

HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble The Acting Chief Justice &
Hon'ble Shri Justice Prashant Kumar Mishra:

Writ Appeal No. 225 of 2013

Tarendra Kumar Jha

Vs.

The High Court of Chhattisgarh & Another

And

(Connected Writ Appeals No. 226 of 2013; 231 of 2013; 232 of 2013; 237
of 2013; 238 of 2013; 259 of 2013 and 261 of 2013)

CAV Judgment

For consideration

Acting Chief Justice
/03 /2015

Hon'ble Shri Justice Prashant Kumar Mishra

Judge
/03/2015

Post for CAV Judgment: /03/2015

Acting Chief Justice
/03/2015

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 225 of 2013**

Tarendra Kumar Jha S/o Late Shri S.D. Jha, Aged about 58 years,
District and Sessions Judge, Koriya (Baikunthpur) Chhattisgarh

Presently Posted as Chairman Permanent Lok Adalat, (PU)
Jagdalpur (Chhattisgarh)

---- Appellant**Versus**

1. The High Court of Chhattisgarh Through Registrar General,
Bilaspur
2. The State of Chhattisgarh through- Law Secretary, Naya
Mantralaya, Naya Raipur

---- Respondents**Writ Appeal No. 226 of 2013**

Tarendra Kumar Jha S/o Late Shri S.D. Jha, Aged about 58 years,
District and Sessions Judge, Koriya (Baikunthpur) Chhattisgarh

Presently Posted as Chairman Permanent Lok Adalat, (PU)
Jagdalpur (Chhattisgarh)

---- Appellant**Versus**

1. The High Court of Chhattisgarh Through Registrar General,
Bilaspur
2. The State of Chhattisgarh through- Law Secretary, Naya
Mantralaya, Naya Raipur
3. Shri Dilip Kumar Bhatt Joint Secretary, State Human Rights
Commission, Raipur
4. Pradeep Kumar Shrivastava Ex. District Judge, 14, SBI, Colony,
Rajnandgaon
5. Shri Inder Singh Uboweja, District Judge, Dhamtari
6. Shri Sandeep Buxy, District Judge, Janjgir-Champa

7. Smt. Maitri Mathur Judge, Family Court, Rajnandgaon
8. Shri Chandra Bhusan Bajpai, District & Sessions Judge, Durg
9. Shri Tapan Kumar Chakravarti, President, Industrial Court, Raipur
10. Shri Surendra Tiwari, Retired District & Sessions Judge, Surguja, Presently Registrar H.N.L. University, Raipur
11. Smt. Anita Jha, District Judge, Ambikapur
12. Shri Chhabilal Patel, District & Sessions Judge, Bilaspur
13. Shri Arvind Kumar Shrivastava, District Judge, Raipur
14. Smt. Madhuri Katulkar, Judge, Ex. Judge, Family Court Bilaspur
15. Smt. Anuradha Khare, District Judge, Mahasamund
16. Shri Prabhat Kumar Shashtri, Legal Advisor, Raj Bhavan, Raipur
17. Shri Rajendra Chandra Singh Samant, Director (JOTI), Old High Court Building, Bilaspur
18. Shri Anil Kumar Shukla, District & Sessions Judge, Raigarh
19. Shri Dinesh Kumar Tiwari, Principal Judge, Family Court, Durg
20. Shri Ashok Kumar Panda, Registrar General, High Court Bilaspur
21. Shri Mahendrapal Singhal, District & Sessions Judge, Rajnandgaon
22. Shri Sharad Kumar Gupta, Judge, Family Court Raigarh
23. Smt. Nirmala Singh W/o Shri L.J. Singh, aged about 63 years, retired Judge, Family Court, Raipur, R/o Devendra Nagar, Raipur
24. Shri M.K. Tiwari aged about 63 years, Ex. President, District Consumer Forum, Bilaspur

---- Respondents

Writ Appeal No. 231 of 2013

Tarendra Kumar Jha S/o Late Shri S.D. Jha, Aged about 58 years, Presently Posted as : Chairman Permanent Lok Adalat, (PU) Jagdalpur (Chhattisgarh)

Old as mentioned in the Order:
District & Sessions Judge, Koriya (Baikunthpur) Chhattisgarh

---- Appellant

Versus

1. The High Court of Chhattisgarh Through Registrar General, Bilaspur
2. Shri C.B.S. Patel, The then District Judge, Dantewada, presently-member Arbitration Tribunal, Ghadi Chowk, Raipur
3. State of Chhattisgarh through Secretary (Law), Mantralaya, Naya Raipur

---- Respondents**Writ Appeal No. 232 of 2013**

Tarendra Kumar Jha S/o Late Shri S.D. Jha, Aged about 58 years,
 posted as : Chairman Permanent Lok Adalat, (PU)
 Jagdalpur, Chhattisgarh

---- Appellant**Versus**

1. The High Court of Chhattisgarh Through Registrar General, Bilaspur
2. The State of Chhattisgarh through- Law Secretary, Naya Mantralaya, Naya Raipur

---- Respondents**Writ Appeal No. 237 of 2013**

The High Court of Chhattisgarh Through Registrar General, High Court of Chhattisgarh, Bilaspur (Chhattisgarh)

---- Appellant**Versus**

1. Tarendra Kumar Jha, S/o Late Shri S.D. Jha, Aged About 54 years, District & Sessions Judge, Korea (Baikunthpur), presently posted as Chairman, Permanent Lok Adalat Jagdalpur (Chhattisgarh)
2. Shri Dilip Kumar Bhatt, Joint Secretary, State Human Right Commission, Raipur (Chhattisgarh), presently retired from service, R/o Dhebarpink City, Khamhardih, Qtr. No. B-2, Raipur (Chhattisgarh)

3. Pradeep Kumar Shrivastava, District & Sessions Judge, Dantewada (Chhattisgarh), presently retired from service, R/o 14, SBI Colony, Rajnandgaon (Chhattisgarh)
4. Shri Inder Singh Uboweja, District & Sessions Judge, Janjgir-Champa (Chhattisgarh), presently posted as District and Sessions Judge, Dhamtari (Chhattisgarh)
5. Shri Sandeep Buxy, Registrar (Vigilance), High Court of Chhattisgarh, Bilaspur (Chhattisgarh), presently posted as District and Sessions Judge, Janjgir-Champa (Chhattisgarh)
6. Smt. Maitri Mathur, Principal Judge, Family Court, Raipur (Chhattisgarh), presently posted as Judge, Family Court, Rajnandgaon (Chhattisgarh)
7. Shri Chandra Bhusan Bajpai, District & Sessions Judge, Dhamtari (Chhattisgarh), presently posted as District and Sessions Judge, Durg (Chhattisgarh)
8. Shri Tapan Kumar Chakravarti, Legal Advisor to Governor, Governor's Secretariat, Raipur (Chhattisgarh), presently retired from service, R/o T-8, Jeevan Vihar Colony, Telibandha, Raipur (Chhattisgarh)
9. Shri Surendra Tiwari, Retired District & Sessions Judge, Surguja, Presently Registrar, H.N.L. University, Raipur (Chhattisgarh), R/o House No. A-124, Agyeya Nagar, Bilaspur (Chhattisgarh)
10. Smt. Anita Jha, Judge, Family Court, Rajnandgaon (Chhattisgarh), presently posted as District and Sessions Judge, Ambikapur (Chhattisgarh)
11. Shri Chhabilal Patel, District & Sessions Judge, Ambikapur (Chhattisgarh), presently posted as District and Sessions Judge, Bilaspur (Chhattisgarh)
12. Shri Arvind Kumar Shrivastava, Registrar General, Chhattisgarh High Court, Bilaspur, (Chhattisgarh), presently posted as District and Sessions Judge, Raipur
13. Smt. Madhuri Katulkar, Judge, Family Court, Bilaspur (Chhattisgarh), presently retired from Service, R/o 452, HIG-1, Sector-1, P.O.- RSU Pandit Deendayal Upadhyay Nagar, Daganiya Raipur (Chhattisgarh)
14. Smt. Anuradha Khare, Judge, Family Court, Bilaspur (Chhattisgarh) presently posted as District and Sessions Judge, Mahasamund (Chhattisgarh)

15. Shri Prabhat Kumar Shastri, Legal Advisor, Lok Ayukt, Raipur (Chhattisgarh) presently posted as District and Sessions Judge, Jashpur (Chhattisgarh)
16. Shri Rajendra Chandra Singh Samant, District & Sessions Judge, Raigarh (Chhattisgarh), presently posted as Director CSJA & I/c S & A Cell, High Court of Chhattisgarh, Bilaspur (Chhattisgarh)
17. Shri Anil Kumar Shukla, District & Sessions Judge, Mahasamund (Chhattisgarh), presently posted as District and Sessions Judge, Raigarh (Chhattisgarh)
18. Shri Dinesh Kumar Tiwari, District & Sessions Judge, Kanker (Chhattisgarh), presently posted as Principal Judge, Family Court, Durg (Chhattisgarh)
19. Shri Ashok Kumar Panda, District & Sessions Judge, Durg (Chhattisgarh), presently posted as Registrar General, High Court of Chhattisgarh, Bilaspur (Chhattisgarh)
20. Shri Mahendrapal Singhal, District & Sessions Judge, Kabirdham, Kawardha , (Chhattisgarh), presently posted as District & Sessions Judge, Rajnandgaon (Chhattisgarh)
21. Shri Sharad Kumar Gupta, District & Sessions Judge, Jashpur (Chhattisgarh), presently posted as Judge, Family Court Raigarh
22. Smt. Nirmala Singh W/o Shri L.J. Singh, aged about 63 years, retired Judge, Family Court, Raipur R/o H. No. D-2/39, Officer's Colony, Devendra Nagar, Raipur (Chhattisgarh)
23. Shri M.K. Tiwari, aged about 63 years, President, District Consumer Forum, Bilaspur (Chhattisgarh), presently retired from service, R/o Plot No. 252, Second Phase Kalturi Aawas, Rajkishore Nagar, Bilaspur (Chhattisgarh)
24. The State of Chhattisgarh through the Secretary, Law & Legislative Affairs Department, Mahanadi, Capital Complex, Naya Raipur (Chhattisgarh)

---- Respondents

Writ Appeal No. 238 of 2013

The High Court of Chhattisgarh Through Registrar General, High Court of Chhattisgarh, Bilaspur (Chhattisgarh)

---- Appellant

Versus

1. Tarendra Kumar Jha, S/o Late Shri S.D. Jha, Aged about 54 years, District & Sessions Judge, Korea (Baikunthpur), presently posted as Chairman, Permanent Lok Adalat Jagdalpur (Chhattisgarh)
2. The State of Chhattisgarh through the Secretary, Law & Legislative Affairs Department, Mahanadi, Capital Complex, Naya Raipur (Chhattisgarh)

---- Respondents

Writ Appeal No. 259 of 2013

The State of Chhattisgarh through the Secretary, Law & Legislative Affairs Department, Mahanadi, Capital Complex, Naya Raipur (Chhattisgarh)

---- Appellant

Versus

1. Tarendra Kumar Jha S/o Late Shri S.D. Jha. Aged about 54 years, District & Sessions Judge, Korea (Baikunthpur), presently at Jagdalpur (Chhattisgarh)
2. Shri Dilip Kumar Batt, Joint Secretary, State Human Right Commission, Raipur (Chhattisgarh)
3. Pradeep Kumar Shrivastava, District & Sessions Judge, Dantewada (Chhattisgarh)
4. Shri Inder Singh Uboweja, District & Sessions Judge, Janjgir-Champa (Chhattisgarh)
5. Shri Sandeep Buxy, Registrar (Vigilance) High Court of Chhattisgarh, Bilaspur (Chhattisgarh)
6. Smt. Maitri Mathur, Principal Judge, Family Court, Raipur (Chhattisgarh)
7. Shri Chandra Bhusan Bajpai, District & Sessions Judge Dhamtari (Chhattisgarh)
8. Shri Tapan Kumar Chakravarti, Legal Advisor to Governor, Governor's Secretariat, Raipur (Chhattisgarh)
9. Shri Surendra Tiwari, Retired District & Sessions Judge, Surguja, Presently Registrar, H.N.L. University, Raipur (Chhattisgarh)
10. Smt. Anita Jha, Judge, Family Court, Rajnandgaon (Chhattisgarh)
11. Shri Chhabilal Patel, District & Sessions Judge, Ambikapur, (Chhattisgarh)

12. Shri Arvind Kumar Shrivastava, Registrar General, Chhattisgarh High Court, Bilaspur (Chhattisgarh)
13. Smt. Madhuri Katulkar Judge, Family Court, Bilaspur (Chhattisgarh)
14. Smt. Anuradha Khare, Judge, Family Court, Bilaspur (Chhattisgarh)
15. Shri Prabhat Kumar Shastri, Legal Advisor, Lok Ayukt, Raipur (Chhattisgarh)
16. Shri Rajendra Chandra Singh Samant, District & Sessions Judge, Raigarh (Chhattisgarh)
17. Shri Anil Kumar Shukla, District & Sessions Judge, Mahasamund (Chhattisgarh)
18. Shri Dinesh Kumar Tiwari, District & Sessions Judge, Kanker (Chhattisgarh)
19. Shri Ashok Kumar Panda, District & Sessions Judge, Durg (Chhattisgarh)
20. Shri Mahendrapal Singhal, District & Sessions Judge, Kabirdham, Kawardha (Chhattisgarh)
21. Shri Sharad Kumar Gupta District & Sessions Judge, Jashpur (Chhattisgarh)
22. Smt. Nirmala Singh W/o Shri L.J. Singh, aged about 63 years, retired Judge, Family Court, Raipur, R/o Devendra Nagar, Raipur (Chhattisgarh)
23. Shri M.K. Tiwari, aged about 63 years, President, District Consumer Forum, Bilaspur (Chhattisgarh)
24. The High Court of Chhattisgarh Through Registrar General, High Court of Chhattisgarh, Bilaspur (Chhattisgarh)

---- Respondents

Writ Appeal No. 261 of 2013

The State of Chhattisgarh through the Secretary, Law & Legislative Affairs Department, Mahanadi, Capital Complex, Naya Raipur (Chhattisgarh)

---- Appellant

Versus

1. Tarendra Kumar Jha, S/o Late Shri S.D. Jha, Aged about 55 years, District & Sessions Judge, Korea (Baikunthpur), presently at Jagdalpur (Chhattisgarh)
2. The High Court of Chhattisgarh Through Registrar General, High Court of Chhattisgarh, Bilaspur (Chhattisgarh)

---- Respondents

For Appellant(s) : Shri Satish Chandra Verma and
Shri Anurag Jha, Advocates.

For State : Shri Jugal Kishore Gilda, Advocate General.

For Other Respondents : Shri Abhishek Sinha and Shri Ghanshyam
Patel, Advocates.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Prashant Kumar Mishra

C A V Judgment

Per Navin Sinha, Acting Chief Justice:

24/03/2015

1. The present batch of Appeals preferred by the original writ Petitioner, High Court and the State of Chhattisgarh arise from a common order dated 25.2.2013 in W.P.(S) No. 1989 of 2009, W.P.(S) No. 2025 of 2009, W.P.(S) No. 2028 of 2009 and W.P.(S) No. 3948 of 2010.
2. Since the primal facts and questions of law involved are common, the Appeals have been heard together and are being disposed by a common order.
3. W.P.(S) No. 2025 of 2009 and W.P.(S) No. 2028 of 2009 have been dismissed as devoid of merits giving rise to W.A. No. 225 of 2013

and W.A. No. 231 of 2013 respectively. W.P.(S) No. 1989 of 2009 and W.P.(S) No. 3948 of 2010 which are inter connected have been allowed in part with directions to reconsider the case of the Petitioner for grant of super time selection grade. This has given rise to W.A. No. 226 of 2013 and W.A. No. 232 of 2013 by the original writ Petitioner, W.A. No. 237 of 2013 and W.A. No. 238 of 2013 respectively by the High Court and W.A. No. 259 of 2013 and W.A. No. 261 of 2013 respectively by the State of Chhattisgarh. The writ Petitioner shall be referred to as the “Appellant” and the “High Court” and “State” accordingly.

4. The Learned Single Judge has set out the facts with utmost clarity. But we deem it appropriate to reiterate the same to the extent necessary for better consideration of the understanding by us of facts and issues for our conclusions. The Appellant is a member of the Higher Judicial Service. He was granted selection grade scale with effect from 7.6.1999 and is aggrieved by the denial of super time selection grade including grant of the same to persons whom he perceives as his junior. In W.P.(S) No. 1989 of 2009 he had originally claimed grant of super time selection grade from June, 2002 but subsequently amended his claim for grant from 30.3.2005.

5. Learned Counsel for the Appellant submitted that the Learned Single Judge arrived at the conclusion that the Annual Confidential Remarks (hereinafter referred to as ACR) for the period 2007-2008 were written by the erstwhile Portfolio Judge after one month from the date of demitting office due to superannuation and that it was in violation of Rule 5 (5) of The All India Services (Confidential Rolls) Rules, 1970 (hereinafter referred to as ‘the All India Rules’). Consequentially the Learned Single

Judge ought to have granted the relief for super time selection grade from March 2005 placing the Appellant above his juniors rather than to have remanded the matter for reconsideration. This submission is reinforced by quashing of Memo dated 9.7.2010 also by which rejection of the representation with regard to the same had been communicated. It was further submitted that the Learned Single Judge should not have directed reconsideration for grant of super time selection grade as on 25.3.2009 but from the date that it may have been granted to his juniors in March, 2005. The adverse remarks had been considered by the Full Court without it being communicated to the Appellant with the opportunity to represent.

6. The relief for quashing Grade-D in the ACR for the period ending 31.3.2007 and the consequent prayer for upgradation have not been considered. The Appellant cannot be prevented or debarred from filing fresh representations on the same issue in the hope to persuade the authorities to ultimately consider his grievances. The authorities cannot deny consideration of fresh representations. No other arguments were made before us in the Appeals filed on behalf of the Appellant.

7. Learned Advocate General appearing for the High Court and the State of Chhattisgarh submitted that Rule 5 (5) of the All India Rules which were adopted for writing of Annual Confidential Reports did not prohibit the Portfolio Judge from writing the ACR after one month from the date of demitting office due to superannuation. It was only desirable that it should be written not later than one month of demitting office. The provision was directory and not mandatory. The Portfolio Judge retired on 24.7.2008 and remarks written on 3.9.2008. There has been substantial

compliance. The delay of approximately nine days only is insignificant. The delay is minimal. The ACR is a matter of subjective assessment by the employer. The Learned Single Judge should not have quashed the report and remanded the matter for reconsideration. Reliance was placed on (1996) 5 SCC 111 (U.P. State Mineral Development Corpn. v. K.C.P. Sinha) to submit that a delay of two years in submission of the service records to assess compulsory retirement was not inferred with. Reliance was further placed on (1987) 2 SCC 602 (State of Haryana v. PC Wadhwa, IPS, Inspector General of Police) to submit that Rule 5 of the All India Rules was directory in nature and not mandatory. There are no allegations of any malafide. Any omission to communicate the remarks was stated to be only fortuitous relying on (1970) SLR 116(SC) (Prakash Chand Sharma v. Oil and Natural Gas Commission).

8. We have considered the submissions on behalf of the parties.

9. At the relevant point of time there was no provision in the Higher Judicial Service Rules for writing of ACR. The Learned Single Judge therefore drew inference from the All India Rules referring to Rule 12 (4) of the Higher Judicial Service Rules that other Rules relating to conditions of service of a government servant of the corresponding grade in general not inconsistent with these Rules shall be applicable to members of the Higher Judicial Service.

10. In W.P. (S) No. 1989 of 2009 the Appellant had originally claimed grant of super time selection grade from June, 2002 but subsequently amended his claim as from 30.3.2005. His case was considered by the Full Court on 25.3.2009, but was rejected because of the adverse ACR

written by the Portfolio Judge for the period 2007-2008. The Portfolio Judge demitted office on 24.7. 2008. Rule 5 (5) of the All India Rules required the confidential report to be written not later than one month from the date of retirement. The ACR of the Appellant was written by him on 3.9.2008 which was nine days after one month of demitting office pursuant to superannuation. The Learned Single Judge therefore held that the period of one month having expired after demitting office consequent to superannuation, the Portfolio Judge was not competent to write the ACR of the Appellant for 2007-2008. The Full Court therefore erred in considering the ACR. The representation against the same had also been wrongly rejected. Consequentially the Learned Single Judge quashed the Full Court Resolution dated 25.3.2009 holding the Appellant unfit for grant of super time selection grade as also the order dated 9.7.2010 rejecting his representation against the same. Directions were then given to reconsider his case for grant of super time selection grade as on 25.3.2009.

11. It shall be appropriate to set out Rule 5 of the All India Rules :-

“5. Confidential reports—(1) A confidential report assessing the performances, character, conduct and qualities of every member of the Service shall be written for each financial year, or calendar year, as may be specified by the Government ordinarily within two months of the close of the said year.

Provided that where a member of the Service is on deputation to an international organisation, confidential reports in respect of such member may be written-

- (i) for the entire period of his tenure with the said organisation even in a case where the period of such tenure exceeds one year; or
- (ii) for such shorter period as may be considered convenient or necessary by the reporting authority having regard to the circumstances of each case,

ordinarily within three months of the close of the said period.

Provided further that a confidential report may not be written in such cases as may be specified by the Central Government, by general or special order.

5(2) A confidential report shall also be written when either the reporting authority or the member of the Service reported upon relinquishes charge of the post, and, in such a case, it shall be written at the time of the relinquishment of his charge of the post or ordinarily within one month thereafter:

[Provided that a confidential report may not be written in such cases as may be specified by the Central Government, by general or special order.]

5(3) Where more than one confidential reports are written on a member of the Service during the course of a financial year or a calendar year, as the case may be, each such report shall indicate the period to which it pertains.

5(4) Where the reporting authority has not seen, and the reviewing authority has seen, the performance of a member of the Service for at least three months during the period for which the confidential report is to be written, the Confidential report of any such member for any such period shall be written by the reviewing authority, and where, both the reporting authority and the reviewing authority have not seen and the accepting authority has seen, the performance as aforesaid of any such member during any such period, the confidential report shall be written by the accepting authority.

5 (5) Where the authority writing the confidential report under sub-rule (2) or subrule (4) of this rule retires from service, the confidential report shall be written not later than one month of the date of such retirement.”

5(6) Where the reporting authority, the reviewing authority and the accepting authority have not seen the performance of a member of the Service for at least three months during the period for which the report is to be written, an entry to that effect shall be made in the confidential report for any such period by the Government.

5(7) Notwithstanding anything contained in sub-rules (1), (2) and (4), it shall not be competent for the reporting authority, the reviewing authority or the accepting authority, as the case may be, where the authority writing the confidential report is not a government servant, to write a confidential report after he demits office.

*Explanation:—*For the purpose of this rule, Minister shall not be treated as having demitted office if he continues to be a Minister in the Council of Ministers with a different portfolio or in the Council of Ministers immediately reconstituted after the previous Council of Ministers of which he was a Minister with the same or different portfolio.”

12. A perusal of the Rule 5 reveals that the words used are “ordinarily” in Rule 5(1) and also in the Proviso. Rule 5 (2) provides that if the ACR is to be written by an officer relinquishing charge it shall be written “ordinarily” within one month of relinquishing charge. Rule 5 (5) provides that if the ACR is to be written under sub-rule (2) by an officer who is to superannuate, as distinct from relinquishing charge it shall be written not later than one month from the date of retirement. An officer superannuating in a sense also relinquishes charge. Rule 5 (7) has no application as the Portfolio Judge did not fall under the disqualification. The question for consideration is whether Rule 5(5) is directory or mandatory. Rule 5 (5) is an extension of specified circumstances of Rule 5 (2). The latter uses the words “ordinarily”. If the Rule maker intended otherwise to make Rule 5 (5) mandatory, nothing prevented it from expressly prohibiting the writing of an ACR one month after demitting office pursuant to superannuation and couching the language in positive and not negative form. The words “ordinarily” shall therefore have to be read into Rule 5 (5) also to give it a harmonious construction. The

meaning of the word “ordinarily” in the Shorter Oxford English Dictionary is :

“In the ordinary course of events; in most cases; usually; commonly.

“To an ordinary degree; to the usual extent.”

It is therefore apparent that the Rule excludes any mandatory interpretation of time. In other words it should normally be done within the time indicated or within reasonable time thereafter. There is no express prohibition with the consequences indicated in the event of failure to write the ACR within time prescribed excluding it from consideration thereafter. The non-obstante clause containing a prohibition notwithstanding the above is in Rule 5 (7) only which has no application presently as held by us herein above.

13. The use of the words “shall ” in the All India Rules is followed by the words “ordinarily”. The latter is not in accord with the mandatory prescription of the former. Evidently the Rule making authority never intended to give the former a mandatory character in the Rules. In (1967) 1 SCR 120 (Khub Chand v. State of Rajasthan), the issue when “shall” may be read as “may” was considered as follows :-

“7....Doubtless, under certain circumstances, the expression “shall” is construed as “may”. The term “shall” in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations....”

A construction to the Rules which will reduce it to a futility must be avoided. The Rule must be construed to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat*, a liberal interpretation which carries forward the effect and intention so as to uphold the Rules ought to be followed.

14. In *P. C. Wadhwa* (supra) relied upon by the Advocate General, holding that the All India Rules were directory and not mandatory it was observed that substantial compliance would suffice but an unreasonable delay of twenty seven months was not approved as being inordinate :

“14.....It is true that the provisions of Rules 5, 6, 6-A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. Such provisions may not be complied with strictly, and substantial compliance will be sufficient.....”

15. In (2014) 13 SCC 172 (*G. Mohansunderam v. R.Nanthagopal*) the ACR of the Respondent for the years 2003-2009 were not forwarded to the UPSC for promotion to the IAS opining that they were written beyond the nine months time prescribed for the same. Rejecting the same it was held as follows :-

“24.....Withholding of ACRs of the year 2003-2009 of the first respondent on a wrong presumption that they were invalid, is illegal and fatal in the case of the first respondent towards his appointment to the post of Indian Administrative Service.....”

16. The purpose of indicating a time limit under the All India Rules was salutary only to avoid unreasonable delay so as not to hinder timely consideration of the employee for further advancement. It ought to be done within reasonable time and must not be delayed unduly. Substantial

compliance will suffice. We are of the opinion that a delay of nine days cannot be said to be gross and did not hinder the candidature of the case of the Appellant by preventing it from being taken up for consideration altogether. The Appellant has not made any allegations of malafide and no prejudice has been demonstrated by delay of nine days.

17. Factually, the contention of the Appellant that his juniors Smt. Nirmala Singh and Shri Mahendra Kumar have been granted super time selection grade and he is entitled to the same from that date also is not tenable. The Respondents in their counter affidavit have explained that both the officers were in fact senior to the Appellant after their original seniority was restored on 29.6.2006. Except for these two officers mentioned in the rejoinder to the counter affidavit, the Appellant has not mentioned the name of any other though in the Full Court Meeting of 25.3.2009, seven Judicial Officers including the Appellant were considered for grant of super time selection grade.

18. The non-communication of the adverse report was only fortuitous. In Prakash Chand Sharma (supra) relied upon by the Respondents the Supreme Court held as follows :-

“9.....It appears to us that in this case there was no discrimination, purposeful or otherwise, and at best, the Committee's taking into consideration confidential reports with respect to which the petitioner had been given no chance to make a representation was merely fortuitous....”

19. The grievance that Grade-D given in the Annual Confidential Reports for the period ending 31.3.2007 should have been quashed and upgraded, merits no consideration. No such prayer has been made and

the only grievance is with regard to Annual Confidential Reports written by the Portfolio Judge for the period 1.4.2007 to 31.1. 2008.

20. Since no arguments have been addressed in W.A. No. 225 of 2013 and W.P. No. 231 of 2013 dismissing W.P.(S) No. 2025 of 2009 and W.P. (S) No. 2028 of 2009 there is no occasion for us to consider those Appeals.

21. The Full Court which considered the case of the Appellant on 25.3.2009 apparently will be presumed to be aware of the legal implications of the ACR of the Appellant written by the Portfolio Judge delayed by nine days only. In our opinion, the Learned Single Judge ought not to have doubted the wisdom of the Full Court. Though the Learned Single Judge noticed (2012) 6 SCC 357 (Registrar General High Court of Patna v. Pandey Gajendra Prasad) in context of the importance of writing ACR's, the Supreme Court in the same has observed of the precedence to the wisdom of the Full Court as follows :

“23.....In the very nature of such things, it would be difficult, rather almost impossible to subject such an exercise undertaken by the Full Court, to judicial review, save and except in an extraordinary case when the Court is convinced that some exceptional thing which ought not to have taken place has really happened and not merely because there could be another possible view or there is some grievance with the exercise undertaken by the Committee/Full Court.

24. Having regard to the material on record, it cannot be said that the evaluation of the conduct of the first respondent by the Standing Committee and the Full Court was so arbitrary, capricious or irrational that it warranted interference by the Division Bench. Thus, the inevitable conclusion is that the .Division Bench clearly exceeded its jurisdiction by interfering with the decision of the Full Court.”

22. Consequentially we are unable to uphold the order under appeal setting aside the Full Court resolution dated 25.3.2009 and directing reconsideration of the case of the Appellant. As a corollary the quashing of the order dated 9.7.2010 rejecting the representation against the same is also unsustainable. The orders under appeal are set aside to that extent.

23. The aforesaid discussion therefore leads to the dismissal of W.A. No. 225 of 2013, W.A. No. 226 of 2013, W.A. No. 231 of 2013 and W.A. No. 232 of 2013. The Writ Appeals, W.A. No. 259 of 2013, W.A. No. 261 of 2013, W.A. No. 237 of 2013 and W.A. No. 238 of 2013 are allowed.

24. No order as to costs.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE