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CHANDRA GUPTA, IFS

v.

SECRETARY, GOVERNMENT OF INDIA, MINISTRY OF
ENVIRONMENT AND FORESTS AND ORS.

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SEPTEMBER 12, 1994

[M.N. VENKATACHALIAH, C.J., S. MOHAN AND
DR. A.S. ANAND, JJ.]

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Service Law—Confidential Report—Seniority and promotion—Selection post—Supersession of officer in view of adverse remarks in confidential reports—Expunction of adverse remarks after special review, and promotion effected to selection grade—Whether superseded officer entitled to restoration of seniority—Whether officers adversely affected by such expunction have right to be heard—Held, in the promotion under consideration, merit and not mere seniority is essential—In any event, factual finding of comparative merit by the DPC would have to precede consideration for restoration of seniority—Also, while question of locus standi of other affected officers in the matter of expunction of adverse remarks left to Tribunal to decide, held, they may validly urge that they brought to the notice of the authority that expunction had been obtained by fraud.

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Constitution of India. Articles 14 and 16(1)—Indian Forest Service (Pay) Rules 1968, R.3—All India Services (Discipline and Appeal) Rules 1969, R.25—All India Services (Confidential Rolls) Rules 1970, R.9—Indian Forest Service (Recruitment) Rules 1966, R.4(a) and 5—Indian Forest Service (Regulation of Seniority) Rules 1968—Indian Forest service (Initial Recruitment) Regulations 1966—Forest Manual, Rr. 226/227.

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Practice and procedure—Interlocutory order, appeal against—Tribunal being in seisin of the matter, appeal dismissed with general observations

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The officers involved in these cases were all Indian Forest Service (IFS) Officers of the UP cadre. In view of adverse entries in the appellant's confidential reports, he was superseded, and respondents 3, 4, 5 and, latter, 6 were promoted to the grade of Additional Chief Conservator of Forest (ACCF) in selections held in August 1988. Thereafter, the adverse remarks were expunged, in a special review and the appellant was promoted as Chief

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Conservator of Forests (which had, in the meantime, merged with the post

of of ACCF) in February 1990. Respondents 3, 4 and 5 moved the Tribunal to restrain Secretary, Department of Forests, State of UP from considering the appellant and respondent 6 for promotion to the post of Principal Chief Conservator of Forests before the claims of respondents 3 to 5 were considered, on the basis, *inter alia*, of the length of service of respondents 3 to 5 in the higher post. A

The Tribunal held that mere expunction of adverse remarks subsequently could not affect seniority. Persons who had already been accorded promotion will continue to remain senior. In related proceedings, the Tribunal passed interlocutory orders directing the State to produce the DPC record for making selection to the post of Principal Chief Conservator of Forests as well as the records pertaining to expunction of the adverse entry in the confidential records of the appellant. Further, it directed that the appellant shall not be given, or take charge, of the office of the Principal Chief Conservator of Forests. B C

Before the Court, for the appellant it was urged that upon expunction of adverse remarks and subsequent promotion, the original seniority of the concerned officer stood restored and the failure to restore the seniority would be violative of Article 14 of the Constitution. For the respondents it was contended that the expunction of remarks was based on misrepresentation and fraud; that the officers likely to be affected by the expunction of the remarks had not been afforded an opportunity to put forth their objections; and that the promotions in this case was to a selection post to be filled by merit with due regard to seniority and that only when the merit is equal seniority becomes relevant in the matter of promotion to a selection post. D E

Dismissing the appeal, this Court F

HELD : 1. It cannot be held that on the expunction of adverse remarks and consequential promotion, the promotion of the appellant would date back to the date when it was due. Rule 3(3) of the IFS (Pay) Rules 1968 provides that the selection shall be made by selection on merit with due regard to seniority. Therefore what is essential is merit and not mere seniority. [377-G, 378-F] G

Sant Ram Sharma v. State of Rajasthan, [1968] 1 SCR 111 and *State of Mysore v. Syed Mahmood*, [1968] 3 SCR 363, relied on.

2. Even assuming the best in favour of the appellant, as a consequence H

A of expunction of adverse remarks, the appellant's case was liable to be reviewed by the DPC for the post of Chief Conservator of Forest as on the date when respondents 3 to 5 were so promoted. It could be done, provided the appellant was found suitable for promotion on the basis of record. The attention of the Court has not been drawn to any record from which it may be concluded that after the expunction of adverse remarks, the record of service of the appellant was more meritorious than that of respondents 3 to 5. [389-D, E]

R.K. Singh v. State of UP, [1991] Supp 2 SCC 126, referred to

C 3. Eligibility for promotion is one thing while actual promotion is a different thing. Even assuming on the strength of the ruling in *R.K. Singh* the appellant is entitled to promotion on the date when he became eligible for promotion but for these adverse entries, a factual finding requires to be rendered as to whether the adverse entries for 1980-81 and 1981-82 were actually communicated, and whether, after expunction of adverse remarks, D there was a comparative estimate of the merits by the DPC. [390-C to D]

4. It is well settled in law that no employee has a right or vested right to promotion. [381-C]

E *Ramchandra Shankar Deodhar v. State of Maharashtra*, [1974] 1 SCC 317; *Mohammad Shujat Ali v. Union of India*, [1975] 3 SCC 76; *Reserve Bank of India v. C.T. Dighe*, [1981] 3 SCC 545; *State Bank of Maharashtra v. Chandrakant Anant Kulkarni*, [1981] 4 SCC 130; *Reserve Bank of India v. C.N. Sahasranaman*, [1986] Supp SCC 143; *Paluru Ramakrishnaiah v. Union of India*, [1989] 2 SCC 541 and *K. Jagadeesan v. Union of India*, [1990] 2 SCC 228, relied on.

F 5. Confidentiality is underscored in the All India Services (Confidential Rolls) Rules 1970. These Rules do not provide for any opportunity of raising objection being given to any other officer against the government's decision for entering, or expunging, adverse remarks. Therefore, it follows G that no legal right or *locus standi* can be given to any person to challenge the expunction of an adverse entry. [379-H, 380-D]

Lakhi Ram v. State of Haryana, [1981] 2 SCC 674, referred to.

H 6. The respondent has alleged misrepresentation and fraud in the expunction of the adverse entries, which the appellant controverts.

Whatever may be the correctness of these allegations, what is sought to be urged by the respondent is that it is open to the respondent to bring to the notice of the authority that expunction was made by the officer concerned and the same has been procured by fraud. This could be validly urged.

[388-B, C]

7. It is however made clear that the general observations made in the judgment are not a decision on the *locus standi* of respondents 3 to 5 in relation to the expunction of adverse remarks against the appellant.

[392-D]

8. Since the Tribunal is in seisin of the matter, the appeals are not entertained at this stage, against interlocutory orders. [392-B]

Union of India v. E.G.Nambudiri, [1991] 3 SCC 38, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5996 of 1994.

From the Judgment and Order dated 15.9.92 of the Central Administrative Tribunal, Lucknow in R.O.A. No. 170/92.

With

Civil Appeal No. 5997 of 1994.

From the Judgment and Order dated 15.9.92 of the Central Administrative Tribunal, Lucknow in R.O.A. No. 170/92.

And

Civil Appeal Nos. 5998-6000 of 1993.

From the Judgment and Order dated 21.11.92, 27.11.92 & 2.12.92 of the Central Administrative Tribunal, Lucknow in O.A. No. 617/92.

V.R. Reddy, Additional Solicitor General, Gobinda Mukhoty, P.P. Rao, Sunil Gupta, K.J. John for Swarup John & Co., A.K. Srivastava, Sanjay Parikh, Pramod Dayal, Ms. Sushma Suri, C. Ramesh, Rajat Kishan and Shakil Ahmed Syed for the appearing parties.

The Judgment of the Court was delivered by

MOHAN, J. Leave granted.

A All these cases can be dealt with a under a common Judgment.

B Civil Appeal arising out of SLP: (C) No. 16351 of 1992 has been preferred by Chandra Gupta and Civil Appeal arising out of SLP (C) No. 16718 of 1992 has been preferred by the Secretary Department of Forest. These appeals challenge the correctness of the judgment of Central Administrative Tribunal, Lucknow in O.A. No. 170 of 1992 dated 15.9.92 (as amended on 18.2.92). Civil Appeal arising out of SLP (C) Nos. 1264-66 of 1992 preferred by Chandra Gupta are directed against the interlocutory orders dated 21.11.92, 27.11.92 and 21.2.92. The parties will be referred to as arrayed in Civil Appeal arising out of SLP (C) No.. 16531 of 1992.

C The Indian Forest Service is an All India Service. It is constituted under Section 2(a) of the All India Services Act, 1951. The appointment to the Indian Forest Service are made by the Central Government under Rule 4 of the Indian Forest Service (Recruitment) Rules of 1966 (hereinafter referred to as the Recruitment Rules). *Inter se* seniority of the officers appointed by the various methods to the Indian Forest Service is determined by the orders issued by the Central Government under the provisions of Indian Forest Service (Regulation of Seniority) Rules of 1968 (for short Seniority Rules) in the Uttar Pradesh Cadre of Indian Forest Service, the following grades are available for promotion of the officers:

E	S. No.	Grade	Scale of Pay
	1.	Asstt. Conservator of Forests (Junior Scale)	2200-4000
	2.	Dy. Conservator of Forest (Senior Time Scale)	3700-4500
F	3.	Dy. Conservator of Forest (Senior Scale - Junior Administrative Grade)	3700-5000
	4.	Dy. Conservator of Forest (Senior Scale - Selection Grade)	5100-5800
G	5.	Conservator of Forest (Super Time Scale)	4500-5700
	6.	Chief Conservator of Forests (Super Time Scale)	5900-6700
H	7.	Principal Chief Conservator of Forest (above Super Time Scale)	7600 (fixed)

Previously, the post of Chief Conservator of Forest was divided into two categories, namely, 1. Additional Chief Conservator of Forests and 2. Chief Conservator of Forest. Both these posts were borne on the super-time scale of Rs. 5900-6700. However, with effect from 31st of May, 1990 both these posts were re-designated and merged into the category of Chief Conservator of Forests. On the appointment of an officer to the Indian Forest by the Central Government order Rule 4(a) of the Recruitment Rules his promotion to the various grades within the State is done by the State Government. While doing so, the State Government must have regard to the statutory Rules and the administrative instructions issued by the Central Government, from time to time. Particularly, regard must be had to Rule 3(3) of the Indian Forest Service (Pay Rules). This is because that Rule lays down the mode of selection to the grade of senior scale/selection grade. That Rule prescribes selection on merit with due regard to seniority. The Government of India have also issued certain guidelines on 31st January, 1985 to regulate the manner of effecting promotions.

The provision of Seniority Rules are independent of the various grades of posts to which officers of the Indian Forest Service are appointed from time to time. Rule 5 requires the preparation of the gradation list of State cadre as well as joint cadre of all the officers borne in that cadre and arrayed in the order of seniority. The officers involved in these cases are all Indian Forest Service officers of Uttar Pradesh cadre. Their Years of allotment of *inter se* placement in the cadre is as follows:

S. NO.	Party	Year of allotment order of seniority
	S/Shri	
1.	Chandra Gupta Appellant	1963 1/2
2.	R.S. Singh Respondent No. 3	1963 1/2
3.	J.N. Srivastava Respondent No. 6	1963 1/2
4.	R. S. Bhaduria Respondent No. 4	1964
5.	K.C. Thapliyal Respondent No. 5	1964

In August 1988, for promotion to the grade of Additional Chief Conservator of Forests selections were conducted. In the said selection

- A** Chandra Gupta, appellant in Civil Appeal arising out of SLP (C) No. 16531 of 1992 and J.N. Srivastava, Respondent No.6 were not selected. R.S. Singh, Respondent No. 3, R.S. Bhaduria, Respondent No. 4 and K.C. Thapliyal, Respondent No. 5 were selected. Consequent to their selection they were promoted to the grade of Additional Chief Conservator of Forests with effect from 2.9.1988. Subsequently, J. N. Srivastava, Respondent No. 6 was considered for promotion to the grade of Additional Chief Conservator of Forests. He was promoted to the grade with effect from 14.3.1989. As regards the appellant there were certain adverse entries, in his confidential report for the years 1981-82, 1985-86 and 1986-87. In view of these adverse entries when his case for promotion came to be considered in August 1988 he was superseded by Respondent Nos. 3 and 4. However, the records disclose that the adverse remarks were expunged. Therefore, his case for promotion to the grade of Chief Conservator of Forests was considered fresh. He was promoted as Chief Conservator of Forests in February 1990. Respondent 3, 4 and 5 moved the Central Administrative Tribunal in O.A. No. 170 of 1992 for prohibiting the Secretary, Department of Forest, Government of Uttar Pradesh from considering the appellant and Respondent No.6 for promotion to the post of Principal Chief Conservator of Forests before the claims of Respondents 3 to 5 were considered. There was also a prayer to restrain the State permitting Respondent No. 4 and 5 to discharge the duties of Chief Conservator of Forests. It was urged by Respondent Nos. 3 to 5 that under Indian Forest Service (Initial Recruitment) Regulations, 1966 they were allotted 1963 1/2, 1964 and 1964 as years of allotment whereas the appellant and the 6th Respondent were allotted 1963 1/2 as year of allotment.
- F** Respondent 3 superseded the appellant. Respondents 4 and 5 had superseded the appellant and the 6th Respondent. Respondent No. 3 was promoted as Chief Conservator of Forests before the appellant while Respondents 4 and 5 were promoted before the appellant and the 6th Respondent. As such Respondent Nos. 3 to 5 became senior to the appellant and the 6th Respondent. Their length of service on the higher post was the basis of seniority. Therefore, even if the original order of allotment of the appellant and the 6th Respondent was earlier they would be junior to Respondents 3 to 5 since Respondent 3 to 5 were promoted earlier than the appellant and the 6th Respondent. The mere fact, the posts of Additional Chief Conservator of Forests and the Chief Conservator of Forests were merged on 31.5.1990, will not, in any manner, effect the fact
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- H**

of supersession and prior promotion. The case of the appellant before the tribunal was, his non-selection was due to certain adverse entries. These adverse entries were not communicated to him. However, once they have been expunged on his representation, he was found fit for promotion. Wrong supersession will not affect seniority.

The State (Appellant in Civil Appeal arising out of SLP (C) No. 16718 of 1992) supported this stand. The Tribunal under the impugned judgment referred to a few rulings of this Court and held mere expunction of adverse remarks subsequently will not affect seniority. Persons who had already been accorded promotion will remain senior. Thus the Tribunal concluded: Respondents 3 and 4 should be considered senior. This Judgment is appealed against in Civil Appeal arising out of SLP (C) No. 16531 of 1992.

Mr. Sunil Gupta, learned counsel for the appellant states that the Government of India, by its order dated 13th January, 1985, has provided for a special review. Such a review is to be done in cases wherein the adverse remarks in the officers annual confidential reports are expunged subsequently as a result of the representations. This necessarily implies the decision of an earlier Departmental Promotion Committee to promote an officer stands reviewed or revised by a new decision of the Departmental Promotion Committee to promote the officers concerned thereby leaving the seniority of the officer over his juniors unaffected. If on expunction the original seniority of the officer is denied that would result in great arbitrariness and injustice violating Article 14 of the Constitution of India. The Tribunal ought to have approached the question in a proper perspective instead of merely declaring the seniority of Respondents 3 to 5 above the appellant. While, in fact, the appellant was senior to them. The Tribunal erred in relying on decisions which have no relevance to the issue involved which is a short one here, namely, on the expunction of adverse remarks and a consequential promotion being accorded, whether such a promotion dates back to the date when it was due. By such dating back the promotions of the juniors are not, in any manner, disturbed.

In support of this submission reliance is placed on *R.K. Singh v. State of U.P. and others*, [1991] Supp. 2 SCC 126.

The State which is the appellant in Civil Appeal arising out of SLP (C) No. 16718 of 1992 supports this stand and adds, where a person has

A been wrongfully left out of consideration by reason of adverse entries, on expunction of these adverse entries he should be entitled to his due promotion. Merely because the appellant and the 6th respondent were not given promotion on account of uncommunicated adverse entries which were subsequently expunged, seniors like the appellant and the 6th respondent cannot be deprived of their legitimate due.

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Learned counsel for the respondents would submit, first and foremost the expungement of the remarks for the years 1980-81 and 1981-82 was based on misrepresentation of the appellant that they were never communicated to him. On the contrary, the records clearly establish these adverse entries were, in fact, served on him. The counter affidavit contains all the details. If, therefore, those adverse entries have been communicated and the appellant had, in fact, acknowledged, the plea that he was not communicated will clearly amount to fraud.

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It is not the case of the respondent that before expunging the adverse remarks the officer or all other officer who are likely to be affected must be afforded an opportunity to put forth their objections. What is urged is that it is open to the affected officer to bring to the notice of the authority the fact that expunction was made on misrepresentation made by the officer concerned and was procured by fraud. In fact, this Court has held in *Lakhi Ram v. State of Haryana*, [1981] 2 SCC 674 an officer whose chances of promotion are prejudiced by Government's action, expunging the adverse remarks has *locus standi* to maintain a writ petition challenging the expunction.

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These respondents were promoted as Chief Conservator of Forests by virtue of the superior merit and suitability since this is a selection post to be filled by merit with due regard to seniority. Only when the merit is equal in the matter of promotion of a selection post seniority becomes relevant. Otherwise, merit alone counts. In support of this submission reliance is placed on *Sant Ram Sharma v. State of Rajasthan*, [1968] 1 SCR 111 at pages 118-119.

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Mere expunction of remarks itself will not make the appellant more meritorious. The ratio of the judgment of this Court in *State of Mysore v. Syed Mahmood*, [1968] 3 SCR 363 will apply. Unless and until, therefore, the appellant proves that after expunction of remarks he had a more meritorious record than these respondents, he cannot succeed. In any

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event, in so far as the review is concerned the Departmental Promotion Committee considered the case of the appellant after the expungement and directed that he might be promoted prospectively to the post of Chief Conservator of Forests. The appellant cannot have any grievance. A

The restoration of old seniority would amount to violation of Articles 14 and 16(1) of the Constitution of India as held by this Court in *S.K. Ghosh v. Union of India*, [1968] 3 SCR 631 at pages 637-38. Thus, it is prayed that the Civil Appeals may be dismissed. B

In Civil Appeals arising out of SLP(C) Nos. 1264-1266 of 1993 it is urged that these interlocutory orders adversely affected the appellant. Once the adverse remarks have been expunged and the appellant has been directed to be promoted to the post of Chief Conservator of Forests there cannot be any roving inquiry concerning these aspects. Nor again, the order dated 27.11.92 is relevant to the issue. C

Learned counsel for the respondents submits that it is never the practice of the Court under Article 136 of the Constitution of India to interfere with the interlocutory orders, more so, when the main case is part-heard before the Tribunal. In any event, the production of those records, as directed by the Tribunal, is necessary for a proper adjudication. D

The short question that arises for consideration in this case is on the expunction of adverse remarks of the appellant and consequent promotion under a special review process, whether the promotion dates back to the date when it was due? On such according of promotion, how is seniority of the officers to be reckoned? E

Before we go to the core of this question we would like to deal with certain important aspects which arise repeatedly before this Court. F

(1) The nature of confidential rolls.

(2) Before expunction of adverse entries the officer likely to be affected has a right to be heard. G

A careful reading of the All India Services (Confidential Rolls) Rules 1970 (hereinafter referred to as the Confidential Rolls Rules) clearly establishes that what is underscored in these Rules is confidentiality. Even the concerned officer against whom the entries are made hardly any chance H

A of known about the entries. Of Course, it is a different matter if in adverse entry is made. Prior to making such an entry the officer concerned could have no knowledge. It is only after the entry is made an opportunity is provided to him to make a representation. This is evident from Rule 9 of the Confidential Rolls Rules. It reads as under :

B "9. Representation against adverse remarks. -

A member of the Service may represent to the Government against the remark communicated to him under rule 8 within 45 days of the date of its receipt by him:

C Provided that the Government may entertain a representation within three months of the expiry of the said period if it is satisfied that the member of the service had sufficient cause for not submitting the representation in time."

D The said Rules do not provide for any opportunity of objection being given to any other officer against the Government decision for entering the remarks or expunging those remarks. Therefore, it should follow that no legal right or *locus standi* can be given to any person to challenge the expunction of an adverse entry.

E This Court in *Lakhi Ram v. State of Haryana*, [1981] 2 SCC 674 & 675 held as under :

F ".....The appellant filed the writ petition challenging the action of the government expunging the adverse remarks made in the annual confidential report of respondent 6. The High Court took the view that the appellant was not entitled to complain against the expungement of adverse remarks made in the confidential report of another officer. But this view is, in our opinion, erroneous because the effect of expungement of adverse remarks in the confidential report of respondent 6 is to prejudice the chances of promotion of the appellant and if the appellant is able to show that the expungement of the remarks was illegal and invalid, the adverse remarks would continue to remain in the confidential report of respondent 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent 6. The appellant was therefore, clearly entitled to show that the govern-

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ment acted beyond the scope of its power in expunging the adverse remarks in the confidential report of respondent 6 and that the expungement of the adverse remarks should be cancelled. The appellant had, in the circumstances, *locus standi* to maintain the writ petition and the High Court was in error in rejecting it on the ground that the appellant was not entitled to maintain the writ petition." A B

What is required to be carefully noted is the Court was considering the effect of expungement of adverse remarks which was likely to prejudice the chances of promotion. It is well-settled in law that no employee has a right or vested right to chances of promotion as held by this Court in *Ramchandra Shankar Deodhar v. The State of Maharashtra*, [1974] 1 SCC 317 at 329 : C

".....It is now well settled by the decision of this Court in *State of Mysore v. G.B. Purohit* that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely effects chances of promotion cannot be regarded as varying a condition of service. In *Purohit's* case the districtwise seniority of sanitary inspectors was changed to Statewise seniority, and as a result of this change the respondents went down in seniority and became very junior. These, it was urged, effected their chances of promotion which were protected under the proviso to Section 115, sub-section (7). This contention was negated and Wanchoo, J., (as he then was), speaking on behalf of this Court observed : "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service". D E F

The same principle is reiterated in the following cases:

In *Mohammad Shujat v. Union of India*, [1975] 3 SCC 76 at page 95 this Court held thus: G

".....It is true a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can no longer be disputed H

- A in view of several pronouncements of this Court on the point and particularly the decision in *Mohammad Bhakar v. Y. Krishna Reddy*, where this Court, speaking through Mitter, J., said: "any rule which affects the promotion of a person relates to his conditions of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion - the latter would certainly not be condition of service."
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Again, in *Reserve Bank of India v. C.T. Dighe*, [1981] 3 SCC 545 at 556 this Court held thus :

- C ".....It is will settled that a rule which affects the promotion of a person relates to his condition of service but this is not so what is affected is a chance of promotion only. This Court in *Mohd. Shujat Ali v. Union of India*, held :

- D "But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion - the latter would certainly not be a condition of service ... that though a right to be considered for promotion is a condition of service, mere chances of promotion are not."

- E In *Shujat Ali* case the respondents went down in seniority and it was urged that this affected their chances of promotion."

Again, in *State Bank of Maharashtra v. Chandrakant Anant Kulkarni*, [1981] 4 SCC 130 at page 141 this Court held thus :

- F "..... Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service but mere chances of promotion are not."

- G Again, in *Reserve Bank of India v. C.N. Sahasranaman*, [1986] SCC 148 at pages 158-159 this Court held thus :

- H "This Court had also observed that the right of promotion should not be confused with mere chance of promotion. Though the right to be considered for promotion was a condition of service, mere chances of promotion were not. See *Mohd. Shujat Ali v.*

Union of India, See Also in this connection the observations in *R.S. Deodhar v. State of Maharashtra*, [1974] 2 SCR 216 at 230 and *Reserve Bank of India v. C.T. Dighe*, [1981] 3 SCC 545, 556." A

Again in *Paluru Ramkrishnaan v. Union of India*, [1989] 2 SCC 541 at 552 this Court held thus : B

"In the case of *Ramchandra Shankar Deodhar* the petitioners and other allocated Tehsildars from Ex-Hyderabad State had under the notification of the Raj Pramukh dated September 15, 1955 all the vacancies in the posts of Deputy Collector in the ex-Hyderabad State available to them for promotion but under subsequent rules of July 30, 1959 50 per cent of the vacancies were to be filled by direct recruitment and only the remaining 50 per cent were available for promotion and that too on divisional basis. The effect of this change obviously was that now only 50 per cent vacancies in the post of Deputy Collector being available in place of all the vacancies it was to take almost double the time for many other allocated Tehsildars to get promoted as Deputy Collectors. In other words, it resulted in delayed chance of promotion. It was, *inter alia*, urged on behalf of the petitioners that the situation brought about by the rules of July 30, 1959 constituted variation to their prejudice in the conditions of service applicable to them immediately prior to the reorganisation of the State and the rules were consequently invalid. While repelling this submission the Constitution Bench held : C D E

All that happened as a result of making promotions to the posts of Deputy Collectors divisionwise and limiting such promotions to 50 per cent of the total number of vacancies in the posts of Deputy Collector was to reduce the chances of promotion available to the petitioners. It is now well settled by the decision of this Court in *State of Mysore v. G.B. Purohit* that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affect chances of promotion cannot be regarded as varying a condition of service. In *Purohit* case the districtwise seniority of sanitary inspectors was changed to Statewise seniority, and as a result of this change the respondents, went down in seniority and became very junior. This, it was urged, F G H

A affected their chances of promotion which were protected under the proviso to Section 115. sub-section (7). This contention was negatived and Whancho, J., (as he then was), speaking on behalf of this Court observed: "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We seen no force in this argument because chances of promotion are not conditions of services." It is, therefore, clear that neither the Rules of July 30, 1959 nor the procedure for making promotions to the posts of Deputy Collector divisionwise varies the conditions of service of the petitioners to their disadvantage."

C Again, in *K. Jagadeesan v. Union of India*, [1990] 2 SCC 228 at 230 this Court held thus :

D "..... A right to be considered for promotion is a term of service, but mere chances of promotion are not."

E As to the applicability of natural justice, while rejecting the representation against expunction of advise remarks by a speaking order this Court pointed out in *Union of India v. E.G. Nambudiri*, [1991] 3 SCC 38 at 45 as under :

F "There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the government servant. The decision, rejecting the representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. In many case having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the government servant."

H At page 46 it was held thus :

"There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons, However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

The appellant has suffered adverse entries for the years 1980-81, 1981-82, 1986-87 and 1987-88.

The case of the appellant is the adverse entries for the years 1980-81

- A and 1981-82 were not communicated to him in time. Concerning the adverse entries for 1986-87 the appellant filed a representation on 14.9.87. That was rejected by State Government on 16.11.87. On 12.1.88 the appellant filed a representation against the adverse entries for 1987-88. That was rejected by the State Government on 19.5.88. Eventually, the adverse entries got expunged by the President of India, by reason of a memorial filed under Rule 25 of the All India Services (Disciplines and Appeal) Rules, 1969. The memorial was allowed by the President of India on 27.9.89. At this stage we have to find out whether the stand of the appellant that the adverse entries for the years 1980-81 and 1981-82 were not actually communicated is correct. In paragraph 31 of the affidavit filed by Shri R.S. Singh, Respondent No.3 it is stated thus :

"The fact that the said expunction orders have been obtained by playing fraud and mis-representation by the petitioner will be apparent from the following:

- D (i) That for the year 1980-81 the adverse entries were communicated by the Chief Conservator of Forest U.P. Lucknow vide his letter dated 3.3.1982, copy of the said letter was sent to the Addl. Chief Conservator of Forest and the Director Social Forestry Lucknow for further transmission to the petitioner who was working at that time as Divisional Director Social Forestry, Etawah D.F.C. Etawah.
- E
- F (ii) That the Addl. Chief Director, Social Forestry Lucknow vide his letter dated 5.3.1982 sent a copy of the letter dated 3.3.1982 of the Chief Conservator of Forests directly to the petitioner. A photocopy of the letter dated 5.3.1982 is being enclosed as Annexure CA 2 to this affidavit.
- G (iii) That the petitioner sent acknowledgment of the letter of the Chief Conservator of Forests No. E-164 TC/10-4 (Chandra Gupta) dated 3.3.1982 on 6th May, 1982 duly entered in Camp. Despatch register of the office of Divisional Director, Social Forestry/D.F.O., Etawah. It is stated that photocopy of this despatch register which is in Hindi has been placed on the record of the Tribunal. A translated copy of the despatch register is annexed hereto and marked as Annexure CA-3 to this affidavit. It is submitted that effect of this document is that the letter of Chief
- H

Conservator of Forest bearing No. E.164 TC/10-4 (Chandra Gupta) dated 3.3.1982 was duly acknowledged by the petitioner, communication adverse entry for the year 1980-81. The receipt of which was acknowledged by petitioner and entered in camp despatch register bearing letter no 206 TC dated 6.5.1982. Thus the case of the petitioner that he was not communicated of the adverse entries for the year 1980-81 was wholly false, misconceived and wholly wrong.

(iv) That the Chief Conservator of Forest again vide his letter No. 373/TC-10 4-(Chandra Gupta) dated 17/20th December, 1982, communicated the adverse entry for the year 1981-82 to the petitioner through office of Addl. Chief Conservator and Director Social Forestry, Lucknow.

(v) That the Addl. Chief Conservator of Forest and the Director Forestry Lucknow vide his letter No. 637/2-32-2 dated 7.3.1983 sent Chief Conservator of Forest's letter dated 17/20th December, 1982 to the petitioner through Conservator of Forest, Agra. The above letter was despatched under letter No. 3712/2-32 dated 17.1.1983 from the office of Conservator of Forest, Agra along with a number of other letters. A true copy of the letter dated 7.1.1983 is being filed as Annexure CA-4 to this affidavit.

(vi) That as the above entries were communicated in later point of time while the petitioner fell due for promotion to the post of Conservator of Forest and consequently he was promoted on the post of Conservator of Forest (1800-2000) vide order dated 15.1.1983 and it appears that the D.P.C. had no occasion to consider the above two adverse entries in view of the facts that their communication and the entry of period of making representation had not expired at that time.

(vii) That the petitioner sent acknowledgment letter dated 20th December, 1982, vide letter No. 82 TC dated 26.2.1983 duly *intered* in the camp dak despatch register in the office of Divisional Director Social Forestry Etawah.

Thus the case of the petitioner that he was not communicated adverse entry for the year 1981-82 is totally falsified from these documents."

A In his rejoinder the appellant would controvert that no copy of the alleged acknowledgement letter dated 6.5.82 was made available by the respondent. Under Rules 226 and 227 of the Forest Manual such a copy should exist. The theory of receipt of any such letter dated 5.3.82 is falsified. Equally, the entry of the camp despatch register has been manipulated. If really, the letter dated 5.3.82 had not been acknowledged there should have been reminders in this regard. Equally, the allegation, the adverse entry for 1981-82 was sent by the Chief Conservator of Forests under his letter dated 20th December, 1982, is also unreliable. Whatever may be the correctness of these allegations what is sought to be urged by the respondent is that it is open to the respondent to bring to the notice of the authority that expunction was made by the officer concerned and the same has been procured by fraud. We think that could validly be urged.

No doubt, a special review is provided for under clause III(vi) of the Government's orders dated 31.1.85. That reads as follow :

D "Special review may be done in cases where the adverse remarks in the officers' annual confidential reports' are expunged subsequently as a result of their representations."

E On this score, we are unable to hold that on the expunction of adverse remarks and consequential promotion the appellant would date back to the date when it was due. First of all, the method of selection is: "Selection should be made on merit with due regard to seniority in terms of Rule 3(3) of the Indian Forest Service (Pay) Rules, 1968."

That Rule reads as follows:

F "3. Time-scale of pay -

(1)

(2)

G (3) Appointment to the Selection Grade and to posts carrying pay above the time-scale of pay in the Indian Forest Service shall be made by selection on merit with due regard to seniority."

H Therefore, what is essential is merit and not mere seniority. This Court in *Sant Ram Sharma v. State of Rajasthan*, [1968] 1 SCR 111 at 118

has stated follows :

".....it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officer is judged to be equal and no other criterion is therefore available."

Again this Court in *State of Mysore v. Syed Mahmood*, [1968] 3 SCR 363 at 366 held thus :

"Where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone."

Therefore, even assuming the best in favour of the appellant as a consequence of expunction of adverse remarks, the appellant's case was liable to be reviewed by the Departmental Promotion Committee for the post of Chief Conservator of Forest as on the date when Respondent 3 to 5 were promoted it could be done, provided the appellant was found suitable for promotion on the basis of record. Our attention has not been drawn to any record from which conclusion could be arrived at that after the expunction of adverse remarks, the record of service of the appellant was more meritorious than that of Respondents 3 to 5.

The learned counsel for the appellant strongly relies on *R.K. Singh v. State of U.P.*, [1991] Supp. 2 SCC 126. This Court at pages 126-127 held thus:

"There is no dispute that during the pendency of this appeal the appellant's representation against the adverse entries has been allowed and these entries have been expunged from his service record. Since the adverse entries were expunged the State Government by its order dated January 24, 1991 granted Selection Grade to the appellant with effect from the date he takes over charge. We fail to appreciate the view taken by the State Government. Once the adverse entries awarded to the appellant were expunged the appellant is entitled to Selection Grade with effect from January 1, 1986 the date on which he was eligible for grant of

A Selection Grade. We, accordingly, allow the appeal, set aside the order of the Central Administrative Tribunal and modify the order of the State Government dated January 24, 1991 and direct that the appellant shall be treated in Selection Grade with effect from January 1, 1986 and he will be entitled to all other consequential benefits with effect from that date. As regards appellant's further promotion, he will be considered for promotion in accordance with Rules."

B

C What requires to be carefully noted is eligibility for promotion is one thing while actual promotion is a different thing. Even in this ruling promotion in accordance with the Rules alone was what was directed. Even assuming on the strength of this ruling the appellant is entitled to promotion on the date when he became eligible for promotion but for these adverse entries, a factual finding requires to be rendered on the following aspects :

D

1. Whether the adverse entries for 1980-81 and 1981-82 were actually communicated?

2. After expunction of adverse remarks whether there was a comparative estimate of the merits by the Departmental Promotion Committee?

E

These are matters pending adjudication in O.A. No.617 of 1992. Therefore, we restrain from saying anything more as to the entitlement of seniority of the appellant over Respondents 3 to 5. That will depend upon the decision in O.A. No. 617 of 1992.

F

On 16.2.90 the following order was passed :

"From

G

G. Ganesh,
Secretary,
Govt. of Uttar Pradesh.

To,

H

The Principal Chief Conservator
of Forests,

Uttar Pradesh, Lucknow.

A

Forest Deptt. - One Dated 16.2.90

Sub : Promotion of Sri Chandra Gupta, Conservator of Forests, Indian Forest Service to the post of Chief Conservator of Forests.

B

Sir,

On the subject as noted above I have been directed to say that the Hon'ble Governor has ordered for the promotion of Sri Chandra Gupta on the post of Chief Conservator of Forests in the scale of 5900-6700 from the date of his taking over the charge.

C

Hon'ble Governor also orders about the appointment/posting of Sri Chandra Gupta on the post of Chief Conservator of Forests (Seed and Research). Notification concerning the promotion of Sri Chandra Gupta will be issued after he assumes charge of the post concerned.

D

Your faithfully,

sd/-

(G. Ganesh)
Secretary"

E

The appellant was not satisfied with this. He was wanting the restoration of seniority over Respondents 3 to 5. That necessitated the Respondents 3 to 5 to challenge the orders by which the adverse remarks against the appellant had been expunged and the consequential promotion made under the above order dated 16.2.90 in O.A. No.617 of 1992. Pending that O.A. three interim orders have been passed.

F

(1) Order dated 21.11.92 directing the State Government to produce DPC record for making selection for the post of Principal Chief Conservator of Forests and records pertaining to expunction of adverse entry of the appellant.

G

(2) Order dated 27.11.92 directing that the appellant shall not be given or take charge of the office of Principal Chief Conservator of Forests to permit the State Government to give charge to any person in case it is

H

A required.

(3) Order dated 2.12.92 directing the earlier interim order to continue. That order is significant because it opens with the words "A case has been heard in part". Thus, it is beyond doubt that Tribunal is in *seisin* of the matter. No doubt, rival contentions are raised on :

B

1. *Locus standi*.

2. Constructive *res judicata*

3. Limitation under Section 21 of the Administrative Tribunal Act.

C 1985.

We do not think we should entertain the civil appeal at this stage against interlocutory orders. We make it clear that by our general observations made above we have not decided about *locus standi* of Respondents 3 to 5 in relation to the expunction of adverse remarks against the appellant.

D

In the result, all the civil appeals will stand dismissed subject to the above observations. However, there shall be no order as to costs.

U.R.

Appeals dismissed.