 55 years to retire in the public interest provided that atleast three month's previous notice in

writing will be given to the member concerned.

Having pointed out that retirement in accordance with such a rule neither results in punishment, nor stigma and such retirement does not cause any

real prejudice, the Supreme Court after quoting Butail's case, (supra) referred to the fact that Union of India had placed before them the entire

confidential personal file of the respondent starting from the date he joined the police service, and on going through this file the Supreme Court

took the view that "we are unable to agree with Mr. Krishnamurthy Iyer (counsel for the respondent) that the officer had spotless career." The

following observations are therefore made at Para 18 of Union of India (UOI) Vs. M.E. Reddy and Another, at Page 14.

We might also mention that before passing an order under rule 16(3) it is not an entry here or an entry there, which has to be taken into

consideration by the Government, but the overall picture of the officer during the long years of his service that he puts in has to be considered from

the point of view of achieving higher standard of efficiency and dedication so as to be retained even after the officer has put in the requisite number

of years of service. Even in the last entry which was sought to be expunged through a representation made by Reddy and other entries made

before that it appears that the integrity of Reddy was not above board.

17. The decision of the Supreme Court in Reddy's case is therefore an authority for the proposition that when exercising jurisdiction under Art.

226, this Court will not mechanically set aside the reversion order merely because some adverse entries have not been intimated to him and the

jurisdiction under Art. 226 of the Constitution must extend as far as to ensure that the conclusion of the unsuitability has been fairly reached and

was not mala fide. None of these authorities which we have referred to can be read as laying down that an automatic infirmity is created in an

action of reversion the moment it is shown that adverse reports are not communicated. When the matter is brought before this Court under Art.

226, it will be well within the scope of the jurisdiction of this Court to determine whether on such material as is placed before the Court the action

is well supported, is taken bona fide and a just and proper decision has been reached by the appropriate authority. To hold that on it being shown

that some confidential reports have not been communicated the order of reversion must be set aside automatically without anything more will in fact

amount to making a rule barring the jurisdiction of this Court to go into the merits of the reversion order.

18. In the light of the view taken by us, having regard to the material which is placed before us it is difficult to hold that there is any infirmity in the

order of reversion. What is contained in the confidential report for 1977-78 is already communicated to the petitioner by the letter dated 8th

September, 1977. (Annexure R-13). What is not communicated in 1978-79 has not been rebutted by any additional affidavit. We are not really in

a position to find out when the confidential reports for 1978-79 were written, but assuming that they have been written before the reversion order

has been made, nothing prevented the petitioner from either making a representation in respect thereof because they have been communicated

almost four years back on 28th September, 1979. In any case there was nothing to prevent the petitioner from filing a further affidavit to show that

the communication sent to him about his performance was not correct or from pointing out that the assessment made in the confidential report was

not correct. The Government has taken recourse to obtain a special report with regard to his performance during the trial period and thereafter.

The resolution dated 18th August, 1979 made a reference to this special report. The fact such a special report is made is not disputed. We are not

required to go into the correctness of this special report and we must accept that the decision based on this report was bona fide decision unless it

was challenged. This material is, in our view, enough to sustain the order of reversion.

19. Since some other decision have been cited before us, we may briefly refer to them, though we do not find that any particular purpose will be

served by discussing those decisions.

20. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, was a decision which arose out of the order

of the Election Commission in the exercise of its special power under Art. 324. This was relied upon by the learned counsel for the appellant in

support of his proposition that fairplay necessarily implied observance of the principles of natural justice. Undoubtedly the breach of natural justice

may create an infirmity in the action of a particular authority, but then the question as to whether there has been a breach of natural justice, what

were the principles of natural justice which would be attracted on the facts that particular case and what was the nature of the breach would

ultimately be determinative of the question as to whether interference was necessary. Apart from this, that was a matter which specifically arose out

of the jurisdiction of the Election Commission under Art. 324 and his powers under that article.

21. S.L. Kapoor Vs. Jagmohan and Others, was a case where it was held that before the Municipal Council was superseded an opportunity

should be given to give its say before an order is passed. That was once again a matter which turned on the principles of fairplay and natural

justice. As already pointed out, the principles of natural justice are not embodied in the rules and they have to be fashioned and applied on the facts

of each case. Reference was made to the decisions in Guman Singh and Others Vs. State of Rajasthan and Others, and particularly to the

observations in paragraph 44 thereof, which referred to a circular which laid down that adverse remarks recorded in the confidential rolls should

be communicated to the person concerned in time so that he may get an opportunity to represent his case to the authority concerned. With this

principle there is no dispute and it is not the case of the State or the respondents that adverse confidential reports need not be communicated.

22. Parvez Qadir v. Union of India (supra) was referred to in order to highlight the possibility that confidential reports could be the result of the

vagaries of the individual officer. In that case that Supreme Court pointed out that confidential reports records do not sometimes give a true picture

due to vagaries of the recording officer and the human fallibility and the want of objectivity in the superior officer are factors which cannot be

eliminated altogether and it was pointed out that as a safeguard against such contingency, there was an opportunity to the officer concerned to

make representations. Now we fail to see the relevance of this decision in the present case. It is not even contended that the confidential remarks

1977-78 are the result of the vagaries of any superior officer or they have been mala fide made. The decision in Parvez Qadir's case (supra) is

therefore, not very relevant.

23. A reference was made to a decision of a learned Single Judge of the Rajasthan High Court in Mangilal v. Union of India 1981 W.L.N. 622.

The facts of that case will show that the promotions of the petitioners were set aside on the basis of a report made by some other persons who

were not promoted and no opportunity was given to those who were promoted to meet the case made against their promotions by those who

were not promoted. It appears that on the basis of the representations made against promotions of the petitioners, the promotions were

categorised while quashing those said order. The learned Single Judge took the view that the orders were liable to be quashed on the simple

ground that after the petitioners were once promoted, they having joined and having drawn salary, the principles of natural justice warranted that

they should have been told of the representations against their promotions and allowed an opportunity of showing that these representations were

untenable and unjustified. That not having been done, the principles of natural justice were held to have been violated. It is obvious on the facts of

this case that the representations made against the promoted persons could not have been acted upon unless the promoted persons were given an

opportunity to give their say against those representations.

24. Two other decisions which were cited before us were : M. S. Sharma v. State of A. P. 1981 S.L.R. 760, Union of India v. Shyam Shiva

Prasad 1979 (2) S.L.R. 425. In M. S. Sharma's case the learned Judge, who was deciding the matter on a difference between two other learned

Judges seems to have taken the view that specific instances or particulars must be given in the confidential reports, a question which is not relevant

for the purposes of this case. In Shyam Shiva Prasad's case the order challenged was an order of compulsory retirement and it was held that the

final position is that for the purposes of compulsory retirement uncommunicated adverse remarks could not be taken into consideration. This

decision is based mainly on Gurdial Singh's case and Butail's case. Since we have discussed in detail these two decisions of the Supreme Court,

we do not think any useful purpose will be served by discussing the ratio of this decision of the Delhi High Court.

25. Having given the matter our anxious consideration we are satisfied in the instant case that there was enough material on which unsuitability of

the petitioner could be determined by the appropriate authorities. Not only are the contents of the adverse remarks not disputed, nor explained by

way of additional affidavit, but there is no grievance whatsoever with regard to the special report. If on this material the concerned authorities have

reached the conclusion that the petitioner was unsuitable to hold the post of promotion, we do not see how we can interfere with such a decision.

26. A faint grievance was made that juniors of the petitioners are continuing in the post of promotion which itself is a stigma on the petitioner. We

fail to see how it is open to the petitioner to canvass this aspect of the challenge in such a vague manner. This will necessitate going into the legality

of the promotion of each one of the respondents against whom such a grievance has to be made. No such argument is advanced before us. In any

case it has been explained by the State that the petitioner when he asked for being retained at Pune and wanted to forgo his promotion to class I,

he was positively told that he would lose his seniority and his juniors would be promoted. We have no material as at present to determine whether

these are the only juniors or there are any other juniors who are continuing to hold posts of promotion. In any case, so far as the petitioner is

concerned, since we have sustained the order of reversion on the ground that he has been properly found unsuitable, he cannot now make a

grievance that his juniors are holding the posts of promotion. In the view which we have taken, this petition must fail.

27. In the result, the petition is dismissed with costs.