

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/05/2003

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THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.8732 of 2000 and WRIT PETITION No. 8733 OF 2000
and
8642 and 19576 of 2002

Sri P.N. Ananthanarayanan .. Petitioner in all
the petitions

-Vs-

1. Union of India
rep. by the Secretary to
Government of India
Ministry of Finance, New Delhi

2. Reserve Bank of India
rep. by its Governor
Reserve Bank of India
Central Office
Fort, Mumbai-400 001

3. State Bank of India
rep. by its Chairman
State Bank of India Central Office
Building
Madame Cama Road
Mumbai-400 021

4. Mr.A.K.Purwar
General Manager
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

5. Mr.P.J.Sampathkumar
Managing Director
S.B.I. Securities Limited
Mumbai

6. Mr.T.S.Vaidyanathan

General Banager
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

7. The Managing Director
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

8. Deputy Managing Director (Personnel)
State Bank of India
State Bank of India Central Office

Building, Madame Cama Road
Mumbai-400 021 .. Respondents in
WPs.8732 & 8733/2000

1. The Chairman
State Bank of India
Central Office
Nariman Point
Mumbai-400 021

2. The Managing Director
(National Banking)
State Bank of India
Central Office
Nariman Point
Mumbai-400 021

3. Shri R.C.Sharma
Chief General Manager
State Bank of India
Local Head Office
College Road
Chennai-600 006

4. Shri S.C.Das
General Manager (Commercial Banking)
State Bank of India
Local Head Office
College Road
Chennai-600 006 .. Respondents in
WP.8642 of 2002

1. The Chairman
State Bank of India
SBI Central Office Building

Madame Cama Road
Mumbai-400 021

2. The Managing Director (National Banking)
State Bank of India
SBI Central Office Building
Madame Cama Road
Mumbai-400 021

3. The Departmental Committee for G.M.
Promotion
C/o The Deputy Managing Director
(Personnel) and C.D.O
State Bank of India
SBI Central Office Building
Madame Cama Road
Mumbai-400 021 .. Respondents in
WP.19576 of 2002

Writ Petition Nos.8732 of 2000, 8642 and 19576 of 2002 filed
under Article 226 of the Constitution of India praying for the issue of Writs
of Mandamus and Writ Petition No.8733 of 2002 praying for the issue of a Writ
of Declaration as stated therein.

For petitioner : Mr.V.Prakash

For respondents : Mr.G.Masilamani, Senior Counsel

:ORDER

All these writ petitions have been filed by the petitioner who
is now working as Deputy General Manager in the State Bank of India,
hereinafter called "the Bank" and the crux of the issue raised in all these
writ petitions is non-promotion of the petitioner.

2. In W.P.No.8732 of 2000, he has prayed for the issue of a
writ of mandamus to promote him as Deputy General Manager with retrospective
effect from the year 1988-89 on par with A.K.Purwar (the fourth respondent)
and all further promotion thereon with consequential benefits.

3. In W.P.No.8733 of 2000 he has prayed for the issue of a
writ of declaration declaring the promotion policy of S.B.I. for the purpose
of promotion to TEG Scale VI, namely from Deputy General Manager and above, as
illegal and void more part a use IV(C) of the said policy as violative of
Articles 14 and 16 of the Constitution of India.

4. In W.P.Nos.8642 of 2002, he has sought for the issue of a
writ of mandamus to ensure that ACR/Annual Appraisal of the petitioner for the
year 2001-2002 is not written by Mr.S.C.Das, General Manager (fourth

respondent) or any other officer attached to the Local Head Office at Chennai or be reviewed by R.C.Sharma, Chief General Manager, and only by independent, fair-minded superior officers at the Bank's Central office.

5. In W.P.No.19576 of 2002 writ of mandamus is sought for to direct the respondents to consider the petitioner for promotion in the cadre of General Manager.

6. Elaborate arguments were heard at two different stages namely, at the first stage when W.P.Nos.8732 and 8733 of 2000 were heard and orders stood reserved. While so, the petitioner being aggrieved by the subsequent development of his not being considered for the ensuing promotion for the year 2001-2002, had come forward with the last two writ petitions which were also clubbed together along with the first two writ petitions considering that there were several common issues. Pleadings by both sides have also been presented in an elaborate manner running to several pages and it is not necessary to deal with all the allegations and the minute details raised by both sides except for reference as may be required. It will be sufficient to condense and summarise the pleadings and submissions as follows:-

7. The petitioner joined the services of the Bank in the year 1966 as a Clerk. After successfully completing the examinations (C.A.I.I.B.), was directly recruited as Probationary Officer in 1968. After completion of Probation he was placed in the cadre of Junior Management-Grade I. Subsequently, he earned his promotion as Staff Officer Grade -III. The petitioner has also given various details regarding the excellence of his performance in various capacities and different spheres which according to him is duly recognised and appreciated by his superiors. He was posted in several sensitive areas in recognition of his superior performance. He was posted as Second Accountant in Jabalpur branch and then as Branch Manager in Hoshanga at Madhya Pradesh. He was put in complete charge of the branch which position was given to him only in recognition of his meritorious service. Then he became the Area Superintendent in the Head Office at Bhopal and he was posted as Development Officer in charge of Performance and Personnel, and Institutional banking. Subsequently, bearing in mind his performance and knowledge in Foreign Exchange, he was specifically posted as Development Manager, notwithstanding the fact that he was only in the cadre of middle Management -Grade III. He was selected for International Banking in Australia and deputed to the then National Bank, Australia, Melbourne. He was subsequently posted at Singapore branch of State Bank of India.

8. On return from the said foreign assignments he was promoted to next higher grade of Senior Manager-scale IV on 8.10.1981 at the age of 37 years and posted to Bahrain branch as Internal Auditor. On 1.8.1994, he was promoted as Assistant General Manager and at the age of 39 years he was one of the youngest officers in the said post. The petitioner would further submit that further promotion to the post of Deputy General Manager was due which was recognised as top executive grade in scale VI. The selection process, according to the petitioner was as in civil services viz., for the purpose of promotion, seniority is referable in the order of entry.

In terms of the said policy to fill up the post of Deputy General Manager for the year 1988-89 only individuals belonging to the batch of Assistant General Managers of the year 1982 and those of earlier years who have not been selected in the previous batch, alone should have been considered by the D.P.C. But this convention and norm was broken and the scope of selection was widened only in order to favour a few individuals belonging to 1983-84 batch of Assistant General Managers. Subsequently, the earlier convention of year wise batch for consideration, was restored. The petitioner further submits that as a result of including 1983-84 batch for being considered for the promotion to the vacancy for the year 1988-89 and even though he also belongs to 1984 batch, he was not selected. But instead A.K.Purwar and D.K.Sinha were selected in spite of the fact that they did not have equivalent service performance and experience of the petitioner, only because they were favoured candidates. For the purpose of promotion, criteria is seniority for the purpose of coming within the zone of consideration and thereafter only on the basis of the merit. The petitioner has also explained in detail the process of selection and contends that the policy of selection was only on the basis of performance in the interview and the service record. Seniority was to be taken into account for the purpose of demarcating the zone of consideration. The D.P.C. will then finalise the panel by giving 70 per cent weightage to the Annual Confidential Report (ACR) for all the previous years and 30 per cent weightage for the performance in the interview. The Confidential Reports were being written by superior officers and grades will be assigned as excellent, good, average, above average etc. If there were any positive adverse remarks such remarks alone will be communicated to the officer. But degrading of an Officer from the grade of "excellent" to the grade of "good" etc. was never communicated to the Officer. The petitioner would further positively state that he was not communicated with any adverse remarks as regards his Annual Confidential Report relevant for the period of promotion in the year 1988-89.

9. The petitioner would also further point out that Confidential Reports could not be written by an Officer holding the same post. But the petitioner's Confidential Report were written by one A.K.Batra who was Assistant General Manager of 1983 batch, who was competing with the petitioner for promotion. Therefore, the petitioner had the ignominy of a peer writing his Confidential Report. Such an action was invalid. The petitioner is also critical about the entries made in his Annual Confidential Report during 1987 by the then Deputy General Manager Mr.K.D.Chadda. The petitioner apprehends that he had been down graded. But no adverse remarks had been communicated to the petitioner. The selections have to be based on objective criteria and cannot be a result of whimsical capricious attitude. For instance, the work of the petitioner for the entire period in the substantive cadre of Assistant General Manager was outstanding as borne out by the assignment and responsibilities given to the petitioner. He would further state that the practice of the Bank in communicating only adverse entries in the Confidential entry and not as regards the downgrading from "excellent" to "good" etc., was illegal and the petitioner was unable to make any representation against such downgrading. However, the petitioner had suffered the consequence thereof by loss of promotion. In the case of the petitioner himself, he contends that any entry other than "outstanding" will be only a subjective entry and not a

fair or objective entry. Therefore, according to the petitioner there were serious irregularities in the selection of the year 1988-89. In fact, the Supervisory staff Federation of State Bank had taken up the issue before the Supreme Court. However, the same was subsequently withdrawn. He would further submit that there was also regional bias in the selection effected during the said period and that about 18 Assistant General Managers in Lucknow Circle were promoted as Deputy General Managers. Even in the years which followed, the petitioner was not promoted as Deputy General Manager. The same was arbitrary and capricious and contrary to his service performance which was considered to be excellent by the superior officers. The petitioner was subsequently promoted as the Deputy General Manager only on 16.2.1994 very much after 1988-89. Therefore, the petitioner contends that not promoting him in the year 1988-89 has to be held as arbitrary and violative of Articles 14 and 16 of the Constitution of India. Therefore, he will be entitled to be promoted and as on the date when A.K. Purwar was promoted as Deputy General Manager.

10. The petitioner further submits that he was posted at Madras as Deputy General Manager-Vigilance. He contends that the said posting was motivated and without recognising his achievements and records. One Sampath Kumar, the fifth respondent was posted as Deputy General Manager in the International Branch which was created for boosting leather exports and he was given the said posting because he was closely related to a former Deputy Managing Director. During his tenure, the said individual was directed to recover advances made to M/s. Garden Woodroff and subsequently the petitioner had recovered the same. Therefore, the petitioner underwent severe trauma and nervous coma and had to be hospitalised at Kaliappa Hospital, Madras. It was purely due to the injustice done to the petitioner which was unfair. The petitioner had maintained high level of performance, dedication and integrity and instead of rewarding him, he was victimised for the only reason that he was an upright Officer. After his treatment, he was posted as Principal of the training school and in 1996, posted at Bhopal as Deputy General Manager and Financial Officer in which post he worked till 1998. In September 1998, he was transferred from Madras as Director of Finance and on deputation to a Company which was virtually a dead Company with no assets. Thereafter, he was posted as Deputy General Manager, Rehabilitation Branch in which he was continuing till date.

11. The petitioner further submits that the next promotional post was of General Manager and the petitioner was denied promotion for the years 1997, 1998 and 1999. The petitioner contends that such denial was arbitrary and based on the entries in his confidential reports, which was not brought to his notice. The petitioner further submits that the criteria for selection to the post of General Manager as per the notification issued during April 1998 was selection on the basis of valuation by DPC which gives 75% weightage to the entries in annual confidential reports (ACR) and 25% to the performance in the interview. During all the said three years, the petitioner had no adverse entries in his ACRs and he has also consistently done well in the interview also. However, he was overlooked and his rank juniors were promoted as General Manager. Assessed from performance, his annual ACRs ought to have been excellent and there was no justification for downgrading. He has

submitted a report in the context of audit of Industrial Financial Branch at Indore which was considered to be an outstanding work. However, the said report was not disclosed even to RBI. In the said report, he had pointed out, a huge default running into crores of rupees as regards M/s.Madhumilan Syntax Limited, Indore by misuse of the facilities. Though an investigation was warranted by the RBI as well as a criminal investigation, no steps were taken. He would further submit that in the report, he had fixed accountability and found that advances were being made by one T.S.Vaidyanathan, the then Deputy General Manager of Industrial and Financial Branch, the sixth respondent herein and Mr.Ashwin Jain, the Chief Manager of the said branch. But to the dismay of the petitioner instead of taking action pursuant to the report, Mr.Vaidyanathan was promoted as General Manager and Mr.Ashwin Jain was promoted as Assistant General Manager. The petitioner states that he had stated the said incident to place on record to demonstrate the manner in which promotions were being effected by the SBI. He would further state that Mr.D.K.Sinha, the then Circle Chief Manager of Bhopal had made certain adverse entries behind the back of the petitioner downgrading his ACR for the relevant period. Likewise the petitioner would contend that Mr.Sampath Kumar who did not have a good record was also favoured with a promotion.

12. The petitioner also questions the promotion policy of the SBI to higher management cadre. As per the policy formulated in April 1993 , 75% weightage was to be given to the entries in the ACRs and 25% for the performance in the interview. Under clause-4(c) of the said policy, there is a debarment under which an Officer called for interview for a post thrice and not selected cannot be further considered for promotion to such posts. In view of the fact that the petitioner was considered during the years 1996 to 1999 for promotion and not selected, the said clause will operate against him for further consideration. The petitioner submits that the said clause of debarment is illegal and violative of Articles 14 and 16 of the Constitution. The policy is not based on any rational criteria. The debarment clause was also unreasonable. The petitioner further submits that the policy of giving 75% weightage for the entries in the annual confidential reports was also not based on any rational criteria. The annual appraisal report is based on a marking system and requires reason to be given by the reporting authority only when an Officer is awarded hundred out of hundred. However, the downgrading of an Officer does not require any reasons to be given. The grading of excellent, average, above average and poor is done on the basis of a marking system. The said marking system and the entries referable thereto, gives a very arbitrary discretion to the Reporting Officer in awarding marks and such unguided discretion results in consequences with regard to the promotional prospects of an Officer. The criteria adopted by the SBI for the purpose of promotion to its higher management service is thus based on the whims of the superior Officer and not related to the real suitability for the purpose of promotion. Public interest requires that SBI should have a rational and sound policy of promotion to its higher management.

13. The petitioner had also filed an additional affidavit on 23.8.2000. In the additional affidavit also, he has stated that the performance of appraisal in the State Bank of India was not objective and that it resulted in grave injustice to the petitioner. The promotions have been given in an arbitrary

manner and affecting the well being of the organisation itself. He has also named certain individuals like Mr.K.K.Bhargava, Mr.Birendra Kumar, R.Sampath Kumar, T.S. Vaidyanathan and others as having been shown undue favours.

14. In the counter affidavit filed by the third respondent, the respondent claims that the writ petition No.8732 of 2000 was liable to be dismissed in limini due to latches, as the petitioner is trying to reopen the promotions made during the year 1989 after a lapse of 12 years. To interfere with the promotions at this stage will upset the service career of many persons. The counter also gives details of the establishment of the SBI by an Act of parliament and the provisions of the Act empowering the Board to constitute several committees including the Executive Committee. The respondent also states that promotions are effected in accordance with the policy laid down by the Central Board or the Executive Committee from time to time. Service rules were also framed by the Central Board in exercise of the powers conferred under Section 143 (1) of SBI Act. Rule 17 provides that the promotion to all grades shall be made in accordance with the policy laid down by the Central Government.

15. It is further contended that the allegations contained in the affidavit in support of the writ petition, contains conflicting, contradicting and inconsistent statements. After referring to the promotions in favour of the petitioner stage by stage, the respondent submits that all the promotions and transfers were made in accordance with the rules and in accordance with the merit and seniority in terms of the policy. Promotion to the TEG scale were given to deserving officers. On several occasions, promotions could not be made due to several administrative reasons, resulting in large accumulation of eligible candidates for the promotion over a period of time. Therefore, clubbing of all eligible candidates was devised by the committee. The contention that seniority was referable to the year of entry was also not correct.

16. It is further stated that the promotion policy was considered by the Supreme Court in a batch of writ petitions and upheld in the judgment reported in 1997 I LLJ 4190. As regards the promotions of Sri A.K.Purwar and D.K.Sinha, it is stated that their promotions were considered in accordance with the rules and promotion policy. It was not correct to state that the confidential report of the petitioner was not written and handled by a superior Officer. The petitioner was reporting to the Regional Manager, New Delhi and as he was working under the said Office, it was he who was the controlling Officer who could write confidential reports. Further the confidential report given by the reporting authority is also reviewed by the high ranking official than that of the reporting authority, who is called as reviewing authority. The confidential reports of the petitioner were reviewed by an authority higher than the reporting authority.

17. It is further stated that A.K.Batra, who was the reporting authority belongs to 1983 batch while the petitioner belongs to 1984 batch. Therefore, there was no scope for Mr.Batra to have any bias against the petitioner. It is further stated that the preparation of ACRs are by their nature strictly confidential and therefore the same could not be communicated. The

petitioner's allegations are general in nature and have no bearing on the issues involved in the writ petition. Promotions were given to the meritorious Officers only on the basis of the Confidential reports and the performance in the interview and not otherwise. The various allegations against several Officers, such as A.K.Purwa, R.Sampathkumar and others were in correct. Such allegations made against other Officers would only exhibit the intolerance of the petitioner towards other fellow Officers.

18. As regards the limit prescribed for being considered for promotion under clause 4(c), it is submitted that such a policy was valid and it is based on consideration of efficiency saturation point at different levels and that such a policy is also found accepted in several other competitive examinations as as UPSC, TNPSC etc. Therefore, clause-4(c) was perfectly valid. The State Bank of India is a Business organisation and has to identify posts and available talent for the respective posts in the organisation to meet the challenges of the assignment and therefore the Bank had devised a policy on realistic and reasonable basis, in order to choose the best available talent.

19. A further additional counter affidavit has been filed on 12.11.2000 dealing with the additional affidavit filed by the petitioner. It is stated that for promotion to TEG scale VI and upwards various relevant factors are taken into account before making any promotion. Performance appraisal of an Officer is prepared by a Reporting authority, who has the immediate control and supervision of the Officer. A form of annual appraisal report form (AARF) is prescribed with the required particulars of the performance of an Officer on various aspects. Promotion Committee not only takes into account AARF report but also the promotion appraisal form (PAF) to be submitted by the CGM of the Circle. Further allegations relating to the promotion of A.K.Bhargava and the extension granted to G.P.Kundra and other Officers have also been dealt with in the additional counter affidavit and the allegation of impropriety and bias in the promotion of the said Officers are also denied in the additional counter.

20. Respondents 4,5 and 6 who have been named by the petitioner have also filed separate counters denying the various allegations made by the petitioner.

21. The petitioner has filed a detailed rejoinder affidavit dealing with the policy of promotion as well as allegations against named persons and the defence taken by the respondents in their counter. With regard to the non-communication of the downgrading of the entries, it is bound to have serious repercussion on the future career of the concerned employee. Non-communication of such downgrading was violative of principles of natural justice. As regards the ACR of the petitioner for the year 1986, in the counter, there is no denial of the fact that it was A.K.Batra who wrote ACR for the said year. The contention of the bank that there was no scope for Batra to exhibit any bias was incorrect and in the rejoinder affidavit, the petitioner has also dealt with many details regarding the allegations against individual Officers which need not be gone into any detail.

22. While the above two writ petitions were heard and pending for disposal,

petitioner has come forward with W.P.No.8642 of 2002 praying for a Mandamus to direct the respondents to ensure that his ACR/Annual appraisal for the year 2001-2002 is not written by the fourth respondent, General Manager, Chennai, Mr.S.C.Doss or any other Officer attached to the local Head Office, Chennai or review by Mr.R.C.Sharma, Chief General Manager and instead only by independent and fair minded superior Officers at the Bank's Central Office. According to the petitioner, he was constrained to institute the said writ petition on account of the in action of the respondents on his representation dated 11.2.2002 as regards the writing of his ACR/Annual appraisal for the year 2001-2002, which was due to be written in the month of March 2002. He further contended that the promotion policy of the respondent-bank was overwhelmingly dependent on the ACRs with 75% weightage being accorded to them and only 25% weightage was accorded to the Officers performance in the interview. Therefore, it was imperative that the ACRs are written in a fair and objective manner truly reflecting the actual job performance of the Officer. In the case of the petitioner for the year 2001-2002, his controlling Officer is the fourth respondent Sri.S.C.Das. The petitioner states that he apprehends that the fourth respondent will not write an unbiased and objective ACR in respect of the petitioner. In the affidavit, the petitioner has given few instances of what he perceives as instances of bias against him, inclusive of issuing a show cause notice dated 16.11 .2001 alleging that the petitioner had used intemperate language against him in a representation sent by him. Therefore, the petitioner was constrained to file W.P.No.23519 of 2001 challenging the jurisdiction of the General Manager to issue the show cause notice on the ground that as per the service regulations, it was only the Managing Director, who was his disciplinary authority and has the power to initiate any disciplinary action. The impugned show cause notice was also stayed by this Court. However, even after the communication of the interim order, yet another show cause notice dated 18.12.2001 has been issued in respect of the alleged unauthorised absence of the petitioner in the afternoon of a particular day when the petitioner had actually come to the High Court to attend the hearing of his case. Further, the Circle Management Committee in its meeting held on 20.12.2001 has directed the General Manager to initiate such action as against the petitioner as may be necessary, in respect of his representation against the transfer of NPA accounts of HPF and Cauvery Engineering Industries Limited. Thereupon he caused a lawyer's notice dated 25.1.2002 to be issued against Mr.R.C.Sharma, Chief General Manager, Chennai. The petitioner had pointed out that the General Manager was not competent to initiate any disciplinary action and that the matter was also subjudice before this Court. The petitioner had also made representation to the Chairman and Managing Director in respect of the same and requesting him to initiate high level enquiry into the grave impropriety committed in the context of NPA accounts as aforesaid.

23. In the counter filed by the State Bank, it is contended that the allegations of the petitioner had no basis. The General Manager had necessary jurisdiction and power to issue the show cause notice. The contention regarding the alleged flaws in the promotion policy was baseless and on the other hand, the petitioner himself was a beneficiary of the existing promotion policy. The petitioner was in the habit of imagining and making allegations against his superiors who are the reporting authorities and a host of other

senior Officers. He had made unfounded allegations against on A.K.Batra, K.D.Chadda, D.K.Dhagat and M.Kalyanasundaram in spite of the fact they have made very good reports about him. The annual appraisal report of an Officer is written by an Official who is his immediate superior Officer in the discharge of his duties. The reporting authority takes into consideration the qualitative and quantitative performance of the Officer along with the self appraisal submitted by the Officer. The AAR written by the reporting authority will then be reviewed by an reviewing authority, who is a further superior Officer. In the case of the petitioner, while the reports will be written by the General Manager, the report will be reviewed by the Circle CGM, who is higher in rank over and above the General Manager. The annual appraisal report is further reviewed by a Standing Review Committee which comprises of a Deputy Managing Director, a Corporate Development Officer and the Chief General Manager at the corporate center. Petitioner's apprehension that his report will not be written in a fair and objective manner was imaginary and contrary to the well established policy of the State Bank. The contention that the petitioner's AAR will not be written fairly and in an objective and in an unbiased manner was imaginary and baseless and the petitioner's apprehensions were unfounded.

24. As the petitioner was frequently absenting himself from Office without obtaining sanction or permission from his superior Officer and without explaining the reasons for such absence, the controlling Officer was constrained to seek for an explanation.

25. It is further stated that in respect of BIFR case of the Southern Structurals Limited, an undertaking of the Tamil Nadu Government, the petitioner had made serious remarks on the senior Officials of the Government of Tamil Nadu. The petitioner had made inappropriate comments and allegations against the Government Officials and the said remarks resulted in serious embarrassment not only to the bank but also to the senior officials of the State Government. His further remarks contained in the letter addressed to Salem Branch dealing with the account of Jayamurugan Textiles also contained unwarranted and unsolicited advice to the Branch Manager. Therefore action had to be taken and there was no question of any bias or prejudice against the petitioner and to allow the prayer of the petitioner would be a bad precedent.

26. Separate counters have been filed by both Mr.S.C. Das and Mr.R.C.Sharma against whom the petitioner had made allegations of bias. In their counter, they have denied the allegations of the petitioner and have also stated that they will act only fairly and justly, if any prejudice or bias against the petitioner.

27. The petitioner had also filed W.P.No.19576 of 2002 praying for a Mandamus to direct the respondent to consider the petitioner for promotion to the cadre of General Manager. In the affidavit in support of the said writ petition, after dealing with the defects of the system of selection and the defects in the writing of ACRs, the petitioner had stated that he was intimated through a letter dated 21.5.2002 by the bank about group discussions proposed to be conducted for promotion to TEG scale VII. He wrote a formal letter to the bank stating that his participation in the interview was without prejudice to

the writ petition pending before the High Court. Though the bank found him eligible for being interviewed, subsequently, the petitioner found that the petitioner's equals and his juniors were being interviewed and that he was not called for the interview although he was issued with an earlier letter dated 23.5.2002 to be ready to appear for the interview. Therefore, he issued a counsel's notice to the bank on 31.5.2002 in order to ascertain the background in which he has not been called for the interview. In the affidavit, he has also referred to the achievements made by him and his blemishless record of service and submits that there is absolutely no justification for not calling him for the interview. Hence, the writ petition.

28. In the counter filed by the respondent, it is stated that as per Rule-17 of the State Bank of India Officers' Service Rules, the policy of promotions are laid down by the Central Board or the Executive Committee. As per clause-5.1 of the Executive Selection System (ESS), all the candidates who have already appeared for the interview but unsuccessful (repeaters) along with a fresh set of Officials are considered in the order of seniority equal to two times the number of vacancies and such individual will come within his zone of consideration. Thereafter the performance of the Officers within the zone of consideration will be evaluated by the evaluation Committee and only those Officials who had secured 75% or more marks will come under the zone of selection as per Clause-7.1. The entire selection process was very rational and fairness was ensured by a three tier system of assessment of the Officer. The allegations of bias and prejudice by the petitioner were not correct and unsustainable. The prescribed format of AAR is elaborate and provides for all relevant and necessary particulars to assess the performance of an Officer on the basis of various parameters. The contention that the petitioner had been victimised and his annual appraisals were not written in a fair and objective manner were incorrect as the petitioner has not secured the required percentage of marks. As per Clause.7.1 of the ESS, he cannot claim as a matter of right to be called for the interview merely because he was in the zone of consideration. In the letter dated 23.5.2002 itself, it has been clearly indicated that the Officers were requested to keep themselves in readiness to appear in the interview subject to their name appearing in the zone of selection. The letter does not give a guarantee or confer any right on the Officer that he will be called for the interview. The counter also makes a distinction between "zone of consideration" and "zone of selection". Among the candidates, who come within the zone of consideration, according to merit, some of them are placed within the zone of selection. In order to come within the zone of selection, they have to secure 75% or more marks in the evaluation exercise. There are sufficient safeguards contained in the promotion policy which had been evolved after much deliberation. The contention that the petitioner was not called for the interview in view of the fact that he had invoked the judicial review was incorrect and untenable. The petitioner having failed to get promotion as a General Manager through performance, was now attempting to get the promotion through litigation.

29. A separate affidavit has also been filed by the CGM (Personnel and HRD), SBI, Mumbai. He has given the details as regards the process of promotion by considering promotion appraisal forms. Valuation Committee evaluates the eligible candidates in the zone of consideration on the basis of Promotion

Appraisal Forms and Annual Appraisal Report Forms and award marks as per defined evaluation system which had been formulated by the bank. The Officers are not entitled as a matter of right to peruse the defined evaluation system, as the promotion appraisal form and the defined evaluation system are part of unpublished record as confidential and that the same may not be shown to the petitioner for perusal. The disclosure of the Evaluation System would be against public interest. Therefore, he has requested that the Defined Evaluation System may be permitted to be perused only by the counsel for the petitioner in the presence of the Bank's counsel.

30. A detailed rejoinder has been filed by the petitioner commenting on various contentions raised by the respondents as regards zone of consideration and zone of selection, by referring to the relevant clauses in the promotion policy. He would also refer to the marks awarded in his favour for the year ending 31.3.1999, 31.3.2000 and 31.3.2001. On the basis of calculation in accordance with the policy, even in terms of the statement of the counsel for the respondentbank, the petitioner had been awarded 80 marks. If so, the petitioner's name should have definitely found a place in the zone of selection. Therefore the non-inclusion of the petitioner was discriminatory, unjustified and indicative of the malice on the part of the respondents to victimise the petitioner. The petitioner has also given the details of facts regarding the various transactions concerning the Rehabilitation and Recovery branch of the bank. He would further submit that the petitioner's ACR for the year ending 31.3.2002 would indicate not only reviewing of his ACR was biased and unfair but also reviewing of his ACR by the Standing Review Committee should have also been unfair, assuming that there was any review.

31. Mr.Prakash, learned counsel for the petitioner has argued very extensively on the issues arising for consideration in the above four writ petitions namely on the promotion policy of SBI, how the appraisal system is defective, the manner in which the petitioner had been treated by the management and that the petitioner had been penalised, persecuted and denied promotion only as a result of the petitioner's uncompromising honesty which had resulted in his superiors and equals treating him as unwanted person. He was being deliberately downgraded only to deny him promotion at various stages. This was possible only because the promotion policy was defective. He has also pointed out that in the report submitted by him in the context of State Bank dealings with M/s.Madhu Milan Syntax, whereby the Bank was involved in a default of huge amount of finance, he had indicted in his report some of the Officers as guilty of responsibility for their mis-adventure and the fraud which was committed on the bank. The very Officers who were indicted by him happened to write his ACRs and appraisals and by deliberate downgrading every time his name was taken up for consideration for promotion, he was denied promotion. Some of his equals and even juniors who were indicted by him, and were comparatively less meritorious than himself in performance have been gifted with promotion above him. Mr.Prakash also expressed his anguish that an Officer who was graded as Excellent and very high both performance-wise and also of absolute integrity, had been made to languish in the same position while many of his juniors and less meritorious had managed to move above him. The State Bank was a very high profile institution dealing with crores of public money. If its system of promotion is found to result in deserving

people being kept out of higher positions and if persons with bad record and doubtful antecedents could steal a march over deserving candidates, the Court was not powerless to intervene and to hold that the promotion policy was inherently bad and violative of the basic rules of service jurisprudence and to do justice to the petitioner.

32. As regards the promotion policy, learned counsel contends that the policy was based on an appraisal of the candidates for which 75% weightage was given to the ACR and 25% weightage was given for performance in the interview. His contention is that the annual appraisal is not based on any rational objectives and with the result, becomes an exercise whereby marks are awarded not on the basis of the actual job performance but based on other extraneous considerations which may not be in the interest of the bank. In his arguments, Mr. Prakash dealt with the mode of appraisal in the back ground of the Annual Appraisal Formats and made detailed submissions that notwithstanding the features of a seemingly analytical criteria, the system lacks proper basis for awarding of marks. There was no indication as regards the basis on which the marks were to be awarded. He would also give an instance of comparison between one Officer who may mobilise excellent deposits and may not have created any non-performing asset and in contrast another Officer who might have mobilised higher deposits but had been responsible for many non-performing assets. The appraisal criteria had absolutely no indication or basis of which marks have to be awarded. This resulted in the superior Officer awarding marks and gradation as excellent, good, average and poor according to his whims and fancies. I am not referring to the very detailed references made by Mr. Prakash to the various features contained in the Annual Appraisal Form and the rulings of the Court in support of his contention that the Courts had power under Article 226 of the Constitution to intervene and to strike down the promotion policy which could be demonstrated to be either arbitrary or irrational or giving room for manipulation etc., considering that the very promotion policy of the State Bank of India was considered by the Supreme Court and upheld at least in two judgments referred to below, giving no room for this Court to adjudicate on the points raised by Mr. Prakash.

33. While making his submissions in the context of the prayer to promote the petitioner as Deputy General Manager with retrospective effect from the year 1988-1989 and on par with Mr. A.K. Purwar and all further promotions with consequential benefits, learned counsel contends that both the petitioner and Mr. A.K. Purwar were directly recruited Officers as Probationary Officers belonging to 1968 batch. While the petitioner had been given regular promotions till 1.8.1984, after 1984 he was given only one promotion as Deputy General Manager on 16.2.1994. In contrast, A.K. Purwar had been granted four promotions as Deputy General Manager on 24.4.1989, as General Manager on 16.2.1994, as Chief General Manager on 14.8.1997 and as Deputy Managing Director on 1.6.2002. If the petitioner had been awarded with his normal promotions, he should have been made Deputy General Manager in 1989 itself and as General Manager in 1994 and as Deputy Managing Director during the year 2000. He would have also had further chances of even becoming the Managing Director. He had been successively superseded at every stage and persons far juniors to him had been overtaking him, notwithstanding his blemishless and

excellent service. This was possible only because of the defective promotion policy of the bank and the motivated appraisal of his performance and deliberate downgrading which had resulted in denying promotions to the petitioner.

34. In the context of how confidential reports should be written and how the said exercise should be complied with, learned counsel relies on the judgment of the Supreme Court in *State of U.P. vs. Yamuna Shankar Mishra and Others* (1997 4 SCC 7). Reference is also made to the judgment in *State Bank of India vs. Kasinath Kethar* (AIR 1 996 SC 1328), and on the issue as to whether there was any confidentiality in the confidential reports, reference is made to the judgment in *Sukhdev vs. Commissioner, Amaravathi Division* (1996 5 SCC 103).

35. In support of his contention that an Officer of equal grade cannot write confidential reports, reference is made to the judgment in AIR 1996 SC 1328 *supra* and *S.P.Kapoor vs. State of Himachalpradesh* (AIR 1981 SC 218).

36. In the context of his prayer, in W.P.No.8642 of 2002, to restrain the named Officers not to write ACR of the petitioner for the year 2001-2002 or be reviewed by them, Mr.Prakash had also alleged details of facts which according to him would amount to show bias and prejudice against the petitioner by those Officers. Therefore, in the interest of justice and equity, they shall not be permitted to do so. I have already referred to the factual contentions relating to the allegations of bias. Learned counsel also relies on the observations of the Supreme Court in *R.D.Shetty vs. International Airport Authority* reported in 1979 2 LLJ 217. Reliance is placed on the observations that an executive agency must be rigorously held to the standards by which it professes its actions. Every action of the executive Government must be informed with the reason and should be free from arbitrariness. That is the very essence of the rule of law and its minimum requirements. The Government cannot act arbitrarily like a private individual and deal with any person and its actions must be in conformity with the standard norms which are not arbitrary, irrational or irrelevant. The learned counsel also commented on the attitude of the State Bank in refusing to disclose the papers relating to the policy of appraisal. He further contends that such claim of absolute confidentiality was illegal and that is the reason why he had refused to peruse the same, in view of the stand of the bank that the petitioner cannot peruse the same. The said stand of the bank claiming confidentiality in a matter which is expected to be transparent and that even the counsel should peruse the booklet only in the presence of the petitioner's counsel amounted to lowering the dignity of the Advocate's profession. The attitude of the bank was indicative of the vindictiveness which was being exercised as against the petitioner.

37. Mr.G.Masilamani, learned Senior Counsel appearing for the respondent-bank, contends as follows:-

(a) The promotion policy is a very rational and time tested one and a perusal of the various forms, appraisal forms will disclose that all possible criteria are taken into account in a very analytical manner. The policy is a product of repeated improvements and experience gained over the years. In any system

of evaluation, there is bound to be a discretionary element. The Reporting Officer, who has to evaluate has to be given the discretion to award marks according to his assessment. The assessment certainly has the human element and the petitioner's expectation of mechanical accuracy, can never be achieved.

b. The petitioner was fully aware of the policy, which was prevalent all through these years and he should have himself dealt with and exercised the same powers in respect of his subordinates. The stand of the petitioner is therefore not bona fide and is also opportunistic. In fact, he got his promotion as Deputy General Manager only on the basis of the said policy and the appraisal system.

c. The very policy in selection process was already subject matter of two judgments of the Supreme Court and the Supreme Court after elaborate consideration of the process of the appraisal scheme, had upheld the scheme followed by the State Bank of India and hence, it is not open to the petitioner to question the same vide the judgment of the Supreme Court in State Bank of India and Others vs. Kasinath Kher (1996 8 SCC 762) and All India State Bank Officers' Federation vs. Union of India and Others (1997 1 LLJ 419).

d. The self-serving claims of the petitioner about his eligibility for promotion cannot be entertained. He can no doubt assess his own performance to his satisfaction, but he cannot say what is the comparative merit of the other individuals, whose names are also considered in the selection process. It is for the selecting authorities to consider the suitability of each of the contender and select the best in their assessment.

e. The assessment itself goes through a three-tier system, first by the Reporting Officer, second by a further superior Officer and third by a Review Committee consisting of two further senior Officials. Therefore, the petitioner cannot complain of any bias or prejudice of a single individual Officer.

f. The attempt on the part of the learned counsel for the petitioner to make it appear as though one of the features and in the process of selection viz., Promotion Appraisal Form which have to be evaluated by a Committee called Evaluation Committee was not disclosed when the first two writ petitions were being heard and as though the same was projected by the respondent for the first time only when the last two writ petitions were taken up for hearing, is not at all sustainable. There is ample reference to the Promotion Appraisal Form in the pleadings of the first respondent in the first two writ petitions, viz., in the counter and in the additional counter in W.P. Nos.8732 and 8733 of 2000, and the petitioner was fully aware of the entire process.

g. The brochure relating to Promotion Appraisal is a confidential document which need not be disclosed to the Officers considered for selection. Certain amount of confidentiality is essential while selecting the personnel, who occupy very high positions. The issues are very sensitive and cannot expose the authorities involved in the process of selection.

h. The attempt on the part of the petitioner to reopen promotions made several years prior to the filing of the writ petition not only lack bona fides, but is also vitiated by laches. The service, promotion and the position as it prevails cannot be disturbed and upset after considerable lapse of time. Reliance was placed on some of the judgments of the Supreme Court which will be referred to later.

i. Learned senior counsel also took me through the various correspondence which emanated from the petitioner. He would contend that the said letters/communications not only amounted to preaching and sermonising to his higher officials thus amounting to insubordination, but also the language was so vituperative and offensive which even a superior officer will not use against a subordinate Officer. Thus by his own conduct, the petitioner was only confirming that he was not fit to be promoted to high and sensitive level of Officers where he has to deal with any sensitive issues which will have extreme repercussions on the very functioning of the bank. Officers at higher level have to exhibit restraint and be discreet and not give room to any abusive style of functioning.

j. As regards bias against individual Officers, the petitioner was in the habit of making wild allegations without any basis. The petitioner had wrongly assumed that Mr. Batra had downgraded the petitioner in his annual appraisal. This was not factually correct. Similar allegations against other Officers have also been made without any basis or reason.

k. There is no need to communicate the remarks of the Reporting Officer in the annual appraisal report unless and otherwise such remarks are adverse and damaging. General assessment from the points of view of the Reporting Officer or the Reviewing Authority regarding comparative qualifications of different candidates and reference to the drawbacks of a particular Officer cannot be treated as adverse so as to comply with the requirement of communicating the said remarks to the Officer concerned.

38. I have heard both the parties in an elaborate manner and also perused the files forwarded by the respondent-bank in the context of the petitioner's claim for selection from the year 1988 to 20 02. It will be convenient to deal with each of the writ petitions separately.

39. W.P.No.8732 of 2000: In this writ petition, the petitioner seeks a Mandamus to accord promotion to the petitioner as Deputy General Manager with retrospective effect from the year 1988-89 on par with Mr.A.K.Purwar and all further promotions. The basis on which the said claims are made is mainly two fold. Firstly, the petitioner contends that the promotion policy is bad and arbitrary. Secondly, promotion was denied to the petitioner only due to the fact that he was a straight forward and honest Officer much to the displeasure of many of his superiors which has resulted in a concerted scheme of events resulting in avoiding promotion to him, especially, as a result of the decisions taken by him and reports which he had submitted in his official capacity such as the episode relating to M/s.Madhu Milan Syntax.

40. While dealing with the belated nature of the relief prayed for by the

petitioner and the objections raised on behalf of the bank on the ground of latches, Mr.V.Prakash, learned counsel for the petitioner relies on the judgment of the Supreme Court in R.S.Deodhar vs. State of Maharashtra (AIR 1974 SC 259). A Constitution Bench of the Supreme Court had to deal with the objections of latches in a case where the dispute related to variation in service conditions which resulted in reduction of chances of promotion. One of the objections which arose for consideration was whether rights which had accrued in favour of others should be disturbed by allowing petitions which had been filed after considerable passage of time. The Supreme Court had as a general principle held that the rule which says that the Court will not enquire into belated and stale claims was not a rule of law but a rule of practice based on sound and proper exercise of discretion and that there was no inviolable rule that whenever there was a delay, the Court must necessarily reject the petition. It was also further observed that if there was reasonable explanation for the delay, a relief for protection of fundamental rights cannot be refused solely on the ground of latches.

41. In this case, I am unable to accept the contention of the learned counsel for the petitioner that the delay requires to be ignored. The promotion policy whether legal or arbitrary was well known to the petitioner at every stage when he was overlooked by the bank and he was not successful after the interview. Many individuals have gained promotion not only for one level but some of them have moved above to two or three higher levels. Any attempt to reconsider or to reassess the selection made from the year 1988 will necessarily involve comparative assessment of all the individuals who were within the zone of consideration and whether an individual who had been promoted really deserved promotion in comparison with the petitioner. Such an exercise is bound to result in unsettling the promotions and thus resulting in confusion in the cadre/post of promotion and also violating the rights of individuals, who had already been promoted and certain rights having crystalised in their favour. The contention of the learned counsel for the petitioner that the claims of the petitioner alone can be considered and that the promotions already effected need not be disturbed is also not acceptable. If the petitioner is entitled to succeed on the ground that the promotion policy was illegal and arbitrary, then the same benefit will also be available to all similarly placed individuals like the petitioner, who had been denied promotion. It will be opening the gates wider resulting in total chaos and confusion. The issue of latches may not restrain the Court in an appropriate case to grant the relief while dealing with cases of poor and illiterate persons and where no injustice could be caused to other parties. But the petitioner in this case, is more than a literate person and who is fully aware of his rights and duties and such a person cannot be allowed to agitate the issues which had become old and stale. In the judgment of the Supreme Court relied upon by Mr.V. Prakash in AIR 1974 SC 259 mentioned above, on facts of the case before them, the Supreme Court specifically found that the promotions which had been made were only provisional and that the rights of the promotees had not become finalised in their favour. Therefore, the said ruling cannot apply to the facts of the present case.

42. In P.S.Sadhasivasamy Vs. State of Tamil Nadu (AIR 1974 SC 2217), the Supreme Court held that though no limitation could be prescribed to move the

High Court under Article 226, it was held that a Government servant having slept over the promotions of his juniors over his head for 14 years cannot challenge the rules under which his juniors were granted relaxation of the rules. It is further held that normally aggrieved parties should approach the Court at least within six months or at the most one year after the promotion of his juniors, otherwise it would result in unsettling the settled matters. I am inclined to hold that as far as the time factor is concerned, it may not be possible to fix any specific time limit and having regard to the judgment of the Constitution Bench in AIR 1974 SC 259, if the delay is properly explained, then it will not be proper to reject the writ petition. In this case, there is no acceptable explanation by the petitioner for the belated approach to the Court. The promotion policy which is known well for the petitioner was not a newly formulated one but which has been governing the promotions of the bank for several earlier years.

43. His allegations of vindictiveness against certain Officers cannot also weigh against the glaring delay on the part of the petitioner to approach the Court. Those facts were also within the knowledge of the petitioner for all these years. The process of promotion, that too at the higher level of one of the premier banks of the country, cannot be subjected to uncertainties by a belated litigation. In *S.C.Moghe vs. Union of India* (AIR 1981 SC 1495), promotions made between the years 1968 to 1975 were questioned in the year 1979 and the Supreme Court held that the petitioners cannot be permitted to assail such promotions and they should have approached the Court within a reasonable time, if they really felt aggrieved.

44. I am therefore inclined to hold that the petitioner cannot be granted with the relief for considering his claims for the promotion with effect from the year 1988.

45. As regards the points raised by Mr.V.Prakash, as against the promotion policy, I have perused various forms such as Assignment Appraisal Report Form, Annual Appraisal Report and the different formats contained thereunder-Annual Appraisal Report, Self Appraisal Report etc., and the salient features of the Executive Selection System (ESS) and the rules made thereunder and its salient featuresAnnexure II and other connected instructions. He also took me through the various heads under which marks have to be awarded, such as business performance, position regarding renewal/sanction of advances, house keeping, inspection and audit, customer service, industrial relations, quality of work output, creativity, decision making skills, managerial skills, leadership skills, marking skills, sincerity honesty and integrity, sociability, contribution to corporate policies and a host of such other heads under which evaluation is made and marks be assigned. Though I place on record my appreciation of the detailed and elaborate analysis of those features by Mr.V.Prakash and his criticism to the effect that there are no proper guidelines of assigning proper marks and the defects in the system and that if the superior Officer wanted to condemn an Officer for extraneous reasons, he can easily do it under the existing policy and the formats, even so, I am unable to accept his contentions at least for the following three reasons.

i. The various formats do contain many valid and valuable criteria to assess

the different potentialities of an Officer from different angles as stated above. It is certainly better than the leaving the discretion blindly to the superior Officer to write whatever he wants as it prevails in different Government Departments, without there being a compulsion to give marks under several heads as is required by the State Bank. The formats definitely spell out some rational basis and objective criteria. Giving of marks is certainly by the human mind of the superior Officer who is presumed to act honestly. Awarding of marks do imply certain amount of arbitrary discretion. No system and no format would be perfect or would serve the purpose, if the Reporting Officer is not honest and sincere in his assessment. Therefore, the fact that Mr.V.Prakash is able to point out certain defects on hypothetical basis cannot render the system itself bad. There could be certain suggestions for improvements but that cannot render the existing system illegal.

ii. The format and the system as it exists are applied not only to the petitioner but for all Officers similarly placed like the petitioner in the same manner. As long as there is no discrimination, the defects, if any in the system would affect everyone equally and hence the petitioner alone cannot be heard to complain.

iii. The most important reason is that the very promotion system of the State Bank of India which is attacked by the petitioner was considered by the Supreme Court in All India State Bank Officers' Federation and Others vs. Union of India (1997 I LLJ 419) and the Supreme Court upheld its validity. The earlier promotion policy of the State Bank of India was modified by the Central Board in its meeting on 7th March 1989 and the Federation of employees had challenged its validity on various grounds. It is not disputed before me that it is the said modified scheme which continues to operate even now with minor modifications. The Supreme Court after going into several points raised by the Federation as against the said promotion policy, held as follows:-

"The charges have now been made in 1989 keeping in mind the requirement of the bank and based on the experience of the bank in regard to making selection for promotion. The chances so made cannot be regarded as arbitrary and the Court cannot sit in appeal and decide as to what is good for the institution. Under the new policy the petitioners are also eligible for consideration and they cannot have any grievance because certain persons who were eligible under the old policy, but in practice were not considered for promotion, are now considered under the new policy. The object of the new policy seems to be not only to redress the injustice to those Officers resulting on account of the difference between the rules and the practice but also with the object of selecting the best talent for the top executive posts."

46. Therefore in the face of the above observations by the Supreme Court, it is not open to this Court to go into the issue of the validity of the current promotion policy of the State Bank of India. For all the aforesaid reasons, I am inclined to reject the various contentions raised by the learned counsel for the petitioner in support of his contention that

the promotion policy is illegal and invalid and the writ petition is liable to be dismissed.

47. W.P.No.8733 of 2000: In this writ petition, Clause IV (c) of the promotion policy is sought to be declared violative of Article 14 and 16 of the Constitution. The said rule imposes a bar for an Officer to be called for interview for a post more than three times. As the petitioner was affected by it, he had sought for a declaration as aforementioned. During the pendency of the writ petition, the said rule has been modified and extended by three more times with an interval of one year. Therefore in terms of the modified procedure, the petitioner becomes eligible to be called for the interview and therefore as on date, the petitioner cannot be aggrieved by Clause-IV (c). Hence, the issue becomes purely academic and need not be gone into in this writ petition and may be ordered as unnecessary at this stage.

48. W.P.No.8642 of 2002: The petitioner's prayer is rather unusual seeking for a Mandamus to restrain named individuals from writing ACR/Annual Appraisal or to be reviewed on the ground that the said Officials are biased and prejudiced against the petitioner. In this writ petition also, it is not necessary to go into the said issue considering that the ACR/Annual Report as well review has been completed as on date. The interim order which was originally granted was vacated by P. SATHASIVAM, J., by an order dated 24.4.2002 in view of the affidavits filed by the named Officers assuring that they have no prejudice against the petitioner. Therefore, nothing further survives for consideration in this writ petition also and hence liable to be dismissed as infructuous.

49. W.P.No.19576 of 2002: The petitioner seeks for a Mandamus to direct the respondents to consider the claims of the petitioner for being promoted to the cadre of General Manager. I have already extracted the salient features of his career progress as stated in the affidavit of the petitioner. Starting his career as a Clerk in the year 1966 and as a Probationary Officer in 1968, his growth till the level of scale IV on 1.4.1981 was very fast and the facts stated in the affidavit regarding the same and his performance as a remarkable Officer which saw him through such promotions stage by stage are not seriously disputed by the respondents. He had been given very many responsible and sensitive positions especially in International Banking and in recognition of the same, he has been posted at various branches in India itself to be in charge of foreign exchange business and subsequently sent to Australia for training in international banking and thereafter to Singapore and Bahrain branches as Internal Auditor. In the meantime, he also earned his promotions as Senior Manager, Scale IV on 1.8.1991 and as Assistant General Manager on 1.8.1994 as one of the youngest Assistant General Managers. Thereafter his growth into the next highest position of Deputy General Manager appears to have been delayed and was promoted as Deputy General Manager only on 16.12.1994. Subsequently, till this date, he has been stagnating as a Deputy General Manager. On a comparative study, his contemporaries as well as juniors have climbed above by two or three more higher levels and it is none other than Mr.A.K.Purwar who is now Chairman of the bank was also one of his peers/equals to the petitioner as a Probationary Officer in the year 1968. It

is not the case of the respondent that the petitioner had in any manner become slack in his duties or proved himself unworthy of promotion or higher responsibilities except for the last two or three years, after filing these writ petitions during which period he is accused of having got into the habit of writing abrasive letters to his superiors with a sermonising attitude which issue I will deal with a little later. But right through his career, surprisingly in the ACRs which I had perused, he has been receiving superlative remarks and appreciation of his work as excellent, remarkable and innovative and his integrity has been consistently rated as highest in order. In spite of the same, how is it possible that he could gain promotion as Deputy General Manager only in the year 1994 belatedly while his contemporaries got promoted in the year 1988-1989 itself and thereafter also, he has been stagnating? Mr.V. Prakash contends that it was made possible at least by three factors. Firstly, during 1988-89 selection, there was unprecedented clubbing of three batches. This could be stated as purely administrative and applicable to all concerned and no improper motives could be attributed to the respondents. Secondly, there was regional favouritism and during certain years, promotions were granted only in favour of the one particular region for the reason that the selecting authority from the said region. This sort of regional bias was frequently occurring, according to the petitioner. Thirdly, his unbending and uncompromising attitude in his work and integrity had resulted in displeasure of his equals as well as superiors and they saw to it that every time his name was being considered for promotion, in the appraisal report certain remarks had been made deliberately adverse in nature resulting in downgrading him are also by giving lesser marks and thereby they saw to it that his name was pushed down in the zone of selection. This was managed in a clandestine manner without communicating the said remarks to the affected persons. Fourthly, his report relating to M/s. Madhu Milan Syntax had landed him in trouble in view of the fact that in his report he had to deal with the commissions and omissions of some of the Officers as having been responsible for landing the State Bank under heavy financial adversity and those very Officers were not only reporting and reviewing Officers, but had also later managed to climb the ladder of the hierarchy of the State Bank while the petitioner had been made to languish as a Deputy General Manager.

50. Before I proceed further, at the outset I have to express my surprise at the stand taken by the bank with reference to three legal issues which are well settled.

51. The first issue, is regarding communication of adverse entries which result in downgrading Officer at the time of consideration of the claims of an Officer for promotion. In para 11 of the counter in W.P.Nos.8732 and 8733 of 2000, the bank had taken the stand that the Reporting Authority prepares the report only after assessing the performance of the Officer and that "the preparation of annual confidential reports are by their nature strictly confidential and therefore the same could not be communicated". It is too late in the day for a public institution to have taken such a glaringly erroneous stand. The mandatory requirement to communicate the adverse remarks had been stressed in very strong terms in many judgements of the Supreme Court. Even in the case of compulsory retirement,

though earlier decisions had taken the view that uncommunicated remarks can be taken into account, later judgments had expressed different view, namely that even in a cases of compulsory retirement, it will not be proper to rely on uncommunicated adverse entries vide the judgement of the Supreme Court in Brij Mohan Singh vs. State of Punjab (AIR 1987 SC 948). This rule is all the more applicable to cases of denial of promotion on the basis of uncommunicated adverse entries vide the following judgments:

1. Gurdayal Singh vs. State of Punjab (AIR 1979 SC 1622).
2. Harisingh Varma vs. Union of India and Others (1987 2 LLJ 368).

52. In 1987 2 LLJ 368, the Supreme Court held that the uncommunicated remark "not yet fit for promotion", would vitiate denial of promotion and that in as much as the said remarks were not communicated to the petitioner, the Promoting Authority could not have relied upon the said remark for denying him promotion.

53. The further attempt on the part of the bank to term the remarks ACR/annual appraisal report as not adverse even though it could result in downgrading the candidate from "excellent" to "good" or from "very good" to "good" or in reducing the marks, cannot also be accepted. Downgrading is also adverse to the employee. An employer cannot be allowed to play on the words by using a different phraseology and consequently play with the future of the employee.

54. In U.P.Jalnigam and Others vs. Prasanth Chandra Jain and Others (1996 2 SCC 363), the U.P.Jalnigam, a public institution contended that the rules provided only for communication of adverse entries alone but not the downgrading of an entry like remarks of "outstanding" in one year being altered by the remark of "satisfactory" in the existing year. The Supreme Court rejected the said contention and held that though such downgrading will not ordinarily be in adverse entry, yet the authority recording the remarks should record the reason for such downgrading and also inform the Officer of the change. Even a positive grading which cannot be negative or damaging to the Officer should be communicated. The Supreme Court went further to observe that the sting of adverseness must in all events shall be communicated to the employee and that even a positive confidential entry can be perilously adverse and to say that the adverse entry and would mean and always be damaging may not be true and that downgrading in that case was bad by comparison and there was also no mention of any reason for the change. The Supreme Court confirmed the conclusions of the High Court that the employer was under an obligation to have communicated the same to the employee. I am also inclined to state that this principle is all the more applicable to the promotion policy of the State Bank as it involves marking system and downgrading necessarily involves consequential reduction of marks.

55. In this context, it is rather unfortunate that the State Bank appears to have been adopting a process which is termed by Mr.V. Prakash as the modus operandi by which deserving Officers could be easily denied promotion at the stroke of the pen of the Reporting Officer in the Annual Appraisal Report by writing whatever he wants thereby damaging the chances of

promotion without the need to communicate such remarks by terming it only as an assessment and not an adverse entry. How the said aforesaid process had affected the petitioner will be dealt with below. I am inclined to agree with the learned counsel for the petitioner that by this process of making adverse remarks in the ACR, the Reporting Authority can seal the fate of even the best of all the candidates and at the same time, successfully avoid communicating the remarks to the Officer and without disclosure of any reason. Another fallacious stand taken by the bank on a legal issue is that the Reporting Officer could be of the same rank as that of the assessed Officer. This issue is also settled in the case of State Bank of India and Others vs. Kasinath Kher, supra and the Supreme Court had held that such a procedure was pernicious and pregnant with prejudice and manipulation violating the principles of natural justice and highly unfair and therefore confidential reports should be written only by superior Officers high above the cadre. I would state that this is one of the first principles of service jurisprudence. It is rather unfortunate that the State Bank in spite of having received the said decision should take the stand in this case that there is no illegality in the equal level Officer writing the confidential report of another Officer in the same cadre. However, this issue does not arise for consideration in this writ petition dealing with the years 2001-2002 and 2002-2003 during which period, the Reporting Officer happens to be of a higher rank.

56. The third legal stand taken by the bank which is also according to me is erroneous is that the policy of revised evaluation of promotion appraisal forms as approved by the Central Office Human Resources Committee on 2.5.1997 and 13.4.1998, is a secret and confidential document. In spite of my repeated expression of doubt over the stand taken by the bank, learned senior counsel had stated after instructions by the counsel on record that it is the policy of the Bank and that if required it will be made available to the Court and that only the counsel for the petitioner can be permitted to peruse in the presence of the counsel for the respondent. Mr.V.Prakash disagreeing with the stand of the bank contended that not only the claim of secrecy was erroneous but the stand that it could be perused only by counsel for the petitioner in the presence of the counsel for the respondent was humiliating to the position of an Advocate and his professional dignity. He has also refused to see the policy. This stand of the bank in my opinion, is again bewildering and surprising and is probably indicative of a negative attitude which the higher officials of the bank have chosen to adopt towards the petitioner. In my discussion below, I am also inclined to find that this defence is really motivated in order to cover up a deficiency or a violation committed by the Committee in not adopting the scheme of moderation as will be explained later. I ask myself the question as to how can there be any secrecy in the policy or norms or guidelines issued in the matter of evaluation of promotion appraisal forms. To be confronted with such a submission in these days of transparency of Governmental and administrative actions and right to disclosure, cannot at all be appreciated. It will be perfectly normal and understandable if the reports and remarks against the particular Officer are requested to be maintained confidential in public interest and security of the State and that too in exceptional cases where disclosure may hamper investigation into any complaint against the delinquent or it involves security of the State etc. But to claim confidentiality in

respect of policy of evaluation of promotional criteria and the norms to be adopted for such evaluation is rather disturbing. The said guidelines are comparable to the promotion policy which had been dealt with earlier about which there has been no objection from the bank especially relating to the formats of Annual Appraisal Report, the regulations relating to Executive Selection System (ESS) and the instructions issued thereon. The present document over which confidentiality is claimed is only similar to the same and merely deals with the parameters for evaluation of the potential of the Officer to be assessed, which would form part of the service regulations over which there can be no claim of secrecy. In fact even in the case before the Supreme Court, which had already been referred to in 1997 I LLJ 419, the promotion policy was considered in detail by the Supreme Court and was upheld. There was no claim of any secrecy as regards the promotion policy or the forms or the methodology or norms for assessing of the subject Officers. It was only the appraisal records of the persons concerned, which was submitted to the Supreme Court in a sealed cover. There was no claim of any secrecy as far as the policy was concerned nor can there be any such claim. Therefore, I am unable to appreciate the stand taken by the State Bank in this case. This claim is actually motivated as I would be discussing below and hence this Court is inclined to take strong exception to this defence by a premier Public Bank of the country, that too by filing a special affidavit by the Chief General Manager (Personnel and HRD) dated 18.11.2002 which only exposes the extraordinary bias which is exhibited against the petitioner.

57. Now we have to see whether the petitioner is entitled to the relief asked for in this writ petition and whether the rejection of the petitioner's claim for promotion in 2001-2002 is fair and proper.

58. In the affidavit, the petitioner has after stating that 75% of the marks allocated for annual appraisal was not dependent on any definite or rational standards of evaluation, has further stated that he was informed by a letter from the bank dated 21.5.2002 that group discussions were to be held for promotion into TEG scale No.VII. But he was subsequently not called for the interview. In terms of the Executive Selection System (ESS), seniority is of relevant consideration and he was the senior most eligible Deputy General Manager and even on that ground alone he should have been called for the interview. He will also come within the zone of selection in terms of Clause 7.1 of the ESS and there was no other enabling provision to cut down the number of eligible candidates in any manner. No adverse remarks have ever been communicated to him and hence non-consideration of his name was vitiated due to mala fides and arbitrariness. He is being penalised because he has approached the Court earlier for redressal of his grievances.

59. Mr.V.Prakash after dealing with the submissions as above, contended very vehemently that the process of selection to higher positions in the State Bank was possible only in favour of Officers who are prepared to compromise with their conscience and indulge in sycophancy which was the order of the day. Neither efficiency nor honesty had any impact notwithstanding the

promotion policy which was claimed to be very rational and objective and that is the reason why in his first writ petition, he has sought for a declaration of the promotion policy as illegal. His criticism stands proved in this case, he contends, in which the petitioner who had remarkable achievements in the field of foreign exchange and international banking and had achieved a very high level of substantial recoveries from non-performing assets, could be destined to stagnate at the level of Deputy General Manager, while his peers, who had no better record than that of the petitioner and even his juniors had managed to climb to the higher and highest positions in the bank. Mala fides were staring on the face of the actions of the respondents and in spite of his objections to certain named officials dealing with his case for promotion, the same individuals instead of recusing themselves, had chosen to write the annual appraisal report and to deal with the process of selection determined to finish off the career of the petitioner. Though it is true that process of selection and appointment by promotion to selection post is the prerogative of the management and the Court will rarely interfere in such process, this was an exceptional case in which the petitioner is entitled to the positive direction to promote him even though he had only asked for a Mandamus to direct the respondents to consider the claims of the petitioner.

60. In the counter, the respondents have strongly denied the criticism that awarding of marks was based on irrational criteria, sycophancy and bias and that such sweeping remarks on all Officers at the higher level of the bank were untenable. The process of selection is done very objectively by the Reporting Officer which is scrutinised by the Review Committee and by a further review by the Standing Review Committee. As he did not come within the zone of selection, the petitioner's name could not be considered. The fact that the petitioner came within the zone of consideration and he was informed to be ready to attend the interview does not mean that he has a right to be called for the interview even without coming within the zone of selection. The letter of intimation itself makes it clear.

61. Mr.G.Masilamani, learned Senior Counsel for the bank, apart from the submissions as reflected in the counter, also contends that a perusal of the promotion policy discloses a very well planned and objective methodology which leaves no room for any higher authority to make any arbitrary comments. The policy had also been approved by the Supreme Court. The resultant total marks are arrived at after proper assessment and assignment of marks under several heads of performance and duties of the Officer and hence there is no basis for the argument that the promotion policy was bad enough to give room for arbitrary assessment. The policy contemplates a zone of consideration which is a filter point and it is only candidates who come within the zone of selection, will be called for interview. As per clause-7.1 of ESS, only Officers who have secured 75% and more marks in the evaluation exercise will come within the zone of selection and the petitioner was not called for interview, as he did not obtain 75%. The petitioner was very much aware of the entire process of promotion and his submission as though he was not aware of Promotional Appraisal Forms was false nor is it a stand newly taken by the bank only in the last writ petition. Reference to the PAF had been sufficiently made by the respondent even in the counters filed by the bank, in the first two writ petitions. Learned senior counsel

also took me very extensively through some of the letters and correspondence by the petitioner to his superiors and other Officers in the course of the past two years wherein the petitioner had used very abrasive and offensive comments which disclose total insubordination and lack of official propriety which amounted to gross of misconduct. He had also caused embarrassment in the matter of dealings with the State Government which had resulted adverse comments from the State Government. In short, the petitioner had proved himself to be a very indiscreet person and incapable of discharging duties which are sensitive and need utmost tact in dealing with the affairs of the bank. He appears to be under a delusion that he is the only honest and efficient Officer and all other Officers in the State Bank of India do not have any merit or integrity.

62. I have considered the submissions of both sides.

63. This is a very peculiar case in which denial of promotion of the petitioner even from the position of Deputy General Manager to General Manager appears to be illogical owing to at least two facts. The first fact is that his equals in the position of Probationary Officer and Assistant General Manager and also his juniors are now way ahead of him by two or three ranks above him and Mr.A.K.Purwar, who was of the same 1968 batch of Probationary Officers, is now Chairman of the bank. The second fact is that the petitioner has an impeccable record of service both merit wise and of integrity going by his ACRs consistently for the past several years except for the last two years after the petitioner had approached the Court. I have perused the records from 1984 upto date and the remarks with reference to category-wise assessment under several heads as well as the general remarks of the Reporting Officers and the Reviewing Authority and the comments are uniformly superlative expressions of his integrity, efficiency and capacity to tackle any situation and in recognition of his services. A reference to those remarks are very much necessary, as I have taken them into account for arriving at my ultimate conclusions as hereunder and hence the general remarks made from the year 1984 are extracted and appended to this order as an annexure which will also form part of this order.

64. It was only during the year 1988, one K.D.Chaddha as Reporting Officer had stated as follows:-

"Sri Ananthanarayanan is an intelligent and hardworking Officer. However, he needs to improve inter-personal skill and try to control his tongue and pen"

65. This remark ought to have been communicated to the petitioner but is deliberately not communicated on the ground that there was detailed counselling by Deputy General Manager with the petitioner and hence the remarks need not be communicated to the petitioner. He had also downgraded the remarks against the column relating to general intelligence and job knowledge from "excellent", as entered during the past two years in 1986 and 1987, to "good". It is also pertinent to note that this remark was reversed by the Reviewing Authority as " excellent" for both general intelligence and job knowledge. The Reviewing Authority also remarked as

follows:-

"Due to uncompromising nature, he is more suited for independent assignments which call for incisive analysis or rigorous follow-up, like say, inspection, vigilance"

66. This episode of the year 1988 only confirms the apprehensions of the petitioner that Mr.K.D.Chaddha had some extraneous grievances against him. The fact that there was counselling is hardly a

reason for not communicating the glaringly adverse remarks as well as the downgrading of "excellent" to "good". The Reviewing authority also found him of uncompromising nature fit for independent assignments.

67. Apart from the said remarks, for the year 1988, the general remarks for all the other years as could be seen from the annexure, place the petitioner in a very high and exceptional category of Officers both when he was Assistant General Manager and later from 1994 as Deputy General Manager. Some of the remarks are not the usual or formal expressions of appreciation but reflect very strong and exceptional appreciation. He is described as an Officer of uncompromising nature more suited for independent assignments (1988) and that during his period, the region became a model for work discipline and that he was eminently suitable for shouldering higher responsibilities and that by any parameter he is a splendid Officer and that the bank can be proud of him (1989). He is also described as having consistently rendered outstanding performance and had also curbed indiscipline in the region and deserves to be promoted to higher cadre (1991). In 1992 also he was assigned a very exemplary and high remarks about the projects carried out by him and the recoveries made by him. In 1997, he is certified as capable of shouldering higher responsibilities and in 19 98 it is stated that all the departments working under him have shown remarkable performance and he was eminently suitable for promotion as General Manager. In 1999, it is reported that his strength are his excellent knowledge, high integrity and strong desire to act effectively. It is only thereafter when he approaches the Court on denial of promotion, adverse remarks are made against him without even communicating them to the petitioner.

68. It should make any one wonder how promotions eluded him having regard to his record and that he was promoted as Deputy General Manager only in the year 1994 while many of his contemporaries and juniors were promoted after 1988 and before 1994 itself and that he is still being denied further promotion as General Manager. It cannot be just due to the reason that others also would have had better remarks and higher ranking. This hypothetical reason projected before me was without producing comparative materials regarding the promotions of the other Officers especially juniors. There cannot be any justification in overlooking the seniority of the petitioner. Seniority is also a vital factor and overlooking of seniority is generally perceived to signify either inefficiency or lack of integrity or both. How could an Officer of his record of service as revealed by the remarks mentioned above be denied promotion and be overlooked in favour of many of his juniors? There should be some basis for the allegation on behalf

of the petitioner that promotions in the State Bank and probably in other public institutions also, are ultimately awarded for some extraneous reasons also. The marking system is such that even a well deserved Officer can be kept down by sheer manipulation of the marks. This is well demonstrated in the case of the petitioner and there is absolutely no justification or possibility for having overlooked his seniority several times. The situation is not only bound to be painful and disheartening to the petitioner and others similarly placed, but is also a shocking and monstrous state of affair to the judicial conscience. Was it due to regional bias or was it the price which the petitioner had to pay for his uncompromising nature-in the words of his own superiors? There has to be a reconsideration of this marking system, and a probe at the highest level either by the Reserve Bank of India or by the Ministry concerned over the promotions of Officers of the State Bank of India during the past at least ten years. But for the latches on the part of the petitioner, I would have directed reconsideration of his claims from the year 1988 itself for promotion as Assistant General Manager and for further promotions. The promotion policy is for all appearances very glossy and objective but the marking system appears to play a havoc. In 1997-I LLJ 419 cited above, the Supreme Court went only into the broader aspects of the promotion policy and had no occasion to go into the details and pitfalls of the marking system which appears to give room for manipulation that too by ignoring the seniority. No weightage appears to be given to seniority which is contrary to accepted principles of Service jurisprudence. Seniority can be over looked only if the junior could be rated above merit wise. Such an event can happen only in exceptional and rare cases and not when the senior person has a clean record. The defect in the marking system is that a person being categorised as " excellent", could be given marks ranging from 16 to 20 and this becomes very handy to put down any competent Officer and to push up a favourite irrespective of seniority considering that ultimately even a fraction of one mark counts for ranking among the candidates in the zone of selection. My concern is more about the system than the fate of the petitioner. As I had stated earlier, a certain amount of discretion is inevitable in the process of assessment, but it cannot become so glaringly unreasonable that a person with a record like the petitioner could be even overlooked by appointing juniors.

69. Now I will deal with the attitude adopted by the respondents in having dealt with the claims of the petitioner for 2001-2002 and 200 2-2003. It is necessary to bear in mind that in the meantime, the petitioner had dared to come to Court with many serious allegations and the following are the remarks of the Reporting Officer for the years 2001-2002.

70. The following are the general remarks for the year 2001:-

"The official has excellent command on the English language which is evidenced from many letters/notes but which is often marred by his use of harsh/abrasive words used in letters of correspondence even addressed to Government officials/Financial institutions. With his experience and job knowledge he could exhibit better performance if he understands the priorities of the Bank and acts in proper perspectives".

71. By this time, the respondents have been made aware that even downgrading has to be communicated and hence even though the petitioner was categorised as "excellent", he is given only 16 marks. The adverse remarks as above were also not communicated to the petitioner.

72. The following are the general remarks for the year 2002:-

"The official's ways of functioning have deteriorated over the past months. He has hardly any respect for the hierarchy and the decisions taken by the CMC. He indulges in unnecessary and unproductive correspondence thus wasting valuable managerial/executive time. He has gone to Courts challenging the authority of his Controller in the matter of administering his branch. Has not lived up to his potentiality. He has been given in writing about his malfunctioning by his Controller".

73. The above remarks betray the level of bias and prejudice against the petitioner and expression of displeasure in the petitioner having approached the Court. Penalising a person for approaching a Court of law has been categorised by the Supreme Court as amounting to contempt of Court. The higher authorities of the bank, if they had no role to play in such improper comments, ought to take action against the Reporting Officer for making such comments. In fact, the petitioner had apprehended this very much and had asked for directions against the said particular Officer to restrain him from reporting the appraisal, in W.P.No.8642 of 2002. After the stay was vacated, in all fairness the said Officer should have recused himself and the State Bank ought to have directed some other Officer to carry out the appraisal vide the judgment of the Supreme Court in Badrinath vs. Government of Tamil Nadu (AIR 2000 SC 3243). But he not only records such damaging remarks but also downgrades the petitioner from "excellent" to "good" and sees to it that he is denied promotion. Neither the remarks nor the downgrading is communicated to the petitioner. No further proof is required to establish mala fides rendering the non-selection of the petitioner void and illegal. P. Sathasivam, J., vacated the interim order taking into account the affidavits filed by both S.C.Das and R.C.Sharma, but this is the manner in which they have chosen to act-finding fault with the petitioner having approached the Court, which I am inclined to view very seriously. This is unbecoming of higher officials of State Bank of India.

74. There is yet another serious fallacy which also betrays serious mala fides in the process of the last selection-year 2002. This issue was fairly agreed to by the learned senior counsel for the bank that there was no proper compliance of the policy relating to moderation, which is contemplated in the revised evaluation policy, which is as follows:-
Moderation:

The average of ratings under the heads of Managerial Ability, Potential and Overall Suitability should not be more than +/- 10% of the average of marks secured under the heads of Past Performance and Confidential Reports. In case the difference is more than the tolerance level specified above the Evaluation Committee, constituted as per the Executive Selection System, can suitably

amend the marks under the heads of Potential and Overall Suitability so that the specified averages are maintained.

The evaluation sheet will be prepared in which awarding marks out of 500 (5 heads rated on 100 point scale each) the marks will be converted as against 75 marks aggregate. If an Officer secures less than 75 % marks in the Evaluation exercise i.e., less than 57 marks he will be treated as unsuitable and not included in the zone of Selection for interview.

75. In the present case, while 80 marks were awarded by the Reporting Officer, the Committee gave only 56.67, resulting in a variation of 29.17 marks. Therefore, in terms of the policy, there should have been a moderation but deliberately denied to the petitioner by recording a self-serving decision of the Committee that they had decided not to make any changes in the marks. No such discretion is given to the Committee and it has no power to do so and this decision is arbitrary and in clear violation of the guidelines and deliberately intended to prevent him from appearing for the interview. Moderation would have put the petitioner within the zone of selection. This is the reason why the respondents were very curiously bent upon claiming secrecy over the amended policy which is now made apparent. They did not want the petitioner to know about the flagrant violation of the policy. Another instance of motivated action in the same context is the Committee awarding 56.67 marks. In terms of the policy extracted above, if the Officer secures less than 57 marks, he will be treated as unsuitable and not included in the zone of selection for interview. This explains why the Committee had awarded 56.67 marks. The conduct of the Committee is highly reprehensible and vitiated by glaring mala fides and utter lack of elementary fairness in their approach, to say the least.

76. Repeated emphasis was made before me regarding the letters/ notes written by the petitioner undoubtedly using very abrasive expressions with a sermonising tone. I agree that the petitioner ought not to have lost his composure and in fact I had also told Mr.V.Prakash that such actions of the petitioner is not proper and would amount to indiscipline and insubordination and that when the matter was in the Court he should refrain from such indiscreet action.

77. I have considered this issue very deeply with the seriousness which the issue deserves. Here is a case of a well deserved Officer being denied promotion even as Assistant General Manager successively for more than six years from 1988 to 1994 and thereafter as General Manager till now. I have already pointed out that this has been done due to the marking system and the petitioner also believes that he has been penalised for his uncompromising honesty and some of his reports which he had submitted in the discharge of his official duties such as the one relating to M/s.Madhu Milan Syntax. In the reports of all the years as against the column relating to honesty and integrity, he has been assigned superlative remarks. Even in the adverse reports of both the years 2001 and 2002, he is described as an individual of high integrity and honesty. I ask myself the question as to how would a man like him feel at being denied promotion for several years and his equals and juniors - climb up the ladder three or four levels above him and

one of them today is the Chairman of the bank? Man is a emotional animal and he is not a God. He feels genuinely aggrieved and is justified in feeling so. Therefore his emotional outbursts and the ravings of a wounded person in pain needs to be ignored. Such conduct should not stand in the way of doing justice to such a person who has approached the Court as the last resort. In labour and service cases, the Supreme Court had repeatedly pointed out that emotional outbursts and acts of instinctive insubordination under stress and strain and grave provocation ought to be viewed as natural human reaction and sympathetically. Though undoubtedly the conduct of the petitioner is improper and cannot be encouraged, at the same time the management should not also try to take advantage of such conduct which is only an impulsive reaction of an employee who feels hurt and helpless. The respondents appear to lay too much stress on this issue in an attempt to sweep under the carpet a series of improper actions on their own part as already discussed. Admittedly, there was no such behaviour by the petitioner during the earlier periods and that the petitioner had got into this habit only recently and simultaneously after he had approached the Court. Even as per the remarks of the year 2 002, he has been doing it during the past months only. Therefore, such conduct need not stand in the way of judging his eligibility for promotion if he is otherwise eligible.

78. The respondents should also analyse their own reaction and conduct under provocation and ask themselves as to whether their behaviour was any better. Finding fault with him for having approached the Court and downgrading him with intention to deny him promotion even to the level of General Manager and yet will not communicate adverse remarks to the aggrieved person and the Committee deliberately not complying with the requirement of moderation etc., are not actions which are expected from the higher strata of officials of an organisation like the State Bank of India. Not being satisfied with the same, a series of actions are also sought to be taken against him even when the issues are pending before the Court and without getting any clearance from the Court. The Officer against whom allegations of bias are made would not recuse himself, but would write a damaging report. The above stated series of conduct on the part of the State Bank are also equally unjustified. I would prefer not to be diverted by the instinctive behaviour of both the petitioner and the respondents. What is necessary is to render substantial justice in the aforesaid facts and circumstances of the case.

79. While therefore the petitioner is entitled to succeed, at the same time, I am inclined to take note of the negative and mala fide attitude adopted by the hierarchy of the State Bank of India, which appears to be determined to deny promotion to the petitioner. Not only the aforesaid facts clearly spell out bias against the petitioner but also the attitude of taking action against him subsequently also while the writ petitions are pending and without getting clearance from the Court before initiating such action gives the definite impression that the petitioner may not be treated fairly. About a fortnight back another writ petition was moved before me by the petitioner against a memo initiating disciplinary action against him. Commenting about the petitioner approaching the Court is most improper and the State Bank appears to think that the petitioner has no fundamental rights. No

fairness can be expected from a set up which is bent upon preventing the petitioner from even appearing for the interview by deliberately violating the policy of moderation of marks and very motivatedly plead for treating the policy as a secret document. Therefore, I am inclined to feel that the process of appraisal has to be entrusted to an independent body out of necessity and the need to ensure justice and fairness.

80. Though the Reserve Bank of India has no administrative control over the staff of the State Bank of India, it has certain amount of control over the highest functionaries of the State Bank, and under Section 19 of the State Bank of India Act 1955, the Reserve Bank of India has a major role to play. The Chairman, Vice-chairman and two of the Managing Directors and the Central Board of State Bank of India shall be appointed only by the Central Government in consultation with RBI. Therefore, it is desirable to entrust the work of appraisal to the RBI and the claim of the petitioner's promotion shall abide by the decision of the said Committee of officials belonging to the RBI. I feel that it is sufficient to constitute Appraisal Committee consisting of three Officers of the Regional Office of Reserve Bank of India at Chennai.

81. With the result, I am inclined to allow the writ petition No.19 576 of 2002, subject to the following directions:-

i. The Regional Director of Regional Office of Reserve Bank of India at Chennai, will constitute an Appraisal Committee consisting of three members with himself as the Chairman of the Committee and two more members to be nominated by him, the other two members being not below the rank of Chief General Managers.

ii. The State Bank of India shall forward all the relevant records relating to appraisal/assessment/ACRs from 1.8.1981 when the petitioner was made Senior Manager, Scale-IV and upto date, to the Regional Director, R.B.I., at Chennai. A copy of E.S.S and all other instructions relating to the process of promotion shall also be furnished.

iii. The Appraisal Committee shall thereafter consider the records before them objectively and also interview the petitioner and decide as to whether he deserves promotion as General Manager or not and forward their recommendations to the State Bank as expeditiously as possible and such recommendation shall be binding on both the parties.

iv. If the recommendation is in favour of the petitioner, then the promotion shall take effect from the date on which the promotees (GMs) had been appointed for the year 2001-2002 with all the consequential benefits.

v. The Appraisal Committee shall be guided only by the personal records and the out come of the interview and not by any comments or adverse comments on other issues either by the petitioner or by the respondents. The petitioner is directed and warned not to indulge in any representation to the Appraisal Committee about his grievances and the

respondents are also directed not to refer to any of petitioner's letters, notes, correspondence or representations. The Appraisal Committee shall completely eschew all such matters and also adverse entries and downgrading of him which had not been communicated to him. The Appraisal Committee can also seek any information or clarification if necessary, from the petitioner or the respondents.

vi. Any observations in this order for or against the petitioner or the respondents shall be ignored by the Appraisal Committee and this order shall be looked into only for ascertaining the facts and the directions and the Appraisal Committee shall give its verdict independently and uninfluenced by any of the observations contained in this order.

82. With the result, W.P.Nos.8732, 8733 of 2000 are dismissed. Consequently, connected WPMP No.32558 of 2002 is dismissed. No costs. W.P.No.8642 of 2002 is dismissed as infructuous. No costs.

83. W.P.No.19576 of 2002 is allowed subject to the above observations with costs. Counsel fee is fixed at Rs.5,000/-. Consequently, connected WPMP Nos.27007 and 27008 of 2002 are closed.

13-05-2003

ANNEXURE

Remarks in the Annual Confidential Reports of the petitioner

--

1984

A sincere and painstaking Officer.

1985

A painstaking and sincere Officer who is always attempting to come up to the expectations of the boss.

1986

Sri Ananthanarayanan is a highly intelligent, articulate Officer. He is hardworking and devoted to Bank work.

(The Reviewing Authority had converted the Reporting Officer's grading as "Good" in job knowledge into "Excellent".)

1987

A very sincere and hardworking Officer --- is managing the affairs of Region II in a capable manner. Possesses qualities of leadership and will mature as an efficient senior executive with further experience and exposure as Regional Manager.

1988

Sri Ananthanarayanan is an intelligent and hard working Officer. However he needs to improve inter-personal skill and try to control his tongue and pen.

(The Reviewing Authority disagreed with the Reporting Authority's two gradations/as "Good" in respect of General Intelligence and job knowledge and converted both as "Excellent". The Reviewing Authority also remarked as follows.)

Due to uncompromising nature he is more suited for independent assignments which call for incisive analysis or rigorous follow-up, like say, inspection/vigilance.

1989

Sri Ananthanarayanan's outstanding performance marks him out as a highly distinguished and exceptionally competent Regional Manager. In region-I, he has had a singularly brilliant tenure. He is dynamic, highly competent and takes swift decisions. He has used these skills in abundant measure to develop business in his region in an unprecedented manner. The quality of business booked by him is first class and is yielding handsome returns for the Bank. The Region has done very well on the profitability front with six more branches coming into profit during the last nine months and the remaining eight loss making branches have reduced their total losses from twenty-four to five and half lacs.

A disciplinarian, Sri Ananthanarayanan is a very able and fine administrator. The Region has become a model for work discipline. He is also a just and fair Officer.

He is a brilliant Officer who combines in himself sincerity and devotion to the Institution with high personal integrity. His performance speaks for itself. I consider him eminently suitable for shouldering higher responsibilities and he deserves to go up high in our Bank. By any parameter he is a splendid Officer and the Bank can be proud of him.

1990

Not available.

1991

Sri Ananthanarayanan is a brilliant, conscientious, dedicated and dynamic Officer deeply committed to organisational goals. He has distinguished himself as Regional Manager by giving outstanding performance consistently in all key performance areas over the past three years. He deserves encouragement.

Reviewing Authority's

I agree with the observations of the Reporting Authority. He has been managing the affairs of Region-I at Dehradun exceedingly well. He has been instrumental in curbing indiscipline in his region by taking action whenever needed. He also successfully handled the enquiry, despite heavy odds into the charges on account of violent incident on 4 th October 1989 at the ---- when some of the Central Board Directors were manhandled.

A capable Officer deserves to be promoted to higher cadre.

1992

Sri Ananthanarayanan, a highly competent Officer is totally dedicated to the organisational goals and objectives. His performance as AGM has been excellent. He deserves encouragement by promotion to higher cadre.

1993

A committed and sincere Officer and an effective administrator who marshalls the resources at his command in a commandable manner. In SSI advances his region recorded the maximum growth. In deposits portfolio also the region recorded a handsome positive variance. Sri Ananthanarayanan has a varied exposure of six years as Regional Manager. Deserves encouragement.

1994

He has recently been promoted to Scale VI. Suitability for promotion as to G.M., will be considered after his work as DGM is reviewed.

1995

Sri Ananthanarayanan is sincere and devoted to duty. He discharges his duties satisfactorily.

1996

Not readable but given 100 out of 100 marks.

1997

The Official is highly studious. He has clarity of concept and thought. He is capable of shouldering higher responsibilities.

1998

The official is highly knowledgeable and possesses excellent conceptual clarity. Contributes significantly to the circle management. All the Departments working under him have shown remarkable performance. I consider him eminently suitable for promotion to the grade of General Manager.

1999

The Officers strength are his excellent knowledge, high integrity and strong desire to act effectively. With a little moderation at times he could be an excellent friend philosopher and guide. Overall, I consider him quite suitable for promotion.

2000

Sri Ananthanarayanan is highly talented, intelligent and experienced and is a person of high integrity. He is however self-opinionated, emotional and unrealistic. The realisation of his potential would depend on his self-discipline. Although he has not been amenable to counselling, based on his positive attributes and my sincere hope and desire that he would control these negative tendencies, I rate him as excellent and consider him suitable for promotion as per Bank Rules

(The above adverse remarks were not communicated to the petitioner)

Index : Yes.

Internet:Yes.

Svn.

To

1. The Secretary to
Government of India
Union of India
Ministry of Finance, New Delhi

2. The Governor
Reserve Bank of India
Central Office
Fort, Mumbai 400 001

3. The Chairman

State Bank of India
State Bank of India Central Office
Building
Madame Cama Road
Mumbai-400 021

4. Mr.A.K.Purwar
General Manager
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

5. Mr.P.J.Sampathkumar
Managing Director
S.B.I. Securities Limited
Mumbai

6. Mr.T.S.Vaidyanathan
General Manager
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

7. The Managing Director
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

8. Deputy Managing Director (Personnel)
State Bank of India
State Bank of India Central Office
Building, Madame Cama Road
Mumbai-400 021

9. The Chairman
State Bank of India
Central Office
Nariman Point
Mumbai-400 021

10. The Managing Director
(National Banking)
State Bank of India
Central Office
Nariman Point
Mumbai-400 021

11. Shri R.C.Sharma
Chief General Manager

State Bank of India
Local Head Office
College Road
Chennai-600 006

12. Shri S.C.Das
General Manager (Commercial Banking)
State Bank of India
Local Head Office
College Road
Chennai-600 006
13.The Managing Director (National Banking)
State Bank of India
SBI Central Office Building
Madame Cama Road
Mumbai-400 021

14. The Departmental Committee for G.M.
Promotion
C/o The Deputy Managing Director
(Personnel) and C.D.O
State Bank of India
SBI Central Office Building
Madame Cama Road
Mumbai-400 021

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