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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment Reserved on: 12.04.2018*

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*Judgment Pronounced on: 30.08.2018*

+ **W.P.(C) 2759/2000 AND CM APPL. 19808/2017**

AJAIB SINGH DATEER ..... Petitioner  
Through Dr. M.P. Raju with Ms. C. Kanta Dateer  
and Mr. Gurpreet Singh, Advs.

versus

LT. GOVERNOR & ORS ..... Respondents  
Through Mr. Viraj R. Datar, Adv. for DHC.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE A.K.CHAWLA**

**S.RAVINDRA BHAT, J.**

1. The petitioner in these proceedings is now a retired judicial officer of the Delhi Judicial Service (hereafter "DJS"); he is aggrieved by the annual confidential report (ACR) gradings recorded by the Full Court of the Delhi High Court for three years and the consequent denial of selection grade to him. He accordingly seeks appropriate directions for the quashing of such ACR gradings and consequential directions to grant him promotion to the higher judicial service with effect from the date his juniors in DJS were granted such benefits. During the pendency of the writ petition, those juniors to him were promoted to the Delhi Higher Judicial Service (DHJS); he

therefore wished that he too should be given the same benefit from the date or dates such juniors were promoted.

2. The facts of the case are that the petitioner, a postgraduate who also completed his law degree in 1973, had competed in the exam held for filling vacancies in DJS, but was not appointed in that year. He eventually secured appointment after his selection in 1979. He complains that when his turn for award of senior scale was due, it was denied, in 1984, but was eventually granted that with effect from 06.12.1984, by an order issued on 18.01.1996. In the meanwhile, he was on deputation as Presiding officer, Labour Court for the period 21.01.1993 to 18.05.1996. The petitioner states that his case for grant of selection grade should have been taken up in 1994, but was not so, and that those junior to him were granted selection grade. The petitioner submits that he was diligent in the discharge of his responsibilities during his career and that the overlooking of his claim for selection grade was without any rhyme or reason. In 1992, the petitioner's ACR for 1989 was recorded as B+; on 07.04.1994, by letter, he was informed that the ACRs for the period 1990 to 1992 were recorded by the Full Court again as B+. On 29.09.1995, the petitioners' ACRs for the years 1993 and 1994 were recorded; he was awarded B+ (Good) for these years. It is stated that in these circumstances, the tenure or period of his deputation ended on 18.05.1996. Soon thereafter, on 22.05.1996, as per the departmental promotion committee (DPC), 12 vacancies in the cadre of Delhi Higher Judicial Service (DHJS) arose; six persons were selected; they were just above the petitioner in seniority. It is stated that when the issue of consideration of his name for promotion arose, the concerned authorities felt

that his ACRs were incomplete and there were some other reservations. In these circumstances, consideration of names for filling the other vacancies was deferred.

3. The petitioner states that he was asked by the fourth respondent, a then sitting judge of the High Court, to send copies of the award and other related work done by him, on 12.07.1996, which he complied with; this was for the year 1995. He was posted as Senior Civil Judge, on 24.07.1994; shortly thereafter, he was posted (on 29.08.1996) as Judge- Small Causes court. Stating this as unfortunate, the petitioner protested this, as well as the promotion of five of his juniors to the cadre of DHJS (through order dated 01.10.1996), by representation dated 03.10.1996. Later, on 30.10.1996, the High court communicated his ACR grading as 'C' for the year 1995. The petitioner also represented against this grading, which was adverse to him and impeded his career growth, by citing certain Central Government circulars and instructions dated 31.10.1961 and 18.08.1967 to say that the parent department of a deputationist officer is obliged to maintain his annual confidential reports and that only a superior officer who had at least 3 months supervision time of any particular official can record the latter's ACRs. The petitioner complained that no High Court judge had visited his court or had occasion to supervise his conduct and that consequently the 'C' grading (for 1995) was unfair and improperly awarded to him. He sought its expunction and the upgrading of his grading; further, he sought for his promotion to the DHJS cadre from the date his junior was promoted to it. These representations were rejected after the Full Court (of the High Court)

deliberated on them; the petitioner was communicated this rejection on 23.09.1997, by a letter.

4. On 27.03.1998, the petitioner addressed a memorial seeking review of the Full Court's decision and drawing its attention to certain Central Government departmental circulars, and stating that his work during the period he was on deputation to the Labour department of the government could not be reviewed by any judge of the High Court, but rather by the Labour Commissioner. He also alleged discrimination against him, pointing out the case of another officer whose recorded ACR too was mediocre ('C') but was promoted to the DHJS. This memorial too was rejected after the Full Court's decision in this regard, through a letter dated 4 September, 1998.

5. During the pendency of these writ proceedings, the petitioner apparently approached the Supreme Court by filing a writ petition under Article 32 of the Constitution but it was not entertained, rather, the Supreme Court permitted it to be withdrawn and granted liberty to approach this court. In the light of this, and having regard to the fact that several of the petitioner's juniors in DJS were promoted to DHJS cadre, he sought amendment of the pleadings, in the light of averments made by the High Court establishment in its counter affidavit. The High Court had, in its affidavit, explained that the task of recording ACRs of officers who were deputed, was with the Full Court, by virtue of two resolutions. The first was a Full Court resolution dated 26.10.1991, which provided that the Full Court would finalize the ACR gradings of the deputationists, after considering the report of the inspecting judge and the report of the department with which

the officer had worked during the period. The second resolution is of 23.3.1996; it states that *“the Annual Confidential Remarks in respect of the officers of Delhi Higher Judicial Service and Delhi Judicial Service, who are on deputation, will be recorded by the High Court taking into consideration the assessment made by the borrowing department”*.

6. Dr. D.B. Raju, learned counsel for the petitioner, argued that the decisions of the High Court, in granting adverse ACR grading him ‘C’ for the relevant year *after* deciding to supersede him (and promote juniors to him to the DHJS) cadre is arbitrary. It was submitted that the C grading was without any discernable basis or objective material. In this context, it was urged that the petitioner’s work was not inspected in the true sense of the term, because the fourth respondent never visited his court, but merely called for some awards. That formed the basis of assessment which led to the Full Court awarding the C grading to him. Counsel submitted that since the so-called inspection was of the work done and conducted for a limited period, after the relevant year, i.e. in 1996, the grading – which apparently did not even take into consideration the appraisal of the borrowing department (i.e the government of NCT of Delhi, where he worked as Presiding officer of the Labour Court) despite DOPT circulars to that effect.

7. It was submitted that the two Full Court decisions impugned in the writ petition (dated 28.09.1991 and 23.03.1996) were arbitrary, because they clothed the Full court to discard relevant and material particulars, such as the grading of the borrowing department and merely left it to “consider” it, without being bound by them. Counsel submitted that the borrowing department, where a deputationist’s work is appraised by his superior officer

is the most material and should carry the maximum weightage. In giving this a go bye, and imposing a more directory or recommendatory standard, the Full court decisions authorized exercise of unguided discretion in a wholly subjective manner, for awarding ACR gradings. In this case, those Full Court resolutions could not have been used, further for the reason that they were made in 1996 and were given effect – at least in the petitioner’s case - for a previous year (1995). Therefore, giving retrospectivity to an administrative or executive norm was impermissible and illegal. Counsel relied on Rule 33 of the Delhi Judicial Service Rules, 1970 and argued that as it incorporated all instructions of the Central Government in relation to matters that the said rules had no express provision, the circulars relied on by the petitioners were applicable; the High Court establishment was therefore obliged to give effect to the reports of inspecting officers in the borrowing department (i.e. of the Labour Commissioner of the Govt. of NCT) while awarding ACR for the relevant years that the petitioner was on deputation with that department.

8. It was submitted that the petitioner was never given an explanation for why his ACR grading was downgraded to ‘C’ for 1995, even though for the previous years he was perceived to have functioned quite well, with B+ gradings continuously for the period 1989 to 1994. It was submitted that it was improbable that overnight the service of an officer who had an overall steady record would deteriorate to such an extent that it would be graded as ‘C’. It was emphasized that the ACR given by the borrowing department was (contrary to the Full court’s decision) “Excellent” for three previous years. Counsel relied on *U.P. Jal Nigam v Parshant Chander Jain* 1996 (2)

SCC 363 to say that any material that the High Court establishment had at the relevant time, which could have suggested that his work would be graded adverse, should have been provided to him and that in any case the omission to make known his shortcomings and the adverse remark given in these circumstances was unjustified. Learned counsel relied on *Barkha Gupta v High Court of Delhi* 136 (2007) DLT 119 (DB) which emphasized that there ought to be good and valid reasons for downgrading the performance of a judicial officer, especially when she had received good or excellent grading in the three immediately preceding years. Further, the same judgment had ruled that adverse remarks should not be delayed indefinitely and ought to be communicated early. Counsel also pointed out that the conduct of an officer, based on discreet inquiries should not be in respect of, or for an indefinite period. It was submitted that unless such “inquiries” result in maintenance of an objective record, disclosing why and to what extent an officer’s functioning has deteriorated, the danger of her becoming a victim of whims or biases of the concerned authority cannot be ruled out. Counsel pointed out that in *Barkha Gupta*, the Division Bench had not accepted the *post facto* inquiries made of a judicial officer, for a period of less than 90 days; he stressed that in the present case too, the inquiries, if at all, by the fourth respondent, which resulted in the impugned adverse report, were made for less than 90 days. Similarly, reliance was placed on the judgments reported as *M.S. Bindra v Union of India* 1998 (7) SCC 310, *Madan Mohan Chaudhary Vs. State of Bihar* 1999 (3) SCC 396 and *Padam Singh v Union of India* 2000 III AD Del 430 to say that any ACR should be based on objective materials, and that collective recording or delayed

recording of adverse ACRs can lead to serious consequences and should therefore be avoided.

9. Mr. Viraj Datar, counsel for the High Court submitted that the grounds of challenge to the recording of the Petitioner's 'C' grading for 1995 was not established. It was emphasized that there was complete lack of any, much less specific, averment why any individual or authority did not act objectively in assessing the work and performance of the petitioner as found, and recorded, during the period. Counsel underlined that in such matters judicial review is confined to the process of decision-making rather than examining the correctness or otherwise of the merits of the decision. Cautioning that this court should not delve into the merits of the grading for 1995, counsel stated that the procedure followed in this case normally is that every judicial officer is placed under the supervision of a judge of the High Court. The judge of the High Court, based upon the inspection under monitoring - during the concerned calendar year, of the work undertaken by the inspected subordinate judge, would make an objective and independent assessment. While doing so, she or he not only considers the normal channels, which includes the inputs provided by the District Judge but also considers other channels such as the reputation and general character of the individual as a judge in the discharge of his duties. This information is relevant because a judicial officer performs a public function and has to enjoy the confidence of the litigant public as well as members of the bar; both have a vital stake in the existence of a vibrant functioning of judicial system committed to truth and justice. In this, counsel emphasizes that integrity plays a predominant part. Therefore, if instances of vague

allegations of solitary misconduct are made out, unless a specific series of infirmity is on irregularities, with evidence brought forward, those instances or allegations may be overlooked.

10. Learned counsel stated that if the enquiry by the inspecting judge discloses a pattern of general misbehaviour, omission, laxity in performance or that the judicial officer does not have a good reputation for honesty or integrity, it would be not improper to accept that and proceed to act on it. Such allegations are as difficult to prove as corrupt practices. In such cases, though there may be no concrete proof, the inspecting judge is within rights to conclude that the general reputation of the concerned judicial officer is not that of an honest one, and it is so recorded. If such procedure is not followed, counsel submitted that the entire judicial system would be undermined because corrupt or dishonest behaviour cannot be easily established by concrete proof. The perception of judicial officers as 'honest' is the entire premise on which the courts and the judicial system generally function.

11. Learned counsel relied upon the decision in *High Court of Delhi (Through its Registrar) vs. Purshottam Das Gupta & Ors* 2001 (57) DRJ 809 (DB) which held that the work and performance assessment of individual judges based on available material, in the form of written records and copies of judgments delivered by the individual concerned, as well as the inputs obtained (on the basis of discreet enquiry from amongst lawyers and other such individuals) are relevant and cannot be ignored. It was submitted that the procedure adopted in the petitioner's case was identical in that he was placed under the supervision and inspection of the fourth

respondent. The latter sought inputs from several people and also called for the orders and awards made by the petitioner and the relevant time, i.e. in 1995. The petitioner cannot make a grievance that his work processes on the basis of a solitary inspection or that of a few awards were examined. If, as a matter of fact, the inspecting judge called for certain orders and awards (made by the petitioner during his tenure as a Labour Court judge) based upon the materials available with him, i.e. from a list of decisions or awards rendered during that period, he could not be faulted. Such material i.e. copies of such awards and orders, apparently disclosed that uniformly the judicial output was not up to the mark, and the inspecting judge's assessment was fair in reflecting that. Likewise, the remark that the petitioner was of doubtful integrity was not based on the say of any one individual but rather of the reports of his general reputation and conduct in the court. Learned counsel relied upon the ACR records for the entire 1991 to 1997. He submitted that whilst the reports up to 1994, showed the petitioner was working consistently and was accordingly graded B+, the 1995 recording by the inspecting judge (confirmed by the Full Court), showed that he deserved a 'C' grading with the remark of 'doubtful integrity'. The fairness of the appraisal system, it was emphasized, is evident from the fact that for the subsequent years 1996 and 1997, the petitioner was awarded B and not C. At the same time, the inspecting judges noted for the later two years that some complaints had been made against the petitioner. In these circumstances, the discreet enquiry, which formed the basis of assessment of the petitioner as deserving C grading with the remark 'integrity doubtful', could not be characterised as arbitrary.

12. Learned counsel argues further that the 'C' grading is not based on the assessment of one individual inspecting judge, but rather that the report of such judge forms the material on which the final decision whether to grant the grading which is recommend is granted or any other grading is to be given. This procedure acts as a check and filter- to avoid subjectivity and ensure impartiality. Thus, eliminating any possibility of bias against a particular judicial officer or favouritism is to be ensured (at the time of assessment by the single inspecting judge), by the full court which decides whether to accept the grading given or not. Counsel submitted that this method (of the Full Court grading the officer finally) is not an empty formality. It is based on a robust discussion by all judges of the High Court where the individual opinions of the members are considered. At some time or the other, such judges would be in a position (or at least some of them would be in a position) to assess the performance of any individual judge while sitting and hearing revisions and appeals. Thus, the petitioner's work and performance would at some stage or the other, including for the relevant year, have been the subject matter of scrutiny by other judges as well. In these circumstances, the possibility of arbitrariness would be eschewed.

13. Learned counsel emphasized that the petitioner could not in the circumstances have articulated a grievance that he was unjustifiably overlooked for promotion to the DHJS. It is submitted that the consistent grading given in the past till 1994 only meant that the petitioner maintained a consistent track record deserving such grading. However, there is nothing to preclude the fact that even the judicial officer who might be extremely competent and worthy for a long period, can falter in a given year or years

and his performance turn average or poor. In such event, it will be a travesty of justice, at least to those whose work and duties are discharged in a better manner, to rank the judicial officer concerned on the basis of past gradings. Emphasizing that this would turn the basis of grading (based upon the performance of a judicial officer during the calendar year) on its head and give a premium for condoning indifferent work or average work, by conferring more deserving grading, learned counsel submitted that the mere existence of better gradings in the past does not mean anything except that the judicial officer had performed well during those periods. The general conclusion that giving a substandard grading for a given year, is subjective and biased, (just because the officer had consistently earned better earlier) would not be sound.

14. Counsel emphasized lastly, given the limited discretionary nature of the jurisdiction under Article 226, the importance of assessing truthfully the work and performance of a judicial officer so as to ensure that the confidence of the general public as well as members of the bar, the nature of pleadings, as well as the materials required to establish that the grading given was entirely *malafide* or arbitrary is at a high threshold. In the present case such high threshold or even the normal threshold of showing that the decision-making process was illegal, irregular or tainted by *malafide* had not been made out. It was, therefore, in these circumstances urged that the writ petition should be dismissed.

#### *Analysis and Conclusions*

15. The gravamen of the petitioner's complaint before this court is that his C grading with the remark "doubtful integrity" was entirely unfounded.

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To substantiate this grievance, he advances three arguments: one, that in no previous ACR grading was he graded 'C' as his consistent record – even during the previous period when he functioned as Presiding officer of the Labour Court – was B+. He argues that the impugned grading was based on scanty or no material, because the inspecting judge only visited his court once and that he called for awards rendered for a particular, as opposed to the entire period. Secondly, it is urged that the “integrity doubtful” remark was not based on any material or evidence, and hinged – if at all, on so called hearsay. The petitioner urges that such hearsay material should not be given credence, unless some documentation backs it. Thirdly, it is submitted that the grading, to the extent it ignores the appraisal of the borrowing department, is vitiated. Lastly, it is urged that the two Full court resolutions, which were impugned, formed the basis of assessment; they are contrary to binding circulars and instructions, which in terms of Rule 33 of the DJS rules, applied to his case. The application, *post facto* of those resolutions (for the year 1995) was illegal.

16. In *Syed T.A. Naqshbandi & Ors. v State of Jammu & Kashmir & Ors.*, the Supreme Court held as follows:

*“As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the*

*assessment made by the Committee and approval accorded by the Full Court of the High Court.”*

17. In *Shashikant S. Patil & Anr. (supra)*, the court observed as follows:

*“In case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer.”*

It was further observed that:

*“If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or this Court under Article 32 would not interfere with the order.”*

This view was endorsed in *Registrar General, Patna High Court vs. Pandey Gajendra Prasad* (AIR 2012 SC 2319).

18. The judgment of this court in *Purshottam Das Gupta & Ors. (supra)* held as follows:

*“The learned senior counsel also highlighted the fact that for the years up to 1993 the respondent had 'B+' grading. For the year 1994 the Inspecting Judge graded the respondent as 'B+', and the Inspecting Judge for the year 1995 did not make any variation or modification in the grade 'B+'. The Judge has said "I have not inspected his Court but I have heard complaints about his integrity, I am leaving column Nos. 6 and 7 for being*

*filled up by the Full Court". This tacitly means that the complaints had no credibility in his opinion also. There is nothing on record as to what was the nature of the complaints and who were the complainants. This note therefore does not warrant any adverse inference against the respondent No.1, particularly when the Inspecting Judge in the column at Sr. No.5 of his inspection report gave a positive remark that the respondent No.1 is an efficient judicial officer. Commenting upon the report of Four-member Committee, it was submitted that the report should be rejected inasmuch as the Committee was required to submit its report to the Full Court and not merely one word recommendation 'allowed or rejected'. In other words the intendment was that on examining the reasoned report of the sub-committee the Full Court was to come to its own conclusion.*

*No doubt one does not have to tarnish the reputation of a judicial officer without any basis and without any 'material' on record, as stated above, but at the same time other equally important interest is also to be safeguarded i.e. ensuring that the corruption does not creep in judicial services and all possible attempts have to be made to contain such a virus from spreading lest it becomes infectious. Therefore, when there are pseudonymous and anonymous complaints against a judicial officer those are to be examined with great caution and circumspection and should not be easily believed. However, on the other hand, when even verbal repeated complaints are received against a judicial officer or on 'discreet' enquiries, discreet or otherwise, the general impression created in the minds of those making enquiries or the Full Court is that concerned judicial officer does not carry good reputation, it may form appropriate 'material' for the Full Court while recording ACR of a judicial officer. We quite see that in the system/mechanism adopted by the High Court, possibility of there being an error in forming the opinion about a judicial officer stands minimised. Of course, it is not to say that High Court while recording the ACR of a judicial officer cannot commit mistake. To err is the human nature. Therefore, when the petition is filed challenging recording of adverse remarks in*

*the ACR of a judicial officer, while undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is no basis or 'material' on which the ACR of the judicial officer was recorded. However, while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the Court on Administrative side while recording the ACR and the mechanism/system adopted in recording such ACR."*

19. These judgments clearly enunciate two salient principles: one, that the court, under Article 226 of the Constitution of India, can act only within a limited parameter, exercising a circumspect jurisdiction in matters relating to ACR and performance appraisal of judges by the High Courts. The second is that the reputation and integrity of a judicial officer cannot be lightly jettisoned and certainly not on the basis of surmises or hunches.

20. The petitioner relies on *Barkha Gupta* (supra) and *M.S. Bindra* (supra). These decisions, no doubt, remind the Court that dubbing an officer as a person of doubtful integrity should not be based on hunches or vague conjectures. They also emphasize that the doubt (entertained by an inspecting judge or authority) should be of such nature as can be reasonably entertained by a reasonable man in the given circumstances. The judgment in *Purshottam Das Gupta* – of this Court was conscious of this important principle; it too had quoted *M.S. Bindra* (supra). Thereafter, in *Purshottam Das Gupta*, the Court went on to appreciate what is a material to sustain an adverse remark, the etymological bases and nuances of that expression were examined through various dictionaries, however, the Court emphasized that a balance is to be achieved between ensuring that an officer is not dealt with

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unfairly on the one hand and also maintaining that the stream of justice is kept pure. The Court had conceded that in an appropriate case the decision of the Full Court can be interfered with which was not based on any material. However, in the ultimate analysis the Division Bench upheld the decision of the Full Court in its administrative side grading the concerned party at “C”.

21. Likewise, in *Sanatan Prasad vs. High Court of Delhi and Ors.* WPC 4396/2010 decided on 06.02.2012, a Division Bench of this court observed as follows:

*“8. Apart from this, the learned Inspecting Judge has observed that the knowledge of law and procedure of the petitioner was also only average and, so too, the quality of his judgments. It was also observed that the petitioner had been counselled during inspection, inter alia, in the areas of integrity and discipline. Therefore, we do not see as to how the petitioner can advance the argument that there was no material before the learned Inspecting Judge or the Full Court to have graded him as ‘B’ for the year 2008. While writing the ACR of a judicial officer, an Inspecting Judge, apart from having carried out an inspection and having counselled the judicial officer, also examines the quality of his judgments by going through them and then makes an assessment as to whether the judgments are well written, clearly expressed and as to in which category they fall. The categories being ‘A – Very Good’, ‘B – Good’, ‘C – Average’ and ‘D – Below Average’. As mentioned above, the learned Inspecting Judge had graded the judgments of the petitioner as ‘C – Average’”.*

22. In order to get a full and complete picture of the facts, this Court had directed the High Court’s Establishment to produce the relevant records. The reports of the borrowing departments in the form of recording by the Labour Commissioner/Secretary Labour of the Government of NCT are part  
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of that file. For the year 1993, only a part of the report of the borrowing department for the period 09.7.1993 to 31.12.1993 is on record. The minutes of the Full Court meetings recording the ACRs of the petitioner too are part of the record. The report of the officer in the borrowing department stated that the petitioner's record of disposal was "satisfactory". The assessment of the petitioner for the year 1994 by the Labour Commissioner was recorded on 25.10.1995. These reports stated that the petitioner enjoyed a good reputation and was industrious and well versed in law. Interestingly, both the 1993 and 1994 reports were received only in 1995 (30.06.1995 and 22.03.1995) from the borrowing department. It was in these circumstances that the petitioner's ACR for the year 1995 was recorded. In respect of most of the attributes of quality the Inspecting Judge stated that the performance was "average" in respect of various qualities - "knowledge of procedure", "*industrious and promptness in disposal of cases with clarity and cogentness of the judgment and efficiency and so and so*" were "average". In column 6 the concerned Inspecting Judge stated as follows:

*"No. I have talked to various lawyers of long standing and to some of the office bearers past and present of the Distt. Bar Association. None has given him a clean chit."*

Against the column 7 "Net Result" the remark given is "*C Integrity doubtful*". This report by way of ACR recording was made on 20.08.1996. Eventually the Full Court accepted this recommendation.

23. This Court is unpersuaded with the petitioner's arguments that the ACR grading "C" for the year 1995 was not based upon any material but upon some bias and mis-appreciation harboured by the concerned Inspecting Judge - who has even been arrayed as 4<sup>th</sup> respondent. A Judge assigned a  
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duty of inspection, is expected to act diligently in the circumspect manner while going about the task of evaluating the performance, integrity and efficiency of any given judicial officer placed under his supervision. The petitioner's grievance here is that an element of personal bias has vitiated the Inspecting Judge's mind because long before the evaluation in 1981 he (the petitioner) had not passed favourable order in a property tax case. Mercifully this aspect was pleaded but not urged during the proceedings. Nevertheless, apart from just mentioning details of the case, no particulars with respect to the case or even the judgment delivered or even the date thereof was mentioned. This also does not find any background other than in stray reference in the pleadings. The other element urged strenuously on behalf of the petitioner was that the recording of ACR was not based upon any material and that if there was material it was not made known to him. Now all these aspects, even according to the petitioner, copies of the awards written by him during the relevant period i.e. the year 1995 were called for by the Inspecting judge who also had visited the petitioner's court during the relevant period. Apparently, the Inspecting Judge had also taken pains to enquire into the conduct of the petitioner as Presiding Officer of the Labour Court. It was based upon his overall consideration and analysis of the petitioner's performance and the general reputation that was associated with him, which led him to award 'C' grading with remark "doubtful integrity". The consideration of the awards delivered by the petitioner persuaded the Inspecting Judge that his work was of an average nature. No *mala fides* other than reference to a possibility of a personal bias are alleged- without any specificity or particulars. Given all these circumstances and having regard to the fact that the Full Court endorsed the Inspecting Judge's

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evaluation, this Court is of the opinion that there is no infirmity or illegality in the 'C' grading awarded for the year 1995.

24. During the course of hearing, learned counsel had urged on behalf of the petitioner that some institutional bias had crept in on account of 'C' grading. On this aspect, this argument in the opinion of this Court, is meritless because for the year 1996 the Inspecting Judge had upgraded the remark. At the same time, he too noted that certain complaints were heard about the distribution of work and random check of cases, and that there was need for him to be more cautious. The remark ultimately accepted by the Full Court and communicated to the petitioner was "B" or "average". Again in 1997 the remark recorded by the Full Court was "B+" or "average" whereas for 1998 the remark recorded was "B+" (good). In view of all these facts, it is evident that the allegation of institutional bias has no foundation.

25. As far as the petitioner's submission with respect to application of various Central Government's circulars on account of Rule 33 of the Delhi Judicial Service Rules is concerned it would be appropriate to extract the said provisions, which reads as follows:

*"RESIDUARY MATTERS: In respect of all such matters regarding the conditions of service for which no provision or insufficient provision has been made in these rules, the rules or orders, for the time being in force, and applicable to Government Servants holding corresponding posts in connection with the affairs of the Union of India shall regulate the conditions of such service."*

In similar circumstances, when the question of application of Rule 27 of the Delhi Higher Judicial Service Rule, which was couched in the same

terms, arose, the Supreme Court held in *B.S. Mathur & Anr. v. Union of India and Others* (2008) 10 SCC 271 that the application of an office memorandum of DoPT cannot be pressed and that such rules (like Rule 33 of the DJS Rules) are residuary provisions which explicitly provide that they apply only if there are absolutely no norms under the relevant provisions of the Delhi Judicial Services Rules. In the present case, the petitioner urges that the Government's circulars and memoranda require that the borrowing department's assessments are to be given primacy.

26. This Court finds the submission unmerited. The task of considering and evaluating performance of a judicial officer with respect to judicial or quasi-judicial duties and responsibilities – is that of the High Court. This is by virtue of Article 235 of the Constitution; the principle has been repeatedly reiterated by the Supreme Court in its various judgments. It is now too late in the day therefore, to urge that an executive Government department or agency's appraisal of the work of a judicial officer is to be given primacy; no doubt, often times those who are in judicial services are deployed or deputed to perform administrative tasks; to some extent though, the work performance of the concerned judicial officer or officers at that time comes under the scrutiny of higher officials in the borrowing department. The assessment and evaluation of the performance of such officials is merely an input for the overall determination; performance evaluation of character and integrity of the judicial officer by his parent organization, which is the judicial department, is represented by the High Court. This primary task cannot be said to be supplanted. In these circumstances, the Full Court's resolution which now stands impugned

merely reiterated the established and well known principle. Passing of such a resolution by the Full Court was a mere affirmation and iteration of the principle. Consequently, it is held that the said Full Court's resolutions are valid; the task of evaluating judicial officers wherever they function is that of the High Court – the evaluation of the executive officials at best are inputs and at the highest have some persuasive value but cannot be deemed conclusive or binding. For these reasons, it is held that there is no merit in the petitioner's submission with respect to the binding nature of the OMS or that the resolutions of the Full Court impugned in the present case are illegal or arbitrary.

27. Some arguments were made on behalf of the petitioner that his juniors were intentionally promoted and that his ACR record was kept pending and further that the representation against his ACR grading too was kept pending to accommodate other juniors. The Court is of the opinion that this argument too is unmerited. When vacancies arrive as they did in this case, in the promotion quota, in the cadre of DHJS, it is the duty of the High Court that such vacancies are filled at the earliest. They can be filled only after the ACRs of all the concerned junior officers (in the DJS) are recorded. In the present case, there was a cloud over the petitioner's ACR; the Full Court, therefore, felt it expedient to consider the cases of others whose ACRs were clear and proceeded to promote them. Such promotion orders were not made at once but in two lots, depending upon the availability of the vacancies and ACRs. Once petitioner's ACR was recorded and duly communicated, till it was set aside, the question of his consideration for the DHJS could not have arisen. The Full Court deliberated upon his representation and rejected them

eventually. There cannot be any grievance in the opinion of the Court to this method adopted by the Full Court. No doubt every endeavour should be made by the High Court to ensure that ACRs of all officers within the zone of consideration are duly recorded, when the issue of filling promotion posts arise. There could, however, be two cases where on account of hold up due to one or two stray cases the process of promotion may be delayed. Even at this stage, the High Court establishment under the orders of the Full Court tries that the ACRs are completed before the process of selection for promotion is taken up. In this case, there appears to have been some doubt with respect to the petitioner's integrity. His ACR was recorded, and in the meanwhile, promotion of one officer occurred. Once the ACR revealed that the grading was 'C' (doubtful integrity) the question of his promotion to DHJS could not have arisen. In these circumstances, the promotion of other eligible officers, could not have been faulted, much less characterized as illegal or arbitrary.

28. In view of the foregoing discussions, this Court hereby concludes that:

(a) There was no infirmity or illegality in the procedure adopted by the Full Court while recording 'C' grading with the "doubtful integrity" in respect of the petitioner for the year 1995.

(b) The petitioner's challenge to the two impugned resolutions passed by the Full Court, have to fail. It is also held that the evaluation of performance by executive agencies or departments, for the duration that a judicial officer is deputed it, are not binding upon the Full

Court; they mere constitute inputs and materials for consideration;

(c) The petitioner was neither arbitrarily nor unfairly dealt with in the overlooking of his promotion to the DHJS.

29. In view of the above findings, the petition has to fail. It is accordingly dismissed without any order on costs.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**A.K.CHAWLA**  
**(JUDGE)**

**AUGUST 30, 2018**

