

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.6.2006

CORAM

THE HON'BLE MR.JUSTICE P.K.MISRA

and

THE HON'BLE MR.JUSTICE R.SUDHAKAR

W.P.NOs.4371, 4374 and 4375 of 2001  
and

W.P.M.P.No.6168 of 2001

W.P.No.4371 of 2001

1. The Union Public Service Commission  
rep. by its Secretary, New Delhi
  2. The Selection Committee Constituted  
for preparing 1995-1996 Selection List  
rep. by Mr.Krishna Mohan,  
Chairman of the Committee,  
Union Public Service Commission,  
New Delhi
- ... Petitioners

-vs-

1. R.Sivakumar, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
2. The State of Tamil Nadu,  
rep. by its Chief Secretary to Government,  
Fort St. George, Chennai 9.
3. The Union of India,  
rep. by the Secretary to Government,  
M/s Personnel, Public Grievances and Pensions,  
New Delhi.
4. Dr.J.Radhakrishnan, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

5. Rajendra Kumar, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
6. Neeraj Mittal, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
7. Rajesh Lakhani, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
8. Mangat Ram Sharma, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
9. Pradeep Yadav, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
10. Kumar Jayant, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
11. P. Annamalai, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
12. K. Gopal, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
13. V. Thangavelu, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
14. V. Murthy, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

15. K.Dhanavel, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

16. The Registrar,  
Central Administrative Tribunal,  
Chennai Bench.

.. Respondents

W.P.No.4374 of 2001

The Union Public Service Commission  
rep. by its Secretary, Shajahan Road,  
New Delhi

.. Petitioner

-vs-

1. K.Karuthiah Pandian, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

2. The Union of India,  
rep. by the Secretary to Government,  
M/s Personnel, Public Grievances and Pensions,  
New Delhi.

3. The State of Tamil Nadu,  
rep. by its Chief Secretary to Government,  
Fort St. George, Chennai 9.

4. V.Thangavelu, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

5. V.Murthy, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

6. K.Dhanavel, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

7. Tmt.Kannegi Packianathan, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

8. Basheer Ahmed, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

9. R.Sivakumar, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

10.M.Malik Feorze Khan, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

11.A.S.Jeevarathinam, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

12.The Registrar,  
Central Administrative Tribunal,  
Chennai Bench.

... Respondents

W.P.No.4375 of 2001

1. The Union Public Service Commission  
rep. by its Secretary, New Delhi

2. The Selection Committee Constituted  
for preparing 1995-1996 Selection List  
rep. by Mr.Krishna Mohan, Chairman  
of the Committee,  
Union Public Service Commission,  
New Delhi

.. Petitioners

-vs-

1. R.Sivakumar, IAS  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.

2. The State of Tamil Nadu,  
rep by its Chief Secretary to Government,  
Fort St. George, Chennai 9.
3. The Union of India,  
rep. by the Secretary to Government,  
M/s Personnel, Public Grievances and Pensions,  
New Delhi.
4. V.Thangavelu, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
5. V.Murthy, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
6. K.Dhanavel, IAS,  
C/o Chief Secretary,  
Government of Tamil Nadu,  
Fort St. George, Chennai 9.
7. The Registrar,  
Central Administrative Tribunal,  
Chennai Bench.

.. Respondents

Writ petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records pertaining to O.A.Nos.238, 466 and 781 of 1998 on the file of the Tribunal order dated 13.11.2000 and quash the same.

Mr.V.T.Gopalan, Addl.  
Solicitor General  
for Mr.R.Santhanam,  
Sr, CCG in all W.Ps. : For petitioners

Mr.G.Masilamani, SC  
for Mr.R.Sivasubramanian: For R1 in WP 4371 &  
4375/01

Mr.Vijay Narayan, SC  
for R.Parthiban : For R1 in W.P.No.4374/01

Mr.NGR.Prasad and  
Mr.Chandrasekaran for  
Mr.C.M.Krishna Kumar : For R10 and R11 in  
W.P.4374/01



Mr.Bader Sayeed Addl.  
Advocate General,  
assisted by

Mr.P.P.Shanmugasundaram : For R2 in W.P.4371 &  
4375/01 & for R3 in W.P.4374/01

Mr.G.Sankaran : For R7 to R13 & R14 in  
W.P.No.4371/01 and for  
R4 & R5 in W.P.4374/01

#### COMMON JUDGMENT

P.K.MISRA, J.

These three writ petitions have been directed against a common Judgment passed by the Central Administrative Tribunal arising out of O.A.Nos.238, 466 and 781 of 1998.

2. O.A.No.238 of 1998 is filed by Mr.R.Sivakumar to call for the records of the Select List of 1996 of the respondents 1 to 4 along with the subsequent notification in No.F.14015/22/96-AIS(I) of the Ministry of Personnel, Public Grievances and Pensions, Government of India, dated 30.12.1996 and set aside the placement of 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents in the Select List at S.No.1,2 and 3 respectively and direct the respondents 1 to 4 to place the applicant as against S.No.1 in the Select List of 1996 and accordingly reissue the notification in No.F.14015/22/96-AIS(I) of the Ministry of Personnel, Public Grievances and Pensions, Government of India, dated 30.12.96.

3. The very same applicant R. Sivakumar also filed O.A.No.781 of 1998 calling for the records of the impugned proceedings of the 4<sup>th</sup> Respondent dated 23.6.1997 in F.No.14014/10/96-AIS(I), Government of India, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, communicated vide Letter No.4030/97-1, Public (Special-A) Department, Fort St. George, Chennai 600 009, and quash the impugned proceedings in F.No.14014/10/96-AIS(I), Government of India, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, dated 23.6.1997 and further direct the Respondents 1 to 4 to allot 1991 as a year of allotment and place the applicant below Mr.V. Murthy and above the 5<sup>th</sup> Respondent in interse seniority list of the IAS Officers of Tamil Nadu Cadre.

4. O.A.No.466 of 1998 had been filed by one S.Karuthiah Pandian for quashing the Select List of 1996 and other records relating to fixation of seniority ordered in Select List No.14014/17/97-AIS(I) dated 28.2.1997 as conveyed in G.O.Ms.No.917, Public (Spl.A)

Department, dated 29.07.1997 and to revise the seniority of the applicant by placing him in the appropriate place and confer all the consequential benefits.

5. In all the original applications, Union of India, Union Public Service Commission and the State of Tamil Nadu had been arrayed as respondents 1 to 3 and the persons included in the select list had also been arrayed as respondents. For convenience, the parties shall be referred to by their name.

6. The background and facts giving rise to the present writ petitions can be narrated briefly as follows. The question relates to the preparation of select list for promotion of officers in the State Civil Service to the Indian Administrative Service. During the year 1996, 8 vacancies were expected to be filled up and therefore, as per the regulation, a select list of 10 persons was required to be prepared. Accordingly, a Selection Committee headed by a member of the Public Service Commission Mr. Krishnamohan was constituted and it included 4 other members. The names of 30 senior most officers in the State Civil Service were taken up for consideration by the Selection Committee. The Selection Committee, by its proceedings dated 18.03.1996 prepared a select list of 10 persons. In such list, the name of the Applicant in O.A.No.238 of 1998, Mr. Sivakumar, was included at Sl.No.7 and that of K. Karuthiah Pandian, Applicant in O.A.No.466 of 1998 was included at Sl.No.10. Initially, the State Government forwarded such select list without any comment. Certain representations were made on behalf of State Civil Service Officials Association alleging that many of the senior officers had been unjustifiably ignored and some of the senior officers included in the list had been pushed down with a view to accommodate some junior officers. In response to Government of India DOP & T letter dated 19.7.1996, by letter dated 26.07.1996, which emanated from the Government of Tamil Nadu, it was intimated that the entire service records of two persons namely S. Natarajan and Mr. Dhanavel were not available with the Selection Committee at the time of meeting on 18.03.1996. On 13.08.1996, the Government of India, wrote a letter to the Union Public Service Commission indicating the absence of ACR's of two officers and to examine the matter in detail and take remedial measures. On 30.08.1996, the Union Public Service Commission decided to reconvene the meeting of Selection Committee after obtaining the missing ACR's and requested the State Government to make available the service records of Mr. S. Natarajan and Mr. Dhanavel. The fresh Selection Committee was headed by the very same member Mr. Krishnamohan, but of the new six members committee, four members, were new and were not members earlier. The new Selection Committee reconsidered the records of Mr. Dhanavel and Mr. S. Natarajan and prepared a fresh list which was communicated to the Union Public Service Commission by letter dated 21.11.1996. While Mr. Dhanavel was retained at the original position at Sl.No.3, Mr. S. Natarajan, who had been placed at Sl.No.4 in

earlier list of 18.3.1996 was placed at Sl.No.10 in the new list dated of November, 1996 and because Mr.Natarajan was pushed down at Sl.No.10 and the persons occupying the earlier select list dated 18.03.1996 at Sl.Nos.5 to 10 gained one place and accordingly R.Sivakumar, who was at Sl.No.7 became Sl.No.6 and Mr.Karuthiah Pandian, who was at Sl.No.10 became Sl.No.9. Such revised select list was approved by the Union Public Service Commission on 13.12.1996 and was acted upon by the Government of India, by passing order dated 30.12.1996, promoting Sl.Nos 1 to 8 of the select list to the cadre of I.A.S. Subsequently, Mr.Karuthiah Pandian was appointed as I.A.S. on 03.01.1997. Thereafter, Mr.R.Sivakumar filed O.A.No.238 of 1998 mainly challenging the wrong placement of Mr.V.Thangavelu, Mr.V.Moorthy and Mr.K.Dhanavel at Sl.Nos.1 to 3 of the select list and praying for setting aside the placement of those persons and claiming that he should be placed at Sl.No.1 of the list. In such original application, those three persons had been arrayed as respondents 5, 6 and 7 respectively. However, the other persons in the select list including Tmt.Kannagi Bhagyanathan and Mr.Basheer Ahmed who were placed above Mr.Sivakumar were not impleaded as respondents. Subsequently, Mr.Sivakumar also filed O.A.No.781 of 1998 claiming seniority over the direct recruits and also Mr.V.Thangavelu, Mr.Murthy and Mr.Dhanavel and that year of allotment should be changed based on such seniority. The other Original Application was filed by Mr.Karuthiah Pandian. In such original application, all the 10 persons included in the select list had been impleaded as respondents.

7. The main contention raised in the original applications challenging the select list were two fold. It was first contended that Mr.Krishnamohan who was the Chairman of the Selection Committee which prepared a selection list on 18.03.1996, should not have functioned as Chairman of the reconvened Selection Committee held on 7/8th November, 1996. Allegation of mala fide were made against Mr.Krishnamohan that he had obtained certain concessions from the Government and Mr.S.Natarajan being the Private Secretary of the then Chief Minister had helped him in such matter and therefore the select list was vitiated on the ground of personal bias and vested interest. It was also indicated by Mr.Sivakumar that since he was an office bearer of the State Civil Service Officers Association and since such association had made representation against the Selection Committee, the Committee bore a grudge against him. It was also contended that the select list was prepared without application of mind and based on incomplete record and therefore it was not properly drawn. The second contention relates to arbitrariness in preparing the select list. It was contended that the administrative record of both the applicants were outstanding throughout and those two applicants should have been categorised as 'Outstanding' and not as 'Very good' and because of such arbitrary and mala fide categorisation, the two applicants had been pushed down in the select list. The Selection



Committee represented through the Chairman of the Committee Mr.Krishnamohan had been arrayed as respondents in the original application filed by Mr.Sivakumar.

8. Before the Tribunal, separate counter affidavits were filed by the Union Public Service Commission in O.A.No.238 of 1998 and O.A.No.466 of 1998. Apart from the procedure contemplated in the Rules and Regulations, it was stated that on comparative statement of the service records of all the officers coming within the zone of consideration, the Selection Committee had categorised Mr.Thangavelu, Mr.Murthy and Mr.Dhanavel as 'Outstanding' and had categorised the other persons in the select list as 'Very good' and thereafter, on the basis of such categorisation, the list had been prepared, keeping in view the relative seniority. It was also indicated that the Selection Committee consisting of one member of the Union Public Service Commission and several senior officers of the State Government had decided the matter keeping in view the relative merits of the candidates and in such circumstances the assessment was not open for challenge or to be reassessed by the Tribunal. The Union of India and State Government also had filed counters taking almost similar stands.

9. Before the Tribunal, the relevant records including the service records of all the persons in the select list was made available. The Tribunal, on consideration of the materials and records, came to the conclusion that even though Mr.Krishnamohan had died in the meantime and while he is not in a position to file any counter rebutting the allegations relating to mala fides, the Union Public Service Commission had not specifically rebutted the allegations relating to mala fides and therefore, it was contended that the allegations un-rebutted should be taken to be true. In other words, the Tribunal came to the conclusion that preparation of the select list was vitiated by mala fides of the Selection Committee, which was headed by Mr.Krishnamohan. The Tribunal, held as follows:-

"In the reply filed by the UPSC, there is not even a whisper controverting the above averment made by the applicant. It may be true that Mr.B.Krishnamohan, the then member of the UPSC is no longer alive to defend himself. But, it is expected that the UPSC is duty bound to have touched upon this point which has a direct bearing on the functioning of the selection committee. It is not an allegation which has been made in a huff by an irresponsible person; but, has been made by a responsible SCS officer (now in IAS) who had put in more than 15 years of service and has even quoted the incident with details about the persons. Neither the Tamil

Nadu Government nor the UPSC have chosen to controvert the above said allegation with regard to mala fide attitude on the part of the then Chairman, who headed the selection committee meeting. Had the mist of mala fides or malice in action been cleared, the selection committee's proceeding cannot be termed as biased. But that has not been done. We therefore hold that, in the absence of rebuttal, the attitude of mala fides attributed to the selection committee, UPSC and the State Government cannot be brushed aside."

10. The Tribunal further observed that though ordinarily it was not within the jurisdiction of the Tribunal to re-assess the selection process. Since the action of the Tamil Nadu Government, the Selection Committee and the UPSC bristled with lot of irregularities, the Tribunal has jurisdiction to interfere with the proceedings of the Selection Committee when glaring injustice had been done to meritorious State Civil Service Officers. In this connection, while considering the issues, the Tribunal had further observed that, in the subsequent selection meeting the grading of one officer was changed from 'Outstanding' to 'Very good' (apparently S.Natarajan who was considered 'Outstanding' in the first selection list and placed at Sl.No.4 was considered 'Very good' in the second selection and was pushed down to Sl.No.10).

11. In this connection, the Tribunal observed as follows:

"The applicants in O.A.Nos.238 and 466 of 1998 have claimed that all along they have been uniformly graded as 'outstanding' during their entire career as SCS officers and in particular during the preceding five years of the selection committee meeting and therefore the grading/categorisation given to them by the selection committee as 'very good' is not correct and cannot be sustained. In order to examine this aspect of the case we were inclined to peruse the ACR dossiers of the applicant and their gradings, as prepared by the State Government to facilitate the selection committee and we want to record our views on this aspect. In this connection, we would like to observe that our action on the face of it may look as if we are sitting over the assessment of the selection committee as an appellate body. But, based on the other details of the case with regard to the controversy relating to missing ACRs, the decision to reconvene the meeting which

ultimately had resulted in downgrading the assessment of atleast one officer, we hold that it would not be totally incorrect to give some credibility to the claim of the applicants that there is not only bias but there is arbitrariness in the action of the selection committee. We reiterate that there is some truth in the assertion made by the applicants in these OAs. Therefore, in order to find out as to whether the action of the selection committee would come within the ambit of arbitrary action and consequently there is violation of Art.14 and 16 of the Constitution, needs examination. We have therefore no hesitation to observe that our action cannot be termed as if the Tribunal is acting as an appellate body, but is entitled to examine whether the methodology adopted is according to the rules or there is non-following of the rules/regulations and whether is based on actual recorded facts or not."

12. The Tribunal further observed as follows:-

"We further would like to observe that a perusal of the ACRs of the two applicants alone would not suffice. In fact, 10 officers were included in the select list for appointment to the IAS and therefore any change in the gradings given to the applicants would adversely affect the interest of the other officers considered and included in the select list. Though we are compelled to go into the details of the gradings given to the applicants, we refrain from passing any specific remark, except holding that the whole exercise is required to be done afresh in accordance with the rules/regulations on the subject. We therefore once again reiterate that this Tribunal has got the right to interfere with the proceedings of the selection committee when it is apparent that injustice has been done to the officers considered by it and which fact has also been proved beyond doubt as incorrect procedure has been followed."

13. Ultimately, after perusing the relevant ACRs of Mr.Sivakumar, the Tribunal concluded that he had been graded 'outstanding' for four years and for one year 'very good' and as a matter of fact, even in the year, where he had been considered as 'very good', the reporting officer had considered him to be 'outstanding'. Ultimately, the Tribunal, summarised its conclusion



in paragraph 45. The summary of such conclusion is to the effect that the allegation of bias had not been rebutted by the official respondents. The UPSC had also erred by reconvening the same selection committee and by doing so, they had exceeded the jurisdiction and there was arbitrariness in the proceedings of the selection committee which had categorised one officer as 'outstanding' in the first meeting without complete records, whereas the very same officer was down graded as 'very good', which only indicate that there was non application of mind on the part of the Selection Committee. There has been deviation from the past practice/convention with regard to assigning of seniority in pursuance of inclusion in the select list and the action of the official respondents suffers from the vice of arbitrariness. If there was any fall in standard of any particular person, that should have been communicated which has not been done in the present case. There was no basis for the grading given to the applicant in O.A.No.466 of 1998 Mr.Karuthiah Pandian, especially that during the relevant period, his ACR has been graded as 'outstanding' and therefore, the action of the Selection Committee was arbitrary. The Official respondents have failed to follow Regulation 3(b) of IAS (Regulation of Seniority) Rules 1988. The other member of the Tribunal by agreeing with the findings in the main judgement had also furnished additional legal discussions, but it is not necessary to repeat those aspects. Ultimately, the Tribunal quashed the impugned orders and directed the official respondents to consider the case of the applicants vis-a-vis the private respondents in the original applications by constituting a fresh selection committee, for drawing up a fresh select list.

14. After pronouncing the judgment in the above matter, the Tribunal also clarified to the following effect:

"The promotion of the applicants and private respondents to the IAS cadre is not affected by this order. It stands as it is. The grading, seniority and the year of allotment to be given would form the subject matter to be considered by convening a selection committee".

15. Such Judgment and direction of the Tribunal has been challenged in these writ petitions by the Union Public Service Commission.

16. The main contention raised by the Additional Solicitor General appearing for the UPSC are to the following effect:-

The Tribunal has committed grave irregularity in concluding mala fides merely because the UPSC had not specifically rebutted the allegations relating to mala fides and particularly when the Tribunal had come to the conclusion, that Mr.Krishnamohan against



whom allegations of mala fides had been made, had died in the mean time when the matter was taken up by the Tribunal, therefore was not in a position to rebutt the allegations of mala fides. It is further submitted that the allegations relating to mala fides are very vague and even though unrebutted could not have been accepted. The other contention of the petitioner is to the effect that the selection committee consisting of highly responsible and senior officers including the member of the Union Public Service Commission cannot be reviewed by the Tribunal and at any rate, the opinion of the Tribunal is based mainly on the so called mala fides and there was no justification to sit in appeal over the assessment made by the Selection Committee and the Union Public Service Commission.

17. The counsel appearing for the Union of India and the State Government who had been arrayed as respondents in the present writ petitions have more or less supported the stand taken by the Public Service Commission.

18. The counsels appearing for Mr.Sivakumar and Mr.Karuthiah Pandian have supported the decision of the Tribunal. They have also contended that the ACRs of those two applicants being 'outstanding' throughout, their gradation by the selection committee as 'very good' was most arbitrary and based on non application of mind and therefore the direction of the Tribunal for reconsideration is justified.

19. Mr.N.G.R. Prasad, appearing for other private respondents has submitted that in the original applications, all the necessary parties had not been impleaded and therefore the Tribunal should have dismissed the original applications.

20. Before considering the contentions raised by the counsels appearing for different parties, certain basic aspects may be noticed. On the basis of the select list, 8 officers were promoted to the cadre of IAS on 30.12.1996 and the 9<sup>th</sup> person in the select list was promoted to IAS on 03.01.1997. It is stated at the bar that the other persons in the select list viz., Mr.S.Natarajan has been subsequently promoted to IAS. The select list has not been challenged as such either by Mr.S.Natarajan or by the persons who were also considered in the selection committee. The direction of the Tribunal that the promotion of the concerned officers namely persons in Sl.Nos.1 to 9 in the select list stood confirm and the only question to be considered is relating to their relative rank in the select list, which may have the effect of altering their year of allotment and inter-se seniority. Such a direction given by way of explanation even though criticised is not specifically challenged. In other words, the select list consisting of 10 persons as such is final. The only question is whether there should be reconsideration of the relative grading within the select list as such.

21. Even though in the original applications, lot of grievances had been made that seniority was not considered while preparing the select list, the regulations as it stood at the relevant time clearly indicate that the select list has to be prepared according to merit. The zone of consideration consists of three times the number of persons to be included in the select list. For the relevant year, 10 persons were to be included in the select list and therefore, 30 officers according to their seniority came within the zone of consideration. Those aspects are no longer in challenge.

22. The main address of the learned Additional Solicitor General is regarding the finding of mala fides. We have carefully gone through the assertions made in both the original applications relating to mala fides.

23. It is seen that the main allegation regarding mala fides are the inclusion of the name of one Mr.Natarajan in the original select list wherein he had been included at Sl.No.4. The allegation was to the effect that the relevant ACRs of Mr.S.Natarajan and of Mr.Dhanavel were not available at the time of first consideration and yet those two persons were considered by the Selection Committee on 18.3.1996 and graded as 'outstanding'. It was further alleged that Mr.S.Natarajan happened to be the Private Secretary to the then Chief Minister and the son in law of Mr.Krishnamohan was favoured with prime posting and thereby Mr.Krishnamohan was beholden to Mr.S.Natarajan. So far as the absence of the relevant ACR records of the two is concerned, such aspect was subsequently rectified in the sense that the selection committee was reconvened for the purpose of assessing the ACRs on 7<sup>th</sup> and 8<sup>th</sup> November 1996. Thereafter, Mr.S.Natarajan, who was placed at Sl.No.4 was placed at Sl.No.10. Obviously, the grievance which related to inclusion of Mr.S.Natarajan becomes irrelevant for the present adjudication since Mr.S.Natarajan was shifted from Sl.No.4 to Sl.No.10, thereby going below all of the persons in the select list of December 1996. Further in view of the above stated event the allegations relating to mala fides was not pursued by the counsel for the contesting respondents at this point of time. Since Mr.Krishnamohan was not alive to give reply, no adverse inference could have been drawn, merely because Mr.Krishnamohan had not given any categorical reply. In such view of the matter, in our considered opinion, the conclusion of the Tribunal regarding mala fides on the part of the selection committee and in particular regarding mala fides attributed to Krishnamohan cannot be said to have been established in the manner required by law particularly, keeping in view several decisions of the Supreme Court holding that the standard of proof required for proving the allegations of mala fides is much more and cannot be accepted on mere allegations.

24. The next question is whether the Tribunal was justified in directing the UPSC for reconsideration of the matter. It is of

course true that the Tribunal has observed, instead of reconvening the same selection committee, the UPSC should have constituted a fresh selection committee because according to the Tribunal, the decision of the Chairman of the earlier selection committee viz., the member of the UPSC was tainted with mala fides. Now that the allegations relating to mala fides had been discredited by us, this reasoning of the Tribunal may not be strictly justified. Moreover, factually the Tribunal was not correct in observing that the same selection committee had been reconvened. As a matter of fact, it appears that the first selection committee consisted of five persons including member, UPSC Mr. Krishnamohan and the subsequent selection committee of November, 1996 consisted of six persons out of which Mr. Krishnamohan and another person viz., G. Ranga Rao, the then Principal Commissioner and Commissioner for Revenue Administration, Government of Tamil Nadu were in the earlier selection committee; whereas 4 new persons had been nominated, who were not members of the earlier selection committee of March, 1996. Therefore, the said reasoning of the Tribunal cannot be strictly justified. However, a perusal of the decision of the Tribunal makes it clear that the Tribunal was of the opinion that there was non application of mind on the part of the committee to relevant materials and therefore the process of preparing the panel of select list was vitiated. At any rate, it has been contended before us that in view of outstanding record of the two applicants viz., Mr. R. Sivakumar and Mr. Karuthiah Pandian, the selection committee had acted arbitrarily by grading such officers as 'very good' and such officers should have been categorised as 'outstanding'. Since the Tribunal was directing the Selection Committee to reconsider the matter, a detailed analysis of the entries made in the ACR of these two officers and other officers became necessary. In the original applications, it had been categorically asserted that the past record of these two officers were throughout 'outstanding', but neither in the counter affidavit filed before the Tribunal nor in the affidavits filed in support of the writ petitions anything has been indicated as to why such officers were graded as 'very good' and not 'outstanding'.

25. In the written statement filed by the UPSC, in O.A.No.238 of 1998 filed by Mr. R. Sivakumar, the relevant assertions are to the following effect:-

"3.2 In terms of Regulation 5(4) of the said Regulations, the said Committee duly classifies the eligible State Civil Service officers included in the zone of consideration as 'outstanding', 'very good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records. Then, in terms of regulation 5(5) of the said Regulations, the Selection Committee prepares a



list by including the required number of names first from amongst the officers finally classified as 'outstanding', then from amongst those similarly classified as 'very good' and thereafter from amongst those similarly classified as 'Good' and the order of names 'Inter-se' within each category is maintained in the order of their seniority in the State Civil Service."

3.3 Grading given by reporting/reviewing officer in the ACRs reflects the merit of the officers reported upon in isolation whereas the classification made by the Selection committee on the basis of logical and deep examination of the service records of all the eligible officers in the zone of consideration reflects the merit of the officer in relation to other officers in the zone of consideration. Every Selection Committee is independent of the other. It adopts its own norms and yardsticks in order to ensure equity, justice and fairplay in the assessment of ACRs. (emphasis supplied).

11.3 Further, the Selection Committee which met on 18.3.96 considered the names of S/Shri.V.Thangavelu, V.Murthy, K.Dhanavel and S.Natarajan at Sl.No.7,9,14 and 15 in the eligibility list furnished by State Govt. On an overall relative assessment of their service records, the Committee assessed all of them as 'Outstanding'. On the basis of this assessment, their names, were included at Sl.No.1,2,3 and 4 respectively in the Select List. The name of applicant was considered at Sl.No.6 in the eligibility list. On an overall assessment of his service records, the committee assessed him as 'very good'. On the basis of this assessment, his name was included at Sl.No.7 in the Select list."

11.4..... Accordingly, Govt. Of India requested the Commission to have a detailed examination of the matter and take such remedial measures as deemed fit, in terms of Regulation 7 (2) of the Promotion Regulations. The matter was examined by the Commission and on consideration of the various issues, the Commission decided to reconvene the meeting of the Selection Committee after obtaining the



missing ACRs. The reconvened meeting of the Selection Committee was held on 7<sup>th</sup> and 8<sup>th</sup> November 1996. In this meeting, the Selection Committee examined the service records of S/Sh.S.Natarajan and K.Dhanavel as made available by the State Government. The Committee on an overall assessment of the service records of S/Sh.K.Dhanavel and S.Natarajan assessed them as 'outstanding' and 'very good' respectively. On this assessment, the name of Sh.S.Natarajan, who was earlier assessed as 'outstanding' in the meeting held on 18.03.1996, came down to be included at Sl.No.10 in the Select List from his earlier position at Sl.No.4 in the Select List. As a result, the position of the applicant in the Selection list also improved from 7 to 6."

16.1 In reply to para 4(46) to 4(48) of the OA, it is respectfully submitted that for making an overall relative assessment, the Selection Committee as per practice followed in the Union Public Service Commission examines the service records of each of the eligible officers, with special reference to the performance of the officers during the last five years, preceding the crucial date of eligibility for the Select list to be prepared, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then after a detailed mutual deliberation and equitable discussion finally arrives at a classification assigned to each officer. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the CRs to ensure that the overall grading in the CRs is not inconsistent with the grading/remarks under various parameters or attributes. The Selection Committee takes into account orders regarding appreciation for the meritorious work done by the officers concerned and also keeps in view orders awarding penalties or any adverse remarks duly communicated to the officer, which, even after due consideration of his representation by suitable forum are not expunged."

(the averments in various other paragraphs in the written statement on these aspects being repetitive, have not been extracted).

26. So far as Karuthiah Pandian, the applicant in O.A.No.466 of 1998 is concerned, the relative portion of the specific reply on the aspect relating to outstanding service records of the applicant are as follows:

"3.3 Grading given by reporting/ reviewing officer in the ACRs reflects the merit of the officers reported upon in isolation whereas the classification made by the Selection Committee on the basis of logical and deep examination of the service records of all the eligible officers in the zone of consideration reflects the merit of the officer in relation to other officers in the zone of consideration. Every Selection Committee is independent of the other. It adopts its own norms and yardsticks in order to ensure equity, justice and fairplay in the assessment of ACRs. (emphasis added)

5.3 On the other hand, the respondents 4 to 6 namely S/Shri.V.Thangavelu, V.Murthy and K.Dhanavel were considered at S.No.7,9 and 14 respectively in the eligibility list furnished by the State Government. On an overall relative assessment of their service records, all these officers were assessed as 'outstanding'. On the basis of this assessment, their names were included at S.No.1,2 and 3 respectively in the Select List. On the basis of inclusion of their names in the Select List, they were appointed to IAS vide Govt. Of India notification dated 30.12.96.

6.2 The Committee undertakes the detailed exercise enumerated above solely with a view to ensure objectivity, equity and fair play in the selections. Regulation simply prescribes that the Selection Committee will classify the officers into four different categories i.e., 'outstanding', 'very good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of his service records. Nowhere in the IAS (Appointment by Promotion) Regulations, 1955, has it been mentioned as to how the classification is to be made. It is solely the domain of the Selection Committee manned and presided over by competent and able members to devise its own norms and yardsticks for evaluation of his ACRs. The Selection Committee

is, as per Regulations, presided over by Chairman or a Member of the Union Public Service Commission. They have got adequate expertise in the field. Each Committee has to adopt its own norm or yardstick for evaluation. Without such a norm, it is obvious that uniformity in assessment cannot be achieved. Further, merely because the aggrieved officer feels that he was the most deserving, it cannot be held that the Selection Committee could not form the opinions as it did. That was solely within its province and the divergence in assessment does not afford a criterion to hold the Committee's opinion to be perverse.

6.3 Further, it is also submitted that grading given by reporting/ reviewing officer in the ACRs reflects the merit of the officers reported upon in isolation whereas the classification made by the Selection Committee is on the basis of logical and deep examination of the service records of all the eligible officers in the zone of consideration. The applicant cannot substitute his own judgment to that of statutorily set up Selection Committee which include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers."

27. It is not disputed that the Selection Committee is required to make an overall relative assessment of the service records of the various officers coming within the zone of consideration. While considering the validity of the amended Regulation 5 of Indian Administrative Service (appointment by promotion) Regulations 1955, the Supreme Court, in the case of R.S.Dass - vs. - Union of India and others reported in AIR 1987 SC 593, Per Sabyasachi Mukharji, J. in his concurring order in paragraph 4 has observed as follows:-

"4. .... Indeed the amended provision Regn.5 minimised the role of seniority in the process of selection and importance and primacy was given to merit. This indeed is a laudable object and helps in having the best for the country. It is also true that if selection is made on merit alone for promotion to higher service, selection of such an officer though junior in service in preference to his senior does not really amount to supersession. If promotion is made on merit alone, the senior



officer per se has no legal right to promotion and if promotion is made on merit, it cannot be said that a senior officer has been superseded. It has been emphasised that such categorisation is done on the service record. This has also been emphasised that such categorisation is done on the service record including confidential character rolls as maintained by senior officers holding high positions. It is, therefore, according to my learned brother, sufficient safeguard against arbitrary categorisation and misuse of power. I have my reservations on this aspect though I accede to the position that in the absence of any other practicable solution, this is perhaps a sufficient safeguard and perhaps a practical way of facing a rather delicate task. It cannot be said now-a-days if one is aware of the facts and currents of life that simply because categorisation and judgment of the service records of officers are in the hands of senior officers is a sufficient safeguard. There has been considerable erosion in the intrinsic sense of fairness and justice in the senior officers by all concerned. From the instances of conduct of many, some of senior officers and men in high position, it cannot be said that such erosion is not only unjustified."

K.N.Singh.J., who delivered the Judgment on behalf of the Division Bench had observed as follows:-

"28. The Appellants/Petitioners' entertain an apprehension that in the absence of reasons the selection would be made in an arbitrary manner overlooking the claim of a senior officer eligible for promotion to the Indian Administrative Service. In this regard, it was urged that selection on merit confers wide discretion on the authority making selection and in the absence of reason there would be no objectivity and the members of the State Civil Service would receive discriminatory treatment by the committee. The scheme contained in promotion regulations and the criteria prescribed therein for preparing the select list do not justify any such apprehension. The principle object of the promotion system as contained in the regulations is to secure the best possible incumbents for promotion to the Indian Administrative Service which is the backbone of the administrative



machinery of the country. The efficiency of the administration in the Union as well as in the State largely depends upon the efficiency of the members of the Indian Administrative Service. Efficient public service is in public interest and the public interest is best secured if reasonable opportunity for promotion exist for all qualified members of the State Civil Service and only those who are found efficient and suitable in all respects are promoted. This object is sought to be achieved by the Regulations in prescribing merit as the sole test for promotion. In order to judge the merit the regulations provide for categorisation of eligible members of the State Civil Service on the basis of their service records which are scrutinised by the Committee consisting of high ranking officers of the State Govt. and the Central Govt. The service records of all eligible officers whose names are included in the proposed select list and the records of even those who are not selected are again scrutinised by the State Govt. and the Union Public Service Commission and only thereafter final shape is given to the selection list. There are, therefore, adequate checks and safeguards at different stages by different authorities. But if any dispute arises with regard to the arbitrary exclusion of a senior member of the State Service the matter can always be investigated by perusing his service records and comparing the same with the service record of officers who may have been preferred and that would certainly disclose the reasons for the supersession of the senior officer. It is true that where merit is the sole basis for promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of select list under the regulations for promotion to All India Service, ensures objective and impartial selection. The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the selection committee are scrutinised by the State Govt. and

if it finds any discrimination in the selection it has the power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Govt. along with the records of officers, before approving the select list. The selection committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the Courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power." (emphasis added)

"30. An ancillary argument was raised to demonstrate discrimination. It was urged that the regulations do not lay down any guidelines for categorisation of officers of the State Service into various categories with the result the Committee even if acting bona fide may apply different standards at different times. The argument was further developed that the Committee members change and, therefore, the same Committee or different Committee is likely to apply its own standard in judging the suitability of officers in different manner in different years which would result into discrimination. This submission is founded on the assumption that the Committee is free to categorise officers at its sweet will but that assumption is misconceived. Under Regn.5 the Committee has to categorise officers on the basis of their service records into four categories as discussed earlier. The categorisation is objectively made on the material available in the service records of the officers. There is hardly any scope for applying different standards or criteria at different times as the service records namely the character roll entries would indicate the category of the officers as adjudged by the authority recording annual confidential remarks. There is no dispute that in Punjab, under the State Govt.'s

instruction the authority competent to record annual remarks in the character roll of members of the State Civil Service has been directed to indicate the category of the officer, e.g., whether the officer is 'outstanding', 'very good' or 'good'. The annual confidential remarks as available in the character roll of officers of the State Civil Service therefore indicate the category to which a particular officer may belong. We were informed by Counsel for the Union Govt. during the hearing of the cases that under instructions issued by the Union Govt. All the State Govts. are following similar pattern in categorising members of the State Civil Service in the annual remarks made in their confidential records. This has brought uniformity in the character roll entries. Since category of members of State Civil Service is available in their service record, the Committee has not discretion to disregard the same. The Committee has to categorise the members of the State Service on the basis of entries available in their character roll and thereafter to arrange their names in the proposed list in accordance with the principles laid down in Regn.5. There is no scope for applying different standard or test in preparing the list, or to practise discrimination. We, therefore, find no merit in the submission that Regns.3 and 5 are discriminatory and they violate Arts.14 and 16 of the Constitution."

28. In (2000) 8 SCC 395 (Badrinath vs. Government of Tamil Nadu and others) it was observed as follows:

"38. Normally, this Court does not enter into question of the correctness of assessment made by Departmental Promotion Committees (or Joint Screening Committees)."

"40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the



positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no responsible person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed."

"41. While the courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committees, the executive is also to bear in mind that, in exceptional cases, the assessment of merit made by them is liable to be scrutinised by courts, within the narrow Wednesbury principles or on the ground of mala fides. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that courts or Tribunals may not - by quoting this case as an easy precedent - interfere with assessment of merit in every case. Courts and Tribunals can neither sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precedent only in rare cases."

29. In (2005) 10 SCC 15 (UPSC - vs - K.Rajaiah and Others) after referred to observations in A.I.R. 1992 Supreme Court 1806 (cited supra) which in its turn had referred to 1987 Supreme Court 593 regarding non-requirement to give reasons and the necessity regarding procedural fairness, it was observed as follows:-

"9. .... That being the legal position, the Court should not have faulted the so-called down gradation of the first respondent for one of the years. Legally speaking the term "downgradation" is an inappropriate expression. The power to classify as "outstanding", "very good", "good" and "unfit" is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government but, for good reasons, the



Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs. That is what has been done in the instant case in respect of the year 1993-94. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons. But having regard to the nature of the function and the power confided to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision." (emphasis added)

10. What remains is whether the case of the first respondent was duly considered vis-a-vis the other eligible officers including Respondents 5 to 7. The question is whether the non-selection of the first respondent to IPS against the vacancies pertaining to A.P. State for the year 1999 is on account of non-adherence to relevant rules or arbitrariness in the process of selection." (emphasis added)

30. From a conjoint reading of the aforesaid decisions, the following principles can be summarised:

(1) While preparing the select list, the selection committee is required to categorise various officers as 'outstanding', 'very good', 'good' etc. on the basis of merit and if on that basis, a junior officer can be preferred as being more meritorious and it cannot be said there is a supersession.

(2) While judging the relative overall merit of the officers, the selection committee is ordinarily guided by the entries made in the ACR. However, the selection committee is not necessarily bound by the entries made in the ACR and the classification made by State Government and can come to its own conclusion different from the conclusion of the recording officer or ranking officer. While doing so, the selection committee is not obliged in law to record any specific reason even though it may be desirable to do so. However, the selection committee cannot do so arbitrarily.

(3) If it is found that the selection committee has acted arbitrarily or unreasonably, the Court can interfere with such proceedings of the selection committee in appropriate cases by keeping in view the restricted scope of judicial review in such matters.

31. The necessary corollary however seen from these proceedings is that, when the action behind the proceedings of the selection committee challenged in a Court of Law and it is shown prima-facie that there has been degree of arbitrariness, the appropriate authority should place on record the relevant materials so that the judicial conscience of the Court is satisfied.

32. Judging of the above principles, it is seen that the Tribunal found that the earlier Selection Committee which met on 18.3.1996 had acted irregularly inasmuch as the records, namely, ACRs considered by the selection committee in respect of two of the officers who were placed very high in the select list were not complete and as a matter of fact in the subsequent proceedings, categorisation relating to one such officer was changed from 'outstanding' to 'very good' based on the ACR received. In contrast, the two applicants before the Tribunal apparently had fairly brilliant record as apparent from the assertions made in the original application and not refuted in any significant manner. In such view of the matter, the ultimate conclusion of the Tribunal that the matter required to be reconsidered can be said to be coming within the parameters of the principle as enumerated by the Supreme Court. The Tribunal had rightly observed that the UPSC had merely stated that the procedure was followed in general without giving any specific justification as to how and why these two officers were not considered 'outstanding' inspite of consistent recording of ACRs as 'outstanding'.

33. There is yet another aspect upon which we are inclined to agree with the ultimate decision of the Tribunal regarding the reconsideration of the selected candidates. It had been indicated in the reply filed by the UPSC that each selection committee adopts its own procedure and guideline for assessing the relative merit of all the aspirants coming within the zone of consideration. Since such matter is usually considered by the very same committee, it is obvious that some standard or yardstick is applied. In the present case, the Union Public Service Commission had taken a decision to reconvene the meeting in November, 1996. The Selection Committee which considered the case of the Officers on 18.3.1996 and 7<sup>th</sup> and 8<sup>th</sup> November, 1996 are given as per the tabular column below:-

"The Committee met at Madras on the 18<sup>th</sup> day of March, 1996 at 11.00 A.M.

The following were present:

Sl.No	Name and designation	
1.	Shri B.Krishna Mohan Member, Union Public Service Commission	President
2.	Thiru N.Haribhaskar, IAS Chief Secretary to Government of Tamil Nadu	Member
3.	Thiru G.Ranga Rao, IAS Principal Commissioner and Commissioner of Revenue Administration.	Member
4.	Thiru S.Meikanda Devan, IAS Secretary to Government, Revenue Department, Government of Tamilnadu.	Member
5.	Thiru R.Ramani, IAS Joint Secretary to Government of India, Department of Personnel & Training.	Member"

"The Committee met at Chennai on 7<sup>th</sup> and 8<sup>th</sup> November, 1996 at 11.00 A.M. each day.

The following were present:

Sl.No	Name and Designation	
1.	Shri B.Krishna Mohan, Member, Union Public Service Commission.	Chairman
2.	Shri K.A.Nambiar, Chief Secretary, Government of Tamil Nadu.	Member
3.	Shri G.Ranga Rao, Principal Commissioner and Commissioner for Revenue Administration.	Member
4.	Shri P.S.Pandyan, Secretary to Government, Revenue Department.	Member

5.	Shri N.Gopalswami, Adviser, ((Education) Planning Commission, New Delhi.	Member
6.	Shri N.S.Madhavan, Joint Secretary to Government of India, Ministry of Information & Broadcasting, New Delhi.	Member"

The minutes of the meeting held on 7<sup>th</sup> and 8<sup>th</sup> November 1996 is extracted below:-

"Minutes of the meeting of the Selection Committee constituted under Regulation 3 of the IAS (Appointment by Promotion) Regulation, 1955 to reassess the suitability of Shri K.Dhanavel and S.Natarajan, SCS Officers of Tamil Nadu for promotion to IAS Cadre of Tamil Nadu.

The Committee met at Chennai on 7<sup>th</sup> and 8<sup>th</sup> November, 1996 at 11.00 A.M. each day.

The following were present:

Sl.No	Name and Designation	
1.	Shri B.Krishna Mohan, Member, Union Public Service Commission.	Chairman
2.	Shri K.A.Nambiar, Chief Secretary, Government of Tamil Nadu.	Member
3.	Shri G.Ranga Rao, Principal Commissioner and Commissioner for Revenue Administration	Member
4.	Shri P.S.Pandyan, Secretary to Government, Revenue Department	Member
5.	Shri N.Gopalswami, Adviser, ((Education) Planning Commission, New Delhi.	Member
6.	Shri N.S.Madhavan, Joint Secretary to Government of India, Ministry of Information & Broadcasting, New Delhi.	Member



The Committee were informed that the Selection Committee in its meeting held on 18.3.96 had prepared a Select List consisting of 10 names, for promotion of SCS officers to the IAS cadre of Tamil Nadu, Government of Tamil Nadu vide their letter dated 25.3.96 conveyed their agreement with the recommendations of Selection Committee which met on 18.3.96. Subsequently representations/complaints were received from the Tamil Nadu Civil Service Association alleging certain irregularities in the preparation of the Select List of 1995-96.

Referring to State Government's letter dated 25.3.96 the Government of India, Department of Personnel and Training vide their letter dated 26.4.96 also forwarded copies of the representations/complaints to the Commission and requested the Commission, to forward their comments in the matter. Comments of the Union Public Service Commission were sent to Government of India on 27.6.96.

5. In reply to Government of India, DOP & T letter dated 19.7.96, the Government of Tamil Nadu in their letter dated 26.7.96 stated that Confidential Reports for some period in the Personal File Folders of S/Shri S.Natarajan and K.Dhanavel were not available at the time of the meeting held on 18.3.96.

6. On consideration of the position regarding availability of ACRs as intimated by the State Government in their letter dated 26.7.96, the Government of India, DOP & T in their letter dated 13.8.96 observed that in the absence of ACRs for some periods in the cases of Shri S/S.Natarajan and K.Dhanavel the assessment made by the Selection Committee can get vitiated. Accordingly, the Government of India requested the Commission to have a detailed examination of the matter and take such remedial measures as deemed fit in terms of Regulation 7 (2) of IAS (Appointment by Promotion) Regulations, 1955.

7. The matter was examined by the Commission and on consideration of the various issues involved, the Commission decided to reconvene the meeting of the Selection Committee

after obtaining the missing ACRs. Accordingly on 30.8.96 the Government of Tamil Nadu was requested to make available the missing ACRs in respect of S/Shri K.Dhanavel and S.Natarajan. The wanting ACRs in respect of these two officers have now been made available by the State Government. Accordingly, this Selection Committee has now met to reassess the service records of these two officers in the perspective of complete ACRs.

8. The Committee first examined the service records of Shri K.Dhanavel and on an overall assessment of his service records assessed him as 'Outstanding'.

9. Thereafter, the Committee examined the service records of Shri S.Natarajan and noted that for the year 1993-94 (4.3.93 to 29.9.93) the performance of Shri S.Natarajan in respect of physical capacity, knowledge of Rules and Regulations, capacity for noting and drafting promptness, productivity in terms of volume of work, capacity for control and supervision, tact, initiative and drive has been reported as "Good" only. His performance as reflected under various columns of his ACR for the period 1.4.90 to 23.2.91 is also only 'Very Good'. Accordingly the Committee on an overall assessment of his service records assessed him as 'Very Good'.

10. On the basis of the above assessment in respect of two officers (S/Shri K.Dhanavel and S.Natarajan) and the assessment made by the Selection Committee which met on 18.3.96, in respect of 28 other SCS Officers, the Committee recommends that the select list of 1995-96 for promotion of SCS Officers to IAS should consist of the following ten names in the order indicated below:

Sl.No.	Name (Shri)	Date of birth
1.	V.Thangavelu	15.11.1947
2.	V.Murthi	7.1.1948
3.	K.Dhanavel	9.6.1954

4.	Tmt.Kannagi Packianathan (S.C.)	7.3.1955
5.	P.M.Basheer Ahamed	7.4.1955
6.	R.Sivakumar	7.6.1952
7.	M.Malik Feroze Khan	8.3.1954
8.	A.S.Jeevarathinam (S.C.)	1.1.1953
9.	S.Karuthiah Pandian	9.3.1952
10.	S.Natarajan	7.12.1951

11. The Committee was satisfied from the remarks in the Confidential reports of the Officers, selected for inclusion in the list, that there was nothing against their integrity."

On going through the proceedings of the selection committee dated 7<sup>th</sup> and 8<sup>th</sup> November, 1996, it is clear that the Government did not agree with the proceedings of the Selection Committee dated 18.3.1996 and therefore directed the Commission to have a detailed examination of the matter and take remedial measures and therefore, the Commission took decision to reconvene the meeting of the Selection Committee. The New Committee as set out above was formed. On going through the list of members of the Selection Committee, one important factor, which emerges, is that of the 6 members of the Selection Committee which met on 7<sup>th</sup> and 8<sup>th</sup> November 1996, 4 members are different from the members who sat on 18.3.1996. Therefore, in effect only two members are from the committee which sat on 18.3.1996. It is also stated in the minutes of the meeting dated 7<sup>th</sup> and 8<sup>th</sup> November, 1996 that the Selection Committee met to reassess the service records of these two officers in the perspective of complete ACRs. Accordingly, the said two officers were considered and in the case of Natarajan, the ACRs were considered and they found that for the period 1.4.90 to 23.2.91 he was found to be only "very good". Accordingly, the committee on an overall assessment of his service records assessed him as 'Very Good'. As regards the case of Dhanavel, he was graded as "outstanding". Apparently, the case of other officers were not considered by the Selection Committee in its meeting held on 7<sup>th</sup> and 8<sup>th</sup> November 1996. Based on the minutes of the meeting of the selection committee held on 7<sup>th</sup> and 8<sup>th</sup> November, 1996, a list of 10 officers were approved and by the State Government by letter 3665/95-64 dated 21.11.1996 through the Chief Secretary, Government of Tamil Nadu and communicated the select list of the year 1996 to the Secretary, Union Public Service Commission, New Delhi, based on the selection committee proceedings dated 7<sup>th</sup> and 8<sup>th</sup> November, 1996. The Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi recording the observations of the Central



Government and State Government on the recommendations of the selection committee approved the recommendation of the selection committee as contained in the minutes of the meeting held on 7<sup>th</sup> and 8<sup>th</sup> of November, 1996 consisting of the 10 officers indicated earlier. Subsequently, the Government of India, Ministry of Personnel, P.G. & Pensions (Department of Personnel & Training) by Notification dated 30.12.1996 in exercise of power under the Rules and regulations, 1955, appointed 8 officers to the Indian Administrative Service. Therefore, in effect, it is only the meeting of the Selection Committee held on 7<sup>th</sup> and 8<sup>th</sup> November 1996 which in effect while grading only two of the officers had approved the selection list of 10 officers. On going through the proceedings dated 7<sup>th</sup> and 8<sup>th</sup> November, 1996, it is clear that except two officers, the Selection Committee did not consider the case of other officers. Therefore, while deciding the Select list, the Selection Committee held in November, 1996 did not have the benefits of the records of other officers, who are included in the Select List. Therefore, the proceedings of the Selection Committee held on 7<sup>th</sup> and 8<sup>th</sup> November, 1996 is totally arbitrary, illegal and procedurally improper. They did not consider the service records of the other officers before approving the Select List. Hence, the proceedings of the Selection Committee is tainted with procedural irregularity. As stated earlier the whole process of selection and appointment and fixation of seniority is based on the irregular and inappropriate proceedings of the selection committee.

34. It is useful to refer to the decision of the Apex Court in A.P.S.R.T.C. & Ors. - vs. - G.Srinivas Reddy & Ors. reported in JT 2006(3) SC 189, in which the Hon'ble Apex Court held in paragraph 13.1 thus:-

"Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercise the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself."



35. Judicial review is not concerned with the decision, but with decision-making process. There are three basic grounds on which the Court can exercise its power of judicial review. The first is illegality, the second is irrationality and the third is procedural impropriety. It is established in this case by the contesting respondents that the decision of the selection committee suffers from vice of procedural impropriety. Therefore, such decision can be interfered with. In this regard, the following decisions can be referred to:-

(1) Dwarkadas Mafatia and sons - vs. - Board of Trustees of the Port of Bombay reported in (1989)3 S.C.C. 293,

(2) Tata Cellular - vs. - Union of India reported in (1994)6 S.C.C. 651,

(3) Delhi Development Authority - vs. - U.E.E. Electrical Engineering Private Limited reported in (2004)11 S.C.C. 213 and

(4) S.N.Mukkerjee - vs. - Union of India reported in (1990)4 SCC 594.

Taking into consideration this vital aspects the proceedings of the Selection Committee cannot be justified for the above said reason and the proceedings of the Selection Committee will have to be necessarily interfered with and on this reason also we are inclined to accept the order of the Tribunal that the relative seniority of the officers of the select list also requires to be redone.

36. Mr.N.G.R.Prasad, learned senior counsel appearing for some of the private respondents in the original applications submitted that, if any alteration made in the select list, the seniority of the other officers who were not respondent before the Tribunal and before this Court is likely to be affected and therefore, the original applications should be rejected on the ground of absence of necessary party.

37. Even though in O.A.No.238 of 1998 only two persons out of the 10 in the select list had been impleaded as respondents, it is found that in the connected O.A.No.781 of 1998, all the persons in the select list had been impleaded as respondents. The main challenge in the two original applications was relating to the relative placement of the persons in the select list. It is ofcourse true that while considering the question of inter-se seniority, the year of allotment has to be allotted by taking into account the various factors including the weightage to be given for the number of years already served in the State Civil Service and if

the year of allotment is changed, it is quite possible that some candidate may be given the year of allotment different from the year of allotment already given thereby affecting other officers of the highest cadre whose years of allotment had already been fixed. However, the question of year of allotment is an essential matter depending upon the placement in the selection list and existing officers cannot be strictly said to be necessary party. As the matter is to be decided in the presence of the concerned candidate and the Union of India or the Union Public Service Commission, judging in the above light, it cannot be said that necessary parties were not before the Tribunal and when all the three applications were heard together and have been disposed of by a common judgment. For the aforesaid reasons, we confirm the ultimate direction of the Tribunal.

38. For the purpose of clarity and in order to avoid any further dispute in the matter, it is made clear that the appointment of 9 officers by promotion into the cadre of IAS on the basis of the select list as such is not interfered with. The selection committee is only required to consider the relative merit of the 9 officers who have been appointed by promotion to the IAS cadre on the basis of the select list of the year 1996. If on the basis of such re-examination, any of the applicant is considered as outstanding, the seniority and year of allotment may be fixed accordingly. Subject to aforesaid observations, the writ petitions are dismissed. However, there will be no order as to cost. Consequently, connected W.P.M.P. is closed.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rg/dpk/ts

To

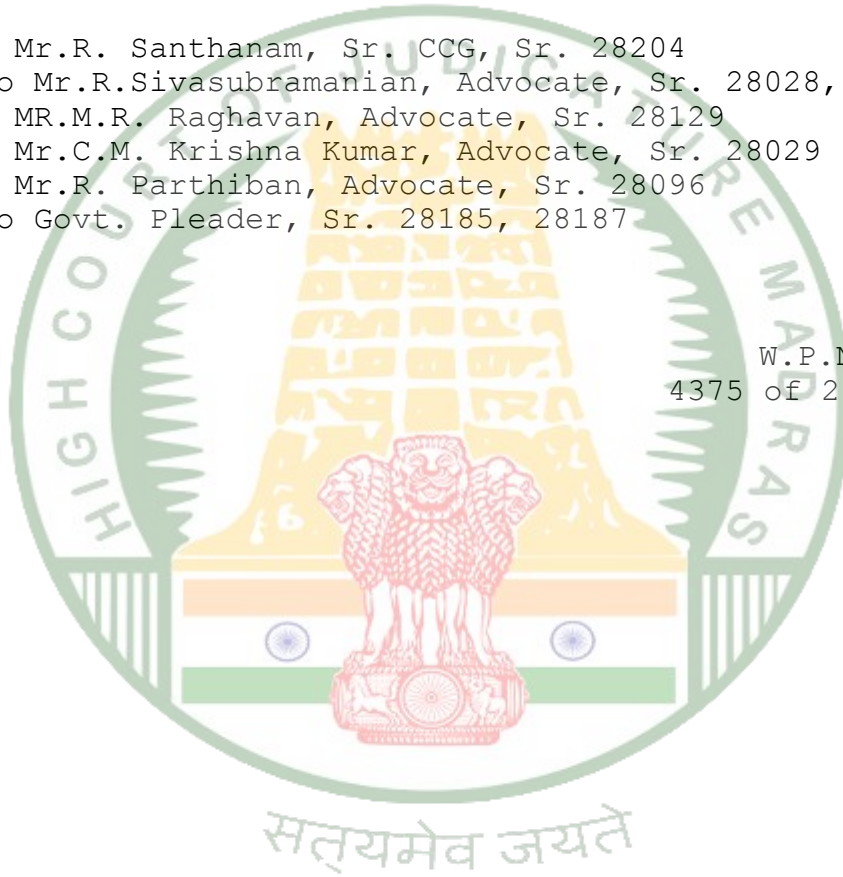
1. The Secretary,  
Union Public Service Commission,  
New Delhi.
2. Mr. Krishna Mohan,  
Chairman of the Selection  
Committee Constituted for  
preparing 1995-1996 Selection List  
Union Public Service Commission,  
New Delhi.

3. The Chief Secretary to Government,  
State of Tamil Nadu,  
Fort St. George, Chennai 9.
4. The Secretary to Government,  
Union of India,  
M/s Personnel, Public Grievances and Pensions,  
New Delhi.
5. The Registrar,  
Central Administrative Tribunal,  
Chennai Bench.

1 cc to Mr.R. Santhanam, Sr. CCG, Sr. 28204  
2 ccs to Mr.R.Sivasubramanian, Advocate, Sr. 28028, 28026  
1 cc to MR.M.R. Raghavan, Advocate, Sr. 28129  
1 cc to Mr.C.M. Krishna Kumar, Advocate, Sr. 28029  
1 cc to Mr.R. Parthiban, Advocate, Sr. 28096  
3 ccs to Govt. Pleader, Sr. 28185, 28187

W.P.Nos.4371, 4374 and  
4375 of 2001

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