

Delhi High Court

Mallinath Jain vs Municipal Corporation Of Delhi on 1 December, 1972

Equivalent citations: ILR 1973 Delhi 572

Author: T Tatachari

Bench: T Tatachari, R Aggarwal

JUDGMENT

T.V.R. Tatachari, J.

(1) This Civil Writ Petition has been filed by Shri Mallinath Jain against the Municipal Corporation of Delhi and others regarding, inter alia, his reversion to the post of Super intending Engineer from the post of Chief Engineer (Water).

(2) The petitioner was appointed on December 22, 1952, as Executive Engineer (Deputy Engineer) in the erstwhile Joint Water & Sewage Board, and was confirmed in the said post on December, 22, 1953.

(3) The Delhi Municipal Corporation Act, 1957, came into force on April 7, 1958, whereupon the Delhi Municipal Corporation came into being and the erstwhile Joint Water & Sewage Board merged in the Corporation. As a consequence, the petitioner became an officer of the said Corporation. Also, under the said Act, the Water Supply & Sewage Disposal Undertaking was formed and a Committee known as Water Supply & Sewage Disposal Committee has been looking after the affairs of the said undertaking.

(4) The petitioner was promoted to the post of Superintending Engineer in the grade of Rs. 1300-1800 with effect from March 1, 1964, on ad hoc basis. One Shri J. D. Cruz (respondent 6) was appointed as Superintending Engineer on December 31, 1964, on ad hoc basis, and another, Shri M. L. Anand (respondent 7) was appointed as Superintending Engineer on May 1, 1967, on ad hoc basis. The petitioner was continued as Superintending Engineer by extension of the period of appointment from time to time up to June 11, 1969, with the concurrence of the Union Public Service Commission. On November 14, 1967, the Corporation passed a Resolution making certain recruitment rules (Annexure IV) whereby, inter alia, the post of Chief Engineer (Water) was declared to be a selection post, and was required to be filled by prounction, failing which by transfer on deputation, and failing both by direct recruitment. In the case of recruitment by promotion, the appointment to the post of Chief Engineer was required to be made from amongst the Superintending Engineers with five years' service in the said grade. By a resolution (Annexure II) of the Delhi Municipal Corporation dated June 3, 1969, the petitioner was appointed, on the recommendation of the Water Supply and sewage Disposal Committee by its resolution, dated May 30, 1969, as Chief Engineer (Water) in the Grade of Rs. 2000-2250 on ad hoc basis for a period of one year with effect from June 11, 1969 or till such time as the post is filled through the Union Public Service Commission on a regular basis whichever is earlier. The said appointment was approved by the Lt. Governor, Delhi on February 23, 1970, (Annexure III) without obtaining the approval of the Union Public Service Commission as provided in section 89 of the Delhi Municipal Corporation Act, 1957.

(5) In the mean time, on September 22, 1969 the Departmental Promotion Committee of the Corporation considered the cases of three eligible Executive Engineers in the order of their seniority for regular appointment to three posts of Superintending Engineer and assessed their confidential reports as shown below :-

S. No.	Name	Assessment
1.	Shri M. N. Jain	Good
2.	Shri J. D. Cruz	Very Good
3.	Shri M. L. Anand	Very Good"

(6) On the basis of the said assessment the Committee recommended the inclusion of the names of the aforesaid three officers in a panel for officiating promotion to the grade of Superintending Engineer, Water Supply & Sewage Disposal Undertaking Municipal Corporation of Delhi, in the following order :-

"1. Shri J. D'Cruz 2. Shri M. L. Anand 3. Shri M. N. Jain (vide Annexure R-IV)"

(7) It has to be noted that although the petitioner (Shri M. N. Jain) was senior to both Shri J. D'Cruz and Shri M. L. Anand in the grade of Executive Engineers he was shown in the aforesaid panel as junior to the other two officers on an assessment of the confidential records relating to them. Subsequently on October 13, 1969, certain adverse remarks in the confidential reports relating to the petitioner for the years 1966 and 1968 which had not been communicated to the petitioner earlier were communicated to the petitioner. The said communication (Annexure V) reads as under :-

"ODC(W)/1/888 Dated 13-10-69 Confidential Municipal Corporation of Delhi Water Supply & Sewage Disposal Undertaking Link House, New Delhi. Sub : Communication of Adverse Remarks Memorandum Shri Mallinath Jain C. E. (W) is informed that he has been reported upon his confidential report(s) for 1966 & 1968 as follows :- 3(b) Is his office in good order, does "Yes, but there is room for he habitually delay cases which improvement." can/ought to be disposed of promptly

"SHRI Jain is an experienced and knowledgeable officer of the Water Wing but I feel that he should show more initiative in his approach to work, tackle difficulties even by anticipating them-arise as they do day after day in water distribution".

(A) Has he adequate knowledge of "He should exercise stricter initial accounts and does he control over accounts of exercise sufficient supervision over the Circle." them? (b) Does he exercise effective con- "There is room for improvetrol over the work of his subordiment." nates (c) Are his reports reliable? "Reports are generally reliable but some times these are found to be incomplete." (a) General qualifications: Quite observant, but needs to put in more drive in the works in field." "Knows his job well but should apply himself a little more intensively on the files submitted to him from below." sd/- Deputy Commissioner(W)"

(8) On November 19, 1969, the Union Public Service Commission approved the recommendation of the Departmental Promotion Committee (Annexure R-5).

(9) On December 12 1969 the Deputy Commissioner (Water) wrote a letter (Annexure XI) to the Union Public Service Commission stating that out of all the Superintending Engineers only the petitioner had completed five years service in the grade of Superintending Engineer including the period of his ad hoc appointment that even though the Union Public Service Commission had pointed out in its letter No. F.I/24-68-Appnt.S.I. dated 21st March 1969, that normally the period of ad hoc appointment is not taken into account for determining eligibility of an officer for promotion to a post of higher grade, the recruitment regulations for the post of Chief Engineer (Water) did not stipulate that five years service as Superintending Engineer should necessarily have been rendered substantively for eligibility for appointment to the post of Chief Engineer (Water), that the said view was held by the Commission itself, in its letter No. F. 1/24/6/65-Appnt- I-(Confid), dated 25-5-1962, in the case of one Shri A. L. K. Rao, that although the petitioner was shown as junior to Shri J. D' Cruz and Shri M. L. Anand in the panel prepared by the Departmental Promotion Committee and approved by the Union Public Service Commission, he was the only departmental candidate who fulfilled the requirement of minimum service of five years (including period of ad hoc appointment) as Superintending Engineer for eligibility to the post of Chief Engineer (Water) and that the Union Public Service Commission may in the circumstances consider the petitioner's case for officiating promotion to the post of Chief Engineer (Water).

(10) On January 12, 1970, the petitioner made a representation (Annexure VIII) to the Deputy Commissioner (Water) regarding the adverse remarks communicated to him. He submitted that under the existing orders of the Ministry of Home Affairs, Government of India, adverse remarks in the confidential reports of an officer were to be communicated to him within a period of six months so that he could improve in his work and efficiency during the following year, that the communication of the remarks to him (the petitioner) after a period of one to three years respectively was unfair, and that it had not only put him in a very awkward situation but was also likely to spoil his future career. He requested that his confidential reports may be reviewed and the adverse remarks be expunged. He also submitted that the recommendations of the Departmental Promotion Committee had not so far been communicated to him, that the views of the said Committee might have been affected by the existence of the adverse remarks in the confidential records, and that in the circumstances the confidential reports, after they have been reviewed, may again be placed before the Departmental Promotion Committee. As the petitioner did not get any reply to his representation, he made a further representation by way of reminder on May 5, 1970, to the Chairman, Water Supply & Sewage Disposal Committee, and another such representation to the Commissioner, Delhi Municipal Corporation, on May 16, 1970. The Commissioner sent a reply on May 27, 1970, stating, inter alia, that the petitioner's representation would be considered on merits.

(11) It may be recalled that the ad hoc appointment of the petitioner was only for one year, and as the period was about to expire on June 12, 1970, the Commissioner of the Corporation had to make his recommendation about fresh appointment. As Shri J.D'Cruz (respondent 6) was placed in the first position in the panel prepared by the Departmental promotion Committee and approved by the Union public Service Commission, the Commissioner, by his letter (Annexure

IX) dated June 10, 1970, recommended the appointment of Shri J. D'Cruz as Chief Engineer (Water) in the place of the petitioner. The Commissioner annexed to his letter a letter, dated June 5, 1970 (Annexure X) received from the Union public Service Commission taking objection to the petitioner's continuation as Chief Engineer (Water) on the ground that he had been graded as junior to respondents 6 and 7. The aforesaid letters of the Commissioner and the Union Public Service Commission were placed before the Water Supply & Sewage Disposal Committee, and by a resolution (Annexure XII) dated July 14, 1970, the said Committee recommended to the Corporation that the ad hoc appointment of the petitioner as Chief Engineer (Water) may be continued for a further period of one year with effect from June 11, 1970, or till such time the post is filled up on regular basis through the Union Public Service Commission, whichever was earlier. On August 25, 1970, the Corporation passed a resolution (vide Annexure XII) approving the aforesaid recommendation of the Committee.

(12) It has to be stated here that the representation, dated January 12, 1970 (Annexure VIII) made by the petitioner against the adverse remarks communicated to him was referred to Shri R.N. Chopra Additional Secretary, Cabinet Secretariat, and Shri P.N. Bahl, Deputy Secretary, [who made the said adverse remarks for the years 1968 and 1966 respectively. In answer to the said reference, Shri Chopra wrote a D.O. letter No. 953/AS(CS) dated June 15, 1970, to Shri B.R. Tarnta, Deputy Commissioner, Water Supply & Sewage Disposal Committee, stating as follows:-

"MYdear Tarnta, This is with reference to your D. O. letter No. DC/US-I/537 dated 6-6-70 regarding the representation of Shri MallS Nath Jain Chief Engineer (Water). My adverse remarks given to him related to the year 1968. The remarks were based on my impression which I had formed about Shri Jain's work and performance during the year. The contents of the representation attached with your letter would not justify and change in my remarks. Of course, I am aware that Shri Jain's work during the year 1969 was much better and he did show some initiative and drive in performing the duties of Chief Engineer (Water) satisfactorily. In the light of this subsequent performance, I will have no objection if the competent authority decides to accept Shri Jain's representation and expunge the adverse remarks given by me in good faith. With kind regards, Yours sincerely, sd/- (R. N. Chopra)"

(13) Similarly, in answer to the reference made to him, Shri P. N. Bahl also wrote a letter, dated July 21, 1970, to Shri Tarnta, which reads as under:-

"MYdear Tarnta, Please refer to your letter No. DC/WI/538 dated 6-6-1970 regarding the adverse remarks in the C. R. of Shri Malli Nath Jain, now C. E. (W), for the year 1966. You will kindly notice that I had started my remarks by saying that Shri Jain was an experienced officer and had been in charge of Water Department for quite a long time. I had further said that he knew his job well. Read in this context the point made by me that he should apply himself a little more intensively on the file submitted to him from below should not be taken very seriously. It might have come to my notice that on some of the files, where I thought Shri Jain should have given his own opinion, he might have just initialled them and sent them on. However, he was not committed by me any time during my tenure in the Wsu in writing to be careful about it. It is also possible that Shri E Jain thought it best to just put his initials on certain files, where, according to him, the note or the recommendation of his juniors was alright and he had kept

highly occupied because he had to look after not only the maintenance side, but the Project Division too, in addition to the work of the Resident Engineer (Water) at Wazirabad and Okhia. In view of what I have stated above, I have no objection if this entry by me is considered as something not to damage his interests. With regards, Yours sincerely, sd/- (P. N. Bahl)"

(14) In view of the above letter, Shri B. R. Tarnta, who was also one of the Deputy Commissioners, wrote a letter No. I DC(W)-843 (Annexure XIII) dated October 21, 1970, to the petitioner, stating as under :-

"MYdear Jain, Please refer to your representation dated 12-1-70 against the adverse remarks recorded in your C. R's. The adverse remarks have been toned down on the basis of the comments received from the Reporting reviewing Officer. A suitable note to this effect has been given in your C. R's. Yours sincerely, (B. R. Tarnta)"

(15) On receiving the said letter, the petitioner wrote a letter (Annexure XIV), D. O. No. CE(W)Pa-40-2221, dated January 19, 1971, to Shri Tarnta requesting that the matter be brought to the notice of the Union Public Service Commission as well as the W. S. & S. D. Committee so that necessary action regarding his gradation and seniority may be taken.

(16) On July 14, 1971, the Commissioner wrote a letter (Annexure XVI) to the Water Supply & Sewage Disposal Committee stating that the filling up of the post of Chief Engineer (Water) on regular basis in accordance with the recruitment rules might take some more time. and recommending the continuation of the petitioner as Chief Engineer (Water) on ad hoc basis for another period of one year with effect from June 12, 1971, or till such time the post is filled on regular basis through the Union Public Service Commission whichever was earlier. He added that the work of the petitioner was found to be up to the mark. Accordingly, the Corporation accepted the said recommendation and passed a resolution (Annexure XV) on November 11, 1971, approving the continuation of the petitioner as Chief Engineer (Water) on ad hoc basis for a further period of one year with effect from June 12, 1971, or till such time the post is filled on regular basis through the Union Public Service Commission, whichever was earlier. Again, on May 24, 1972, the Commissioner wrote a letter (Annexure xviii) to the Committee regarding the filling up of the post of Chief Engineer (Water) with effect from June 11, 1972. In this letter, the Commissioner, after setting out the past history stated that the term of the petitioner would expire on June 11, 1972, and that the matter regarding the filling up of the post for another year with effect from June 11, 1972, be placed before the Corporation routing the same through the WS&SD Committee. It has to be noted that while the Commissioner made specific recommendations in the previous three years, he did not make any such specific recommendation on this occasion. The Commissioner, however, enclosed a representation, dated April 21, 1972, made by Shri J.D. Cruz in which Shri J.D.Cruz pointed out his position in the panel prepared by the Departmental promotion Committee and approved by the Union Public Service Commission, and submitted that the continuation of the appointment of the petitioner even though the latter was shown junior to him in the said panel, would be incorrect. On May 25, 1972, the Water Supply and Sewage Disposal Committee passed a resolution (Annexure XVII) stating that a review of the ad hoc appointment to the post of Chief Engineer (Water) was necessitated on the basis of the seniority of Superintending Engineers as fixed in the panel approved by the Union Public Service Commission, and recommending to the Corporation that Shri J. D'Cruz be

appointed as Chief Engineer (Water) on ad hoc basis for a period of one year with effect from June 12, 1972, or till such time the post is filled on regular basis through the Union Public Service Commission, whichever was earlier. Thereupon, the petitioner made a representation (Annexure XIX) dated May 29, 1972, to the Deputy Commissioner (Water) against the said appointment of Shri J.D.' Cruz (respondent 6) with a copy to the Commi'sioner. In that representation, the petitioner pointed out that the grading in the panel prepared by the Departmental Promotion Committee and approved by the Union Public Service Commission was based upon confidential reports before the adverse remarks therein were toned down, that the said adverse remarks were communicated to him after a period of one to three years and also after the meeting of the Departmental Promotion Committee and not immediately as required under the rules, that the said adverse remarks were later toned down on his representation, and that further reference to the Committee and the Union Public Service Commission in that regard was, therefore, necessary as already requested by him in his letter dated January 19, 1971 (Annexure XIV). He also explained that when the post of Chief Engineer (Water) fell vacant on June 11 1969, he was the only Superintending Engineer eligible for holding the post of Chief Engineer having the requisite experience of over five years as Superintending Engineer and more than fifteen year in responsible position, that the same was the reason why he was appointed as Chief Engineer (Water) at that time and continued in the post for three years on year to year basis, and that it would be an anomalous decision not to continue him as Chief Engineer (Water) without any fresh developments, particularly when his work and conduct were found highly satisfactory. He, therefore, requested that all the said facts may be brought to the notice of the Water Supply and Sewage Disposal Committee and the Union Public Service Commission to prevent any injustice being done to him. In reply to the said representation, Shri B. S. Das, Commissioner, wrote a letter No. I/DC (M-178) (Annexure XX) dated June 2, 1972, stating that the petitioner was not correct in stating that he was the senior most Superintending Engineer adding probably the period of his ad hoc appointment as Superintending Engineer, that the Union Public Service Commission had given a clear cut decision by placing the petitioner junior to Shri J. D'Cruz and Shri Anand obviously without counting the period of ad hoc officiation, that he had gone through the file on the subject and found that the remarks given to the petitioner in 1966 were not adverse remarks with any mala fides, that they were merely corrective remarks indicating some corrective measures to be taken by the petitioner in the performance of his work, that the remarks, therefore, could not be described as adverse remarks as such, that the officers who gave those remarks have subsequently given their comments in which they clearly stated that the remarks were corrective and not adverse, and that none of the said remarks were toned down as such or modified or expunged. He observed that the comments of the then Deputy Commissioner (Water) and the Commissioner (meaning apparently the letters of Shri R. N. Chopra and Shri P. N. Bahl, dated June 15, 1970, and July 21, 1970 respectively) were only placed on the petitioner's file on the basis of which Shri Tarnta seemed to have written to the petitioner that the remarks were toned down, that the only point that was valid was that the pttitioner was not informed of the said corrective remarks as provided under the rules, but the basic thing remained that those remarks were taken into consideration by the Departmental Promotion Conimitte;, and that sines the said remarks were not expunged or modified, the question of the petitioner's case being referred to the Departmental Promotion Committee again did not arise. He al?o observed that the petitioner's ad hoc appointment as Chief Engineer with the approval of the Union Public Service Commission did not entitle him to any benefit of seniority or claim for continued appointment as Chief Engineer as it was clearly indicated by the

Corporation in its letters to the Union Public Service Commission that the appointment was purely ad hoc. He concluded his letter by stating that in view of the factors mentioned above there was no force in the petitioner's representation, and that it could not therefore, be considered.

(17) On June 12, 1972, the Commissioner passed an order giving "current duty charge" of the post of Chief Engineer (Water) to Shri J. D'Cruz in addition to his own duties till the ad hoc appointment on the post of Chief Engineer (Water) was made by the Corporation, and reverting the petitioner as Superintending Engineer. The petitioner, by his letter (Annexure XXIII) dated June 14, 1972, to the Commissioner, protested against his reversion and the appointment of Shri J. D'Cruz, and requested for the withdrawal of the said order. But, on June 19, 1972, the Corporation passed a resolution (Annexure P. I to the rejoinder) that Shri J. D'Cruz be appointed as Chief Engineer (Water) on ad hoc basis for a period of one year with effect from June 12, 1972, or till such time the post is filled up on regular basis through the Union Public Service Commission, whichever was earlier. The petitioner again wrote a letter to the Commissioner (P. 3 to the rejoinder) on June 26, 1972, requesting that his case be sent to the Departmental Promotion Committee and the Union Public Service Commission. Yet, the order for appointment of Shri J. D'Cruz as Chief Engineer (Water) was issued on June 28, 1972 (Annexure XXIV).

(18) It was then that the petitioner filed the present writ Petition No. 604 of 1972, on July 13, 1972, praying (1) that the resolution of the Committee, dated May 25, 1972, the resolution of the Corporation dated June, 19, 1972, the letters of the Commissioner, dated May 24 and June 2, 1972, the Office Order of the Commissioner, dated June 12, 1972, and the Office Order of the Deputy Commissioner (Water), dated June 28, 1972, be all quashed; (2) that the Corporation be restrained from confirming the minutes of its meeting held on June 19, 1972, regarding the appointment of Shri J. D'Cruz, Chief Engineer (Water), from proceeding further in the matter without having before it and perusing the full facts and the service records and confidential reports of all the three candidates, and from treating the petitioner as reverted from the post of Chief Engineer till fresh decision is taken in the matter; (3) that the panel or decision of the Departmental Promotion Committee and the Union Public Service Commission placing the petitioner junior to respondents 6 and 7, as well as the adverse/corrective remarks communicated to the petitioner be quashed; and (4) that the petitioner be declared as senior to respondents 6 and 7 and the ad hoc service put in by him as Superintending Engineer be declared as liable to be counted for the purpose of seniority as Superintending Engineer and for further promotion to the post of Chief Engineer. The respondents to the writ petition were (1) Municipal Corporation of Delhi, (2) The Delhi Water & Sewage Disposal Committee, (3) the Commissioner, Municipal Corporation of Delhi, (4) the Deputy Commissioner (Water), Delhi Water Supply and Sewage Disposal Undertaking, (5) the Union Public Service Commission, (6) Shri J. D'Cruz, (7) Shri M. L. Anand, and (8) the Lt. Governor, Delhi Administration.

(19) In opposition to the writ petition, a reply dated July 22, 1972, was filed on behalf of respondents 1 to 4 and 8, and a counter affidavit was filed by Shri M. L. Anand, respondents, 7, on his behalf. The petitioner filed rejoinders to the said reply and counter affidavit.

(20) Mrs. Shyamala Pappu, learned counsel for the petitioner, urged three contentions. The first contention was that the gradation by the Departmental Promotion Committee and the panel

prepared by it on an assessment of the confidential reports relating to the petitioner and respondents 6 and 7 was incorrect and illegal in as much as the confidential reports relating to the petitioner and considered by the Committee contained adverse remarks which were not communicated at all to the petitioner. It is not disputed that the confidential reports relating to the petitioner for the years 1966 and 1968 did contain certain remarks and the same have already been set out earlier in this judgment. It is also not disputed and in fact it was clearly admitted in the letter of the Commissioner (Annexure XX) dated June 2, 1972, that the said remarks were taken into consideration by the Departmental Promotion Committee. It is further admitted that the said remarks had not been communicated to the petitioner prior to September 22, 1969, when the gradation was made and the panel was prepared by the Departmental Promotiom Committee. It was only after the said date that the said remarks were characterised as adverse remarks and communicated to the petitioner by the Deputy Commissioner (Water) on October 13, 1969 (Annexure V). The argument on behalf of the petitioner was that since the adverse remarks had not been communicated to the petitioner, the gradation made and the panel prepared by the Departmental Promotion Committee on a consideration of the reports containing the said adverse remarks were vitiated and were illegal. In support of the argument, reliance was placed on the decision of Rangarajan J. in Him Singh v. The Union of India, 1970 Labour and Industrial Cases 593. (1) In that case, a government employee, who was on probation, was reverted to his original post on the ground that his performance during the probationary period had not been found to be satisfactory. The learned Judge quashed the order of reversion observing that it 'was violative of rules of natural justice in as much as there was no inquiry into the fitness of the employees for the post, the confidential, reports said to contain adverse entries were not even shown to have been made promptly and without delay and, in any case, they were not admittedly communicated to the employee, the probation reports themselves concerning him were admittedly not drawn up, and the order reverting him, which was communicated to him, was not even unexceptional in form (vide paragraphs 14 and 17).

(21) The above argument has considerable force. Annexure Vi contains a copy of an Office Memorandum No. F.6/14-31/60-R&S, dated November 28, 1961, sent by the Delhi Administration to the Municipal Corporation of Delhi, forwarding for information and guidance a copy of an Office Memorandum No.51/14/60-Ests (A) dated October 31, 1961, issued by the Ministry of Home Affairs, Government of India, regarding the preparation and maintenance of confidential reports. It was stated in the said Office Memorandum of the Ministry of Home Affairs that the Government had accepted the principles that confirmation, crossing of efficiency bar, promotion, grant of pensionary benefits, etc. should be based on the assessment of confidential reports and that the matter was of the greatest importance for the efficiency and the morale of the services, in paragraph 8 of the Office Memorandum it was pointed out that it was necessary that every employee should know what his defects are and how he can remove them, and that if every reporting officer realises that it is his duty not only to make an objective assessment of the subordinate's work and qualities, but also to give him at all times the necessary advice, guidance and assistance to correct his faults and deficiencies, and if the said duty is properly performed, there should be no difficulty about recording, adverse entries in the Confidential reports because they would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected. It was added that in mentioning any faults or defects the reporting officer should also give an indication of the efforts he had made by way of guidance, admonition, etc. to get the defects removed and the result of such efforts. It was further

stated that in communicating remarks to the officer reported upon, any adverse entry made in the confidential report, whether it relates to a remediable or to an irreparable defect should be communicated, but while doing so, the substance of the entire report, including what may have been said in praise of the officer should also be communicated. It was explained that the object of the same was to let an officer know that his good qualities as well as his defects had been recognised. Paragraph 9 of the Memorandum provided for representation by the officer against adverse entries, and laid down a detailed procedure to be adopted in dealing with such representation. In paragraph 14 of the Memorandum, it was requested that the instructions in the Memorandum be brought to the notice of all concerned "for strict compliance". It appears that certain instructions regarding preparation, maintenance of Annual Confidential Reports and communication of adverse remarks were issued by Circular No. F.T/1(i)/ 62-CES(A), dated March 12, 1962, by the Municipal Corporation of Delhi. This is stated in Annexure VII, a circular No. 87/CES/CRS/72 dated March 20, 1972, issued by the Municipal Corporation of Delhi. The Corporation set out instructions in the said Circular on the lines of instructions issued by the Government of India and the Circulars issued by the Central Establishment Section of the Municipal Corporation from time to time. Paragraph 3 of the said Circular is as under:-

"It is unfair to the employee to deny him any promotion on account of defects of which he may well be unaware and which he could have removed had he been informed of them. Every employee should know what his defects are and how he can remove them. All adverse entries in the confidential reports of the officer should be communicated by the Reviewing Officer after they have been seen by the countersigning authority, if any. This should be done as far as possible within one month of the completion of this report. The communication should be in and a record to that effect should be kept in the confidential roll of the officer. Where there is no reviewing officer, the adverse entry will be communicated by the reporting officer likewise. The remarks which are not communicated within a period of six months of their being recorded would be ignored for all purposes and it would be considered whether an adverse entry may be made in confidential reports of the officer responsible for the delay in communicating the remarks."

(22) It is true that this circular was issued in 1972. But, it was clearly stated in it that the instructions contained therein were being issued on the lines of earlier circulars. It is also true that the requirement about the preparation and maintenance of Confidential reports is contained only in administrative instructions issued by the Government of India, the Delhi Administration and the Municipal Corporation and not in any rules. But, it has to be noted that while under Article 309 of the Constitution the recruitment and conditions of service are to be regulated by Acts of the appropriate Legislature, under the proviso to the said Article, the President or the Governor of a State as the case may be or such person as may be directed by either of them may make rules regulating recruitment and conditions of service, and entry 53 in the "President's Order" in the Allocation of Business Rules, 1961, provides for the regulation of the general question regarding recruitment, promotion and seniority in Central Services by the Ministry of Home Affairs. It is also now well settled that it is not obligatory upon the Government to make rules regarding matters pertaining to service under the Government, and that in the absence of rules framed for the purpose, the Government can issue administrative instructions, and if there are Rules already framed, the Government can issue administrative instructions not inconsistent

with those Rules (Vide B. N. Nagarajan v. State of Mysore, and Sant Ram Sharma v. State of Rajasthan,).

Therefore, the administrative instructions in question are to be held to have been validly issued by the concerned authority. Moreover, when the concerned authority issued the administrative instructions in question regarding the preparation and maintenance of confidential reports, they were intended to be followed and applied by all the concerned departments. In fact, as already pointed out, it was stated in the Office Memorandum itself that the instructions contained therein should be strictly complied with.

(23) Further, the instructions, particularly those relating to the communication of adverse remarks and the submission of representation against the adverse remarks, are based upon and are intended to give effect to principles of fairness and natural justice. As stated in paragraph 3 of the instructions in the Circular; dated March 20, 1972, set out above, it is unfair to the employee to make a lower assessment of his merit or to deny him promotion on account of defects on which he was unaware and which he could have explained or removed had he been informed of them. This clearly shows the necessity and importance of communication of adverse remarks to the officer concerned within a reasonable time, and it follows that adverse remarks which have not been communicated to the concerned officer should not be used or relied upon against him and should be ignored, as to do otherwise would be a dear contravention of principles of fairplay and natural justice. In the present case, admittedly, the adverse remarks or entries in the Confidential reports relating to the petitioner for the years 1966 and 1968 were not communicated to him within a reasonable time after they were made, but, were communicated to him on as late a date as October 13, 1969. In the meantime, i.e. even before they were so communicated, they were taken into consideration by the Departmental Promotion Committee on August 22, 1969 in assessing the respective merit of the petitioner and respondents 6 and 7 and preparing the panel in the order of merit. Therefore, it cannot but be said that the said assessment, gradation and preparation of the panel were vitiated as being in contravention of principles of fairplay and natural justice.

(24) In answer to the above, Mr. Frank Anthony, learned Counsel for respondents 1 to 4, 6 and 8, as well as Mr. Anand (respondent 7) who appeared in person, contended firstly that the gradation was made and the panel was prepared by the Departmental Promotion Committee on September 22, 1969 and the adverse remarks were communicated to the petitioner on October 13, 1969, and that the writ petition filed by the petitioner on July 13, 1972 was very much belated and should be rejected on the ground of delay and laches on the part of the petitioner. There is no force in this contention. It is true that the adverse remarks were communicated to the petitioner on October 13, 1969. But, the various subsequent events which have been set out in the course of the narration of the facts earlier in this judgment show that the petitioner did not sleep over the matter till July 1972. He made a representation to the Deputy Commissioner (Water) on January 12, 1970 regarding the adverse remarks. As he did not receive any reply, he sent another representation on May 5, 1970 to the Chairman, Water Supply and Sewage Disposal Committee, and a representation also to the Commissioner, Delhi Municipal Corporation on May 16, 1970. The Commissioner sent a reply on May 27, 1970 stating that the petitioner's representation would be considered on merits. It appears that the representation of the petitioner was referred by Shri B. R. Tarnta, Deputy Commissioner, Water Supply and Sewage Disposal Committee, to

Shri R. N. Chopra and Shri P. N. Bahl by whom the adverse remarks were made. The said officers sent replies on June 15, 1970 and July 21, 1970 respectively. Shri Chopra stated in his letter that he would have no objection if the competent authority decided to accept the petitioner's representation and expunged the adverse remarks, while Shri Bahl stated in his letter that he had no objection if the adverse entry made by him was considered as something not to damage the interests of the petitioner. On October 21, 1970, Shri B. R. Tarnta, Deputy Commissioner, informed the petitioner by a letter that the adverse remarks recorded in the Confidential Reports relating to the petitioner were toned down on the basis of the comments received from the reporting/reviewing officers, and that a suitable note to that effect had been given in the confidential reports. On receiving the said information, the petitioner wrote a letter on January 19, 1971 to the Deputy Commissioner (Water) requesting that in view of the aforesaid toning down the matter may be brought to the notice of the Union Public Service Commission as well as the Water Supply and Sewage Disposal Committee so that necessary action regarding his gradation and seniority may be taken. The matter was, however, not referred to the Service Commission, but the Commissioner recommended to the Water Supply and Sewage Disposal Committee the appointment of the petitioner as Chief Engineer (Water) on an ad hoc basis for another period of one year with effect from January 12, 1971. The said recommendation was accepted by the aforesaid committee and the petitioner was appointed as recommended. Subsequently, on May 24, 1972, the Commissioner, without recommending the name of any particular person informed the Water Supply & Sewage Disposal Committee that the term of the petitioner would be expiring on June 11, 1972, and that the Committee should consider the question of filling up the post of Chief Engineer (Water) for a period of one year with effect from the said date. The Committee, however, resolved on May 25, 1972 to appoint respondent 6 on the basis of the gradation in the panel prepared on September 22, 1969. The petitioner thereupon made a representation to the Deputy Commissioner (Water) with a copy to the Commissioner on May 29, 1972 against the aforesaid appointment of respondent 6 and also repeating his request that the toning down of the adverse remarks against him may be brought to the notice of the Union Public Service Commission and the Committee. The Commissioner sent a reply to the petitioner on June 2, 1972 admitting that the adverse remarks were taken into consideration by the Departmental Promotion Committee in preparing the panel on September 22, 1969, but observing that since the alleged adverse remarks were only corrective in nature and have not been expunged or modified, the question of referring the case of the petitioner to the Departmental Promotion Committee again did not arise. Subsequently, when the Commissioner passed an order on June 12, 1972 giving the current duty charge of the post of Chief Engineer to respondent 6 and reverting the petitioner as Superintending Engineer, the petitioner protested against the same on June 14, 1972 and requested for the withdrawal of the aforesaid order. The Corporation, however, resolved on June 19, 1972 that respondent 6 be appointed as Chief Engineer (Water) on ad hoc basis for a period of one year with effect from June 12, 1972. The petitioner again sent a letter to the Commissioner on June 26, 1972 requesting that his case be sent to the Union Public Service Commission, but the order appointing respondent 6 was issued on June 28, 1972. Thereupon, the petitioner filed the present writ petition on July 13, 1972. It is thus clear that there were no laches or delay on the part of the petitioner in filing the writ petition.

(25) Mr. Frank Anthony and Mr. Anand next contended that no principle of fair-play or natural justice has been violated and no prejudice has been caused to the petitioner. The argument was

that the remarks in the Confidential Reports relating to the petitioner were not adverse at all and were only corrective in nature, that Shri Chopra who gave the aforesaid remarks for the year 1968 was one of the members of the Departmental Promotion Committee, that Shri Chopra must have informed the other members of the Committee about his view regarding the remarks in the Confidential Reports which he had subsequently expressed in his letter dated 15th June, 1970 and on which reliance was placed on behalf of the petitioner, and that in the circumstances the petitioner could not be said to have suffered any prejudice as the presence of Shri Chopra on the Committee was as good as his subsequent letter being placed before the Committee. This contention also cannot be accepted. It has to be noted that the remarks were characterised as adverse remarks and communicated to the petitioner as such by the Deputy Commissioner (Water). Both Shri Chopra and Shri Bahl referred to the remarks as "adverse remarks" in their respective letters. In other words, the remarks in question were treated as adverse remarks by the authorities concerned. It was only in the letter dated June 2, 1972 written by the then Commissioner that it was stated that the remarks were only corrective in nature. The mere fact that they were corrective in nature does not necessarily mean that they were not adverse to the petitioner. The remarks were treated as adverse remarks and were dealt with as such by the concerned authorities at the relevant time. It cannot therefore be said that the remarks were not adverse remarks at all. As regards the circumstance that Shri Chopra was a member of the Committee, we are unable to see how it would show that no prejudice was caused to the petitioner by the noncommunication of the adverse remarks. On the date when the gradation was made and the panel was prepared by the Departmental Promotion Committee, the remarks existed just as they were made by Shri Chopra and Shri Bahl, and they were taken into consideration by the Committee. The representation made by the petitioner and the comments made by Shri Chopra and Shri Bahl regarding the said adverse remarks were all subsequent to that date. In the circumstances, there was no occasion or necessity for Shri Chopra to express his view to the other members of the Committee on the lines of the letter written by him subsequently on June 15, 1970. It is obvious that the members of the Committee took into consideration the adverse remarks as contained in the Confidential Reports, and the petitioner was prejudiced thereby. There is thus no force in the contention of the counsel.

(26) Mr. Anthony and Mr. Anand also referred to the decision of the Supreme Court in Prakash Chand Sharma v. The Oil and Natural Gas Commission and others, 1970 S.L.R.1164. In that case, although Prakash Chand was senior to certain other employees in the year 1963, the Departmental Promotion Committee did not recommend his name for promotion on account of certain adverse remarks in his confidential reports. The adverse remarks had never been conveyed to him, and it was only when the affidavit in opposition to the writ petition was filed in the Supreme Court that he came to know that he had not been given promotion in June, 1963 because of the aforesaid adverse remarks. It was contended on his behalf that there was a clear violation of the instructions in the Memorandum dated February 12, 1962, relating to confidential reports, their preparation and maintenance, that if he had been given an opportunity of making representation against the adverse remarks, he might easily have satisfied the higher authorities that the remarks were uncalled for and unjustified, and that he had been discriminated against on the basis of remarks which should never have been made or should never have been allowed to remain in the confidential reports or stand in the way of his promotion if an opportunity had been given to him to explain the same. Dealing with the said contentions, the Supreme Court observed in paragraph 9 of the judgment as follows:-

"It was not disputed that the instructions as to confidential reports have not been properly observed in this case. It is not suggested that the Departmental Promotion Committee acted mala fide. If the adverse remarks were there in the confidential reports it was the duty of the departmental promotion committee to take note of them and come to a decision on a consideration of them. The Committee could not be expected to make investigation about the confidential reports. It appears to us that in this case there was no discrimination, purposeful or otherwise, and at the best, the Committee's taking into consideration confidential reports with respect to which the petitioner had been given no chance to make a representation was merely fortuitous. In such a state of affairs, we are not satisfied that any interference is called for and the rule will therefore be discharged. There will be no order as to costs."

(27) It has to be noted that the main emphasis in the argument on behalf of the petitioner in that case was that he had been discriminated against by the Departmental Promotion Committee on the basis of the adverse remarks, and the Supreme Court, while noticing that the instructions had not been properly followed in that case, observed that if the adverse remarks were there in the confidential reports it was the duty of the Departmental Promotion Committee to take note of them and come to a decision on a consideration of them, that the Committee could not be expected to make investigation about the confidential reports, that it was not suggested that the Departmental Promotion Committee acted mala fide, and that there was in that case no discrimination, purposeful or otherwise, and at the best, the Committee's taking into consideration the confidential reports was merely fortuitous. Thus, the contention before the Court was, and the observations of the Court' were made, in the context of the question as to whether the petitioner before the Court was discriminated against by the Departmental Promotion Committee by taking into consideration the adverse remarks in the confidential reports. The observations cannot, in our opinion, be said to have been intended to lay down as a general proposition that adverse remarks made in confidential reports relating to an employee but which have not been communicated to him can always be relied upon by a Departmental Promotion Committee in considering the merit of the employee for purposes of promotion or confirmation, and that the employee can never be regarded as prejudiced thereby. Even otherwise, the aforesaid observations of the Supreme Court cannot be of assistance to the learned counsel for the respondents, as in the present case the adverse remarks have since been communicated to the petitioner and were toned down on the representation of the petitioner, while there was no such toning down in the case before the Supreme Court. The aforesaid toning down of the adverse remarks will be considered presently in dealing with the second contention advanced on behalf of the petitioner.

(28) The second contention on behalf of the petitioner was that in view of the subsequent toning down of the adverse remarks by Shri R.N. Chopra and Shri P. N. Bahl, the matter should have been referred again to the Departmental Promotion Committee and the Union Public Service Commission for a fresh consideration of the respective merit of the petitioner and respondents 6 and 7. We have already referred to the letters written by Shri R.N. Chopra and Shri P.N. Bahl as well as to the letter written by the Deputy Commissioner on October 21, 1970 (Annexure XIII) informing the petitioner that the adverse remarks were toned down on the basis of the comments received from the reporting/reviewing officers, and that a suitable note to that effect was made in the confidential reports relating to the petitioner. It has to be stated here that after inspection of the file relating to the petitioner produced by the Corporation, Mrs. Shyamala Pappu pointed out

to two nothings in that file relating to the letters received from Shri R. N. Chopra and Shri P.N. Bahl and sought to rely upon the same. Mr. Frank Anthony had no objection to the same and filed true copies of the said nothings which have been placed on record. The first noting was of Shri B. S. Manchanda, Commissioner, dated August 8, 1970, and it reads as follows:-

"I do not agree with the conclusion drawn by D.C.(W) at 'A' and 'B' above. I also feel that there is no justification for expunging the remarks given by Shri R. N. Chopra. However, since he has, himself in a way recommended their expunction, in view of the improved subsequent performance of Shri Jain, I do not wish to counter his recommendation. In the circumstances, I would accept the recommendation for the expunction of adverse remarks. It would have helped if D.C.(W) had dealt with the report of 1966 and 1968 separately, instead of mixing them up, and suggested specifically the remarks which, according to him should be expunged. He should now reproduce the reports as they are (separately for each year) mark out the remarks which should be expunged, and state the final form in which the report will stay. sd/- (B. S. Manchanda)"

(29) The second noting was again by Shri Manchanda, dated September 20, 1970, and it reads as follows-

"I think the best thing in the circumstance? of the case may be to place the copies of the letter received from Shri P.N. Bahl and Shri R.N. Chopra on the C.R. along with the reports recorded. This is permitted by the instructions on the subject. There need not be any expunction of the remarks, copies of these letters on the C.R. will counter balance, to the desired extent, the effect of the adverse remarks which are of a general nature, and have not been shown as either factually incorrect, or mala fide. They have been recorded by Senior Officers. Commissioner 20-9-1970 It is clear from the aforesaid nothings that the Commissioner was of the view that instead of an expunction of the adverse remarks, as recommended in a way by Shri Chopra, the placing of the two letters written by Shri Chopra and Shri Bahl in the confidential reports relating to the petitioner would counter balance, to the desired extent, the effect of the adverse remarks. Mr. Anthony contended that there was no toning down at all of the adverse remarks. We are unable to agree with that contention. The direction by the Commissioner to place the letters of Mr. Chopra and Mr. Bahl along with the confidential reports, and the observation of the Commissioner that such placing would "counter balance, to the desired extent, the effect of the adverse remarks", do amount, in our opinion, to a toning down of the effect of the adverse remarks. In fact, the Commissioner himself treated the same as toning down and stated so in his letter (Annexure XIII) to the petitioner, dated October 21, 1970."

(30) The question then is as to whether in view of the said toning down the case of the petitioner was to be referred again to the Departmental Promotion Committee and the Union Public Service Commission. In this connection, Mr. Anthony and Mr. Anand filed a copy of an Office Memorandum No. 1/16/68-Estt (D), dated August 30, 1969, issued by the Ministry of Home Affairs, Government of India, containing instructions regarding the functioning of Departmental Promotion Committee. It was stated in the said Memorandum that the instructions contained therein were spread over a number of memoranda circulated by the Ministry as indicated in the margin, and that it was considered desirable to bring in a consolidated form to the notice of the Ministry/Department those important instructions contained in the various memoranda shown in the margin. Paragraph 8(c) of the said Office Memorandum reads as follows:-

"(C)Adverse remarks in character rolls-(i) Adverse remarks are communicated to the officers concerned in all cases; and aggrieved officers should submit their representations within six weeks from the date of communication of adverse remarks. The competent authority should take a decision on the representation expeditiously and in any case not later than six weeks from the date of submission of the representation. (ii) In case where a decision on the representation has not been taken or the time allowed for submission of a representation is not over, the D.P.C. may, in their discretion, defer consideration of the case of the officer, pending a decision on the representation. (iii) In case where the adverse remarks have not been communicated to the officer concerned, this fact should be given due weight while assessing the suitability of the officer for promotion/confirmation. (iv) If, on representation against adverse remarks, the competent authority decides to expunge or tone down the adverse remarks, the concerned officers' case may be revised by the Dpc if it is referred to it by the competent authority. In cases where the Commission have been associated with the Dpc, approval of the Commission to a review of the case will be necessary."

(31) Replying upon clause (iv), Mr. Anthony and Mr. Anand argued that the said clause provides only that the concerned officers' case may be revised by the Departmental Promotion Committee if it is referred to it by the Competent Authority, that it has given a discretion to the competent authority, namely the Commissioner, to refer or not to refer the matter again to the Departmental Promotion Committee, and that since the Commissioner decided in the present case not to refer the petitioner's case to the Departmental Promotion Committee in the exercise of his discretion, this Court should not interfere with the same in exercise of its writ jurisdiction.

(32) We are unable to agree with this argument also. As pointed out above, there was a toning down of the effect of the adverse remarks such as is referred to in clause (iv). A reading of the clauses (i) to (iv) shows that considerable importance has been attached to the communication of adverse remarks and the consideration of a representation by the concerned officer against the said adverse remarks. Clause (ii) provides that the Departmental Promotion Committee may even defer the consideration of the case of the officer pending a decision on the representation. In a case where adverse remarks have not been communicated to the officer concerned, clause (iii) requires due weight to be given to the said fact in assessing the suitability of the officer for promotion or confirmation. These provisions support our view that any reliance upon adverse remarks which have not been communicated to the officer concerned would be violative of principles of fair play and natural justice. That being so, in a case where adverse remarks have been taken into consideration by the Departmental Promotion Committee before they were communicated to the officer concerned and subsequently the said remarks have been toned down on a representation made by the officer, it is but just and fair that the toning down should be brought to the notice of the Departmental Promotion Committee again. No doubt, it is stated in clause (iv) of the Office Memorandum, referred to above, that where there has been toning down the case "may be revised" by the Departmental Promotion Committee "if it is referred to it by the competent authority." It has to be noted that the word "may" has been used with reference to the revision by the Departmental Promotion Committee, and that, so far as the competent authority is concerned, the words used are "if it is referred to it by". Having regard to the importance of the toning down of the adverse remarks and to the beneficial purpose of the provisions relating to adverse remarks, it seems to us that the words "if it is referred" do not give any discretion to the competent authority. In our opinion, the provision in clause (iv) means that

so far as the competent authority is concerned he has to refer the fact of toning down to the Departmental Promotion Committee, and on such reference the Departmental Promotion Committee is given the discretion to revise or not the case of the officer concerned, which discretion, of course, has to be exercised by the Departmental Promotion Committee in a judicial manner. We are, therefore, of the view that in view of the toning down of the adverse remarks, the case of the petitioner ought to have been referred again by the Commissioner to the Departmental Promotion Committee and the Union Public Service Commission.

(33) Mr. Anthony referred to the decision in R.L. Butail v. Union of India, 1970 S.L.R. 926 (s). In that case, the confidential reports of R.L. Butail, an employee of the Government, for the years 1955, 1958 and 1959 were adverse to the employee. They were communicated to the employee and he made representations against them, but without success. The reports for 1964 and 1965 also were adverse to him. The report for 1964 was prepared on March 18, 1965, but it was released to him in September 1965. The adverse report for 1965 was prepared in 1966. The Departmental Promotion Committee had met in May 1964 and declined to recommend the employee for promotion, while it recommended one Aswath. It appears that the employee was again overlooked both by the Departmental Promotion Committee and the Public service Commission when Aswath was appointed on December 30, 1964. It was contended before the Supreme Court on behalf of the employee, inter alia, that the adverse reports for 1964 and 1965 were placed before the Committee and the Commission long before they were communicated to him and therefore before he could make any representation against them, and that consequently the two bodies had no opportunity of knowing his side of the case, and relying on the said reports overlooked his right to promotion. In dealing with the said contention, the Supreme Court pointed out that if at all the Committee declined to recommend the employee's name in May 1964 because of adverse confidential reports, such reports could only be those for the earlier years 1955, 1958 and 1959, and that the overlooking of the employee in December 1964 could not also be on account of the confidential report for 1964 which was recorded much later in March. The Supreme Court further observed in paragraph 15 as follows:-

"THE Confidential report for 1965 was prepared in 1966. Therefore, the report for 1965 would not be before that Committee when it declined to recommend the appellant in 1965. This remained unchanged. The practice followed by the Promotion Committee was that if in such a case representations were to be accepted and in consequence the confidential report was altered or expunged, the Promotion Committee would have to review its recommendations in the light of such a result. In the present case, however, no question of such a review arose as reports for 1964 and 1965 were, in spite of representations by the appellant, neither altered nor set aside. There was, therefore, no question of any injustice having been done to the appellant despite the fact that the Committee had before it the confidential report without there being along with it any representation made by the appellant. Nor did the question of a breach of natural justice arise in view of the aforesaid practice followed by the Promotion Committee."

(34) Mr. Anthony relied upon the said observations and argued that in the present case also, the representation of the petitioner, though made after the gradation by the Committee, had since been considered and the Commissioner refused to expunge the adverse remarks, and that in the circumstances the petitioner cannot be said to have suffered any injustice despite the fact that the Committee and the Commission had considered the confidential reports containing the adverse

remarks as in the case before the Supreme Court. The argument cannot be accepted, as it ignores the fact that the circumstances in the present case are different from those in the case before the Supreme Court. It has to be noted that in the case before the Supreme Court the adverse remarks were, after consideration of the representation of the employee, "neither altered nor expunged", while in the present case, they were toned down as explained by us earlier in this judgment. The Supreme Court was not called upon in the case before them to consider whether an employee would not suffer any injustice even when the adverse remarks are toned down and the toned down remarks are not referred again to the Departmental Promotion Committee and the Public Service Commission. The learned counsel cannot, therefore, derive any assistance from the aforesaid observations of the Supreme Court.

(35) The last contention advanced on behalf of the petitioner was that the reversion of the petitioner as Superintending Engineer and the appointment of Shri J.D'Cruz (respondent 6) as Chief Engineer (Water) were made by the Commissioner and the Corporation without any proper consideration of all the facts and circumstances, and were, therefore, illegal. As stated earlier, the Commissioner passed an Office Order on June 12, 1972 (Annexure XXII) giving current duty charge of the post of Chief Engineer (Water) to Shri J.D'Cruz (respondent 6) and reverting the petitioner as Superintending Engineer. On June 19, 1972, the Corporation passed a resolution (Annexure P.I to the rejoinder) appointing Shri J.D'Cruz as Chief Engineer (Water) on ad hoc basis. In the minutes of the meeting of the Corporation held on June 19, 1972, it was stated that having regard to the full facts and merits of Shri M.N. Jain, Shri J.D'Cruz and Shri M. L. Anand, Shri J.D. Cruz was appointed as Chief Engineer (Water) on ad hoc basis. In the counter affidavit filed on behalf of respondents 1 to 4 and 8, it was stated in preliminary objection I that the aforesaid resolution was passed by the Corporation "after considering the names of the petitioner and respondents 6 and 7 on the basis of their service records and on merits", and "after considering the full facts and merits of all the three candidates." In his rejoinder, the petitioner asserted that all the service records and confidential reports of the three candidates were not placed before the meeting and there was thus no consideration of the same. In support of the averment, he referred to the Commissioner's letter (Annexure xviii), dated May 24, 1972, regarding the appointment of Chief Engineer (Water) for the 4th term, the resolution of the Water Supply and Sewage Disposal Committee (Annexure XVII), dated May 25, 1972, and the minutes of the meeting of the Corporation held on June 19, 1972. The learned counsel for the petitioner pointed out that in the aforesaid letter of the Commissioner, which was written by way of a report of the facts and circumstances for the information of the members of the Corporation, while the Commissioner referred to the gradation made and the panel prepared by the Departmental Promotion Committee on September 22, 1969, he did not bring to the notice of the members of the Corporation either the fact that the confidential reports relating to the petitioner contained adverse remarks which were not communicated to the petitioner, or the fact that the petitioner made a representation when the adverse remarks were communicated to him subsequently, or the fact that there was a toning down of the adverse remarks on a later date, or the fact that the petitioner made a representation that his case be referred again to the Departmental Promotion Committee and the Union Public Service Commission. The learned counsel also pointed out that the resolution of the Water Supply and Sewage Disposal Committee (Annexure XVII), dated May 25, 1972, did not make any mention of the aforesaid facts regarding the petitioner, but after making a reference only to the seniority of the Superintending Engineers as fixed in the aforesaid panel, the Committee recommended the appointment of Shri

J.D'Cruz. The learned counsel further pointed out that the minutes of the meeting of the Corporation held on June 19, 1972 also do not show that the afore- said facts relating to the petitioner were brought to the notice of the members of the Corporation at the meeting and were considered by them. The learned counsel argued that in those circumstances it cannot be said that the members of the Corporation considered the full facts and merits of the petitioner as averred in the counter filed on behalf of respondents I to 4 and 8. So far as the letter of the Commissioner and the resolution of the Committee are concerned, it cannot be disputed that they did not contain any mention of the aforesaid facts relating to the petitioner. As regards the minutes of the meeting, however, the learned counsel for the respondents referred to the recital therein that "having regard to the full facts and merits of Sarvshri M.N. Jain, J.D'Cruz and M.L. Anand, Shri J.D'Cruz, Superintending Engineer, be appointed as Chief Engineer (Water) on ad hoc basis". But, it appears from the minutes that one Shri Ram Lal raised a point of order that the item regarding the appointment of Chief Engineer (Water) as placed before the House lacked full information about the service particulars and competence of the candidates eligible for the post of Chief Engineer (Water), and as such it could not be considered in the meeting; that the Deputy Mayor who presided over the meeting remarked that the item was complete in all respects and accordingly held that there was no substance in the point of order; that an amendment to the effect that the words "on the basis of the seniority of the Superintending Engineers as fixed in the panel approved by the Union Public Service Commission and later adopted by the Delhi Water Supply and Sewage Disposal Committee" in the draft resolution be substituted by the words "having regard to the full facts and merits of Sarvshri M.N. Jain, J.D' Cruz and M.L. Anand", was moved by a Member, Shri Vishamber Duti Sharma; that a second amendment was moved to the effect that it be "resolved that the case be referred back to the Delhi Water Supply and Sewage Disposal Committee for finalising its recommendations on the basis of the directions laid down in Delhi High Court's decision, dated 9-6-72"; that when put to vote the second amendment was rejected and the first amendment was carried; and that it was then that the resolution was passed containing the recital set out above. There was thus some controversy at the meeting as to whether full information was placed before the House about the service particulars and competence of the three candidates, and the Deputy Mayor ruled that "the item was complete in all respects".

(36) It may also be stated here that the petitioner has filed an affidavit of a member of the Corporation, Dr. Z.R. Abbas Malik, in which it has been averred that the full service records of the three candidates were not available to the House to enable the latter to determine the comparative merit of each candidate for selection as Chief Engineer (Water), that the House took a decision in favor of Shri J.D'Cruz without such records, and that he opposed the mode adopted by the House and dissented to the decision then taken in selecting Shri J.D' Cruz as Chief Engineer (Water).

(37) It is clear from the above that the question as to whether all the service records of the three candidates, particularly those relating to the petitioner, were placed before the House at the time of the meeting is thus a disputed fact, and it cannot, in our opinion, be decided on the material placed before us. But, even if it is assumed that all the service records of the three candidates were actually placed before the House at the meeting, the question still remains as to whether the facts relating to the petitioner set out above were actually discussed and considered by the House. There is nothing in the minutes to show that they were so considered and the resolution

was passed after such consideration. The cryptic ruling of the Deputy Mayor recorded in the minutes does not show that there was such a consideration.

(38) The respondents have not placed on record any material to show that there was such a consideration, and if so what conclusion was arrived at regarding the question of referring to the Committee and the Commission the matter of assessing afresh the respective merit of the petitioner, Shri J.D'Cruz and Shri Anand in the light of the toned down adverse remarks. The mere recital in the minutes of the meeting viz., "having regard to the full facts and merits of Shri M.N. Jain, Shri J.D'Cruz and Shri M.L. Anand" is too bald and vague to carry conviction. In the absence of any material to support the said recital, it has to be held that it has not been shown that there was a proper consideration of all the facts and circumstances relating to the respective merit of the three candidates by the Corporation before passing the resolution appointing Shri J.D'Cruz as Chief Engineer (Water) on ad hoc basis. It is now a well established principle that even for ad hoc promotion all eligible persons have a right to be considered under Article 16(1) of the Constitution (vide the judgment of a Division Bench of this Court in *Ishwar Chandra Sangar and others v. Delhi Electric Supply Undertaking and others*, L.P.A. No. 110 of 1969 pronounced on May 28, 1970; *V.K. Tejpal and other v. Municipal Corporation of Delhi*, 1970 S.L.R. 552;(7) and the decision of a Division Bench of this Court in *O.P. Gupta v. Municipal Corporation of Delhi*, L.P.A. 120 of 1971(8), pronounced on September 4, 1972).

(39) There is thus considerable force in the contention on behalf of the petitioner that the resolution appointing Shri J.D'Cruz as Chief Engineer (Water) was passed by the Corporation without a proper consideration of all the facts and circumstances relating to the petitioner. The order of the Commissioner (Annexure XXII), dated June 12, 1972, reverting the petitioner as Superintending Engineer was passed apparently on the view expressed by him in his letter to the petitioner (Annexure XX), dated June 2, 1972, in which he made reference to the gradation made by the Departmental Promotion Committee and the Union Public Service Commission placing the petitioner as junior to Shri J.D'Cruz and Shri Anand, and in which he expressed his view that the adverse remarks were only corrective in nature and were not toned down. It is, thus, clear that the reversion of the petitioner was ordered by the Commissioner on the basis of the gradation made on September 22, 1969 and on the wrong view that there was no toning down of the adverse remarks. The order of reversion and the resolution passed by the Corporation were thus vitiated.

(40) For the foregoing reasons, the writ petition is allowed, the gradation made and the panel prepared on September 22, 1969 by the Departmental Promotion Committee and approved by the Union Public Service Commission are quashed, the order of the Commissioner dated June 12, 1972, reverting the petitioner as Superintending Engineer as well as the resolution of the Corporation passed on June 19, 1972 regarding the appointment of Shri J.D'Cruz as Chief Engineer (Water) on ad hoc basis and the appointment of Shri J.D'Cruz as such are also quashed, and the Commissioner is directed to refer the cases of the petitioner, Shri J.D'Cruz and Shri Anand to the Departmental Promotion Committee and the Union Public Service Commission for grading them afresh taking into consideration the toning down of the adverse remarks in the confidential reports relating to the petitioner for the years 1966 and 1968, and for re-fixing their seniority inter se. In the circumstances of the case, we direct the parties to bear their own costs in this writ petition.

