

GAHC010095742022



2026:GAU-AS:8898

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3359/2022

BINAY KUMAR DIWANA
S/O. SRI SHREEKRISHNA CHAURASIA, R/O. TYPE-III, QUARTER NO.14,
NHPC COLONY, GERUKAMUKH, DIST. DHEMAJI, PIN-787035, ASSAM.

VERSUS

THE UNION OF INDIA AND 16 ORS
REP. BY THE SECRETARY (POWER), SHRAM SHAKTI BHAWAN, RAFI
MARG, NEW DELHI, DELHI-110001.

2:NHPC LTD.

CORPORATE OFFICE
SECTOR-33
FARIDABAD
HARAYANA-121003.

3:THE CHAIRMAN AND MANAGING DIRECTOR

NHPC LTD.
CORPORATE OFFICE SECTOR-33
FARIDABAD
YARAYANA-121003.

4:THE DIRECTOR (PERSONNEL)

NHPC LTD.
CORPORATE OFFICE SECTOR-33
FARIDABAD
YARAYANA-121003.

5:SRI MANOJ KUMAR

S/O. SRI GUPRESHWAR RAI
EMS DIVISION
CORPORATE OFFICE
NHPC LTD.
CORPORATE OFFICE SECTOR-33
FARIDABAD
YARAYANA-121003.

6:SMT. ARCHANA KUMARI SHYAM

D/O. SHYAM KUMAR SINGH
PARBATI PROJECT STAGE-II
NHPC LTD.
P.O. NAGWAIN
DIST. MANDI
HIMACHAL PRADESH-175121.

7:PRAVEEN KUMAR
S/O. SRI JAGRESH KUMAR
SUBANSIRI LOWER HE PROJECT
NHPC COLONY
GERUKAMUKH
DIST. DHEMAJI
ASSAM-787035.

8:DHANVIR SINGH RAWAT

CHENAB VALLEY POWER PROJECTS PVT. LTD.
2ND FLOOR
JKPCC BUILDING
RAIL HEAD COMPLEX
PANAMA CHOWK
JAMMU (J AND K)-180006.

9:UPENDRA KUMAR SINGH

PARBATI PROJECT STATE-II
NHPC LTD.
P.O. NAGWAIN
DIST. MANDI
HIMACHAL PRADESH-175121.

10:SUNIL KUMAR
S/O. SRI JAMUNA PRASAD GUPTA
COST ENGINEERING DIVISION
CORPORATE OFFICE
NHPC LTD.
CORPORATE OFFICE

SECTOR-33
FARIDABAD
HARAYANA-121003.

11:VIRENDRA SINGH
SUBANSIRI LOWER HE PROJECT
NHPC COLONY
GERUKAMUKH
DIST. DHEMAJI
ASSAM-787035.

12:SENMO KARLO

SUBANSIRI LOWER HE PROJECT
NHPC COLONY
GERUKAMUKH
DIST. DHEMAJI
ASSAM-787035.

13:GOBINDA LAHKAR
RANGIT POWER STATION
NHPC LTD.
RANGIT NAGAR
SOUTH SIKKIM-737111.

14:AMARENDRA KUMAR SINGH

S/O. SRI TEJ PRATAP SINGH
BAIRA SIUL POWER STATION
NHPC LTD.
SURANGANI DIST. CHAMBA
HIMACHAL PRADESH-176317.

15:NITIN KASLIKAR

S/O. LT. DAMODAR KASLIKAR
KISHANGANGA POWER STATION
NHPC LTD. KRALPORA
DIST. BANDIPORA
JAMMU AND KASHMIR-193502.

16:SURESH KUMAR SANJEEVI

S/O. SRI SANJEEVI SANYASI
SUBANSIRI LOWER H E PROJECT
NHPC COLONY
GERUKAMUKH
DIST. DHEMAJI

ASSAM-787035.

17:THE DEPARTMENTAL PROMOTION COMMITTEE
REP. BY ITS CHAIRMAN (NOTICE UPON THE RESPONDENT NO.5 TO 17 MA
BE SERVED THROUGH THE RESPONDENT NO.3)

BEFORE

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocate for the Petitioner : MR. K N CHOUDHURY, Senior advocate

MR. N GAUTAM,

MS. N MAHANTA,

Advocate for the Respondents : ASSTT.S.G.I.,

MR. P K TIWARI (R- 2 to 4,17),

MR. A R GOGOI (R2 to 4,17),

MR. D SENAPATI (R-2,3,4,17),

MS. S. TODI (R-2,3,4,17),

MR. H K SARMA (R2,3,4,17),

MR. H ROHMAN (R-2 to 4, 17),

MR. A CHETRY (R-2 to 4, 17),

MR. G ALAM (R-2 to 4, 17),

MR. P D NAIR (R-2 to 4, 17),

MR. R K D CHOUDHURY (R-5-16),

MS. L DEVI(R-5 TO 16)

Date on which judgment was reserved: **19.03.2026**

Date of pronouncement of judgment : **17.06.2026**

Whether the pronouncement is of the **NA**

operative part of the judgment?

Whether the full judgment has been : **Yes**
pronounced?

JUDGMENT AND ORDER (CAV)

Heard Mr. K.N. Choudhury, learned Senior Counsel, assisted by Mr. N. Gautam, learned counsel for the petitioner. Also heard Mr. P.K. Tiwari, learned Senior Counsel assisted by Mr. A.R. Gogoi, learned counsel for the respondent nos. 2, 3, 4 & 17 and Mr. R.K.D. Choudhury, learned Senior Counsel and Dy. SGI for the respondent nos. 5 to 16.

2. The petitioner was posted as a Manager (Civil), DAM Division, Subansiri Lower Hydro Electric Project managed by the National Hydro Electric Power Corporation Limited (NHPCL) at the time of filing of this writ petition. The NHPCL is a category one company under the aegis of the Ministry of Power, Government of India. The petitioner had originally joined his services as a Junior Engineer (Civil) in the year 2004.

3. In the year 2007-2008, an internal induction was conducted for promotions to the post of Trainee Engineer/Trainee Officer, and the petitioner had participated along with other candidates in the said process. The petitioner

was, however, denied promotion. Aggrieved, he had approached the Punjab and Haryana High Court seeking relief. Initially, the relief sought was denied by the learned Single Judge, but thereafter, the Letters Patent Appeal filed by the petitioner came to be allowed by the order dated 16.11.2015.

4. The petitioner was thereafter granted the benefits of promotion to the post of Trainee Engineer with retrospective effect from 01.07.2008. The petitioner served as an Engineer (Civil) E02A from 01.07.2009 to 31.03.2014, as Assistant Manager (Civil) from 01.04.2014 to 31.12.2016, as Deputy Manager (Civil) from 01.01.2017 to 31.03.2018 and as Manager (Civil) from 01.04.2018 till the filing of the writ petition. The petitioner was granted promotions as Manager (Civil) E-V retrospectively w.e.f. 01.04.2018. As such, the petitioner became eligible to be considered for promotion from the cadre of Manager (Civil) E-V to the cadre of Senior Manager (Civil) E-VI on completion of 4 years of service as Manager (Civil) E-V, i.e. w.e.f. 01.04.2022. It has been stated in the writ petition that the petitioner had also pursued a Post Graduate Diploma in Energy Management (Renewable Energy) through a Distance Education Program, pursuant to an approval granted by the competent authority vide order dated 24.07.2020.

5. When the respondents took up a process for consideration of eligible incumbents for promotion to the cadre of Senior Manager (Civil) E-VI, the petitioner was also called for an interview, which was scheduled on 10.03.2022 through video conferencing. The results of the promotional process carried out

by the respondent authorities were not favourable to the petitioner, inasmuch as he was not afforded promotions, whereas 12 other Executives were promoted from the cadre of Manager (Civil) E-V to Senior Manager (Civil) E-VI. The petitioner thereafter made his enquiries and based on replies to the applications filed under the Right to Information Act, it came to his knowledge that the petitioner's name was reflected at Sl. No. 13 and that he had scored 56 marks out of 60 marks for his Performance Appraisal Report, 10 marks out of a maximum 10 marks for locational weightage, 0 marks out of 5 marks for additional qualification, 0 marks out of a maximum 10 marks for seniority weightage and 6 marks out of a maximum 15 marks for DPC/interview. Accordingly, the petitioner had secured 72 marks out of 100 marks allotted for the selection process.

6. The petitioner contends that the petitioner had been awarded 6 marks for DPC/Interview out of bias, only with a view to denying him the promotions, inasmuch as the qualifying marks in the interview were 8. It is a matter of record that all the candidates under the unreserved category who were denied promotions, including the petitioner, had been uniformly awarded 6 marks in the interview by the DPC. It is the case of the petitioner that had he been awarded either the marks which genuinely reflected his performance in the DPC or at least the qualifying marks, on an unbiased and impartial evaluation in the interview, his total would have come to at least 74. In that event, he would have not only qualified the interview but would also have secured enough merit

to ensure his promotion.

7. Mr. K. N. Choudhury, learned Senior Counsel, has submitted that the Promotion Policy of the NHPCL Executives are governed by Part-I Office Order No. 75/2019, which came into effect from 11.11.2019, and a copy of the same has been annexed to the writ petition. The learned Senior Counsel has submitted that the aforesaid Promotion Policy had undergone an amendment on 31.12.2020 and a further amendment on 29.01.2022. The learned Senior Counsel has submitted that by the amendment introduced on 29.01.2022, the promotions up to E-VI Grade were required to be based on eligibility and merit, subject to suitability.

8. The learned Senior Counsel has referred to Clause 8.1 of the Promotion Policy in 2019, which was later amended by the amendment of 2022 to read as follows :

“8.1. In order to encourage employees to acquire the higher educational qualifications leading to improved performance, maximum upto 5 marks shall be awarded for promotion from E2 to E3 and above in the following manner :

1. mark each for:

(i) Additional Degree/Diploma (Minimum duration of one year when in service with NHPC, approved and recognized by the AICTE/UGC/Govt as the case may be,

(ii) Paper publication in 'scopus indexed journal'

9. The learned Senior Counsel has thereafter drawn the attention of this Court to Clause 10.5 of the Policy introduced in 2019, which also underwent a modification and at the time of the consideration of the promotion of the

petitioner, Clause 10.5 read as follows:

“10.5. The DPC shall interview executives in the grades of E2 and above and upto E5 with a view to ascertain their suitability for the next higher position. Marks for interview shall be awarded by the DPC taking into consideration factors like:

- (i) educational qualifications,*
- (ii) consistency in performance,*
- (iii) professional knowledge,*
- (iv) ability to reason out logically,*
- (v) presentation of ideas coherently,*
- (vi) environmental awareness,*
- (vii) leadership, potential for decision making,*
- (viii) communication skill,*
- (ix) sense of involvement,*
- (x) commitment to the organization*
- (xi) recognition/appreciation letter of Director/CMD for commendable performance,*
- (xii) Warning/caution letter issued by the Disciplinary Authority”*

10. By referring to the distribution of marks under Promotion Policy and Rules for NHPC Executives, the learned Senior Counsel has submitted that the minimum qualifying marks in the interview for General Category candidates was fixed at 8, while for the SC and ST Category candidates, it was fixed at 7.

11. The learned Senior Counsel for the petitioner has submitted that as per Clause 10.5 of the amended Promotion Policy, the marks for interview were required to be awarded by the DPC taking into consideration 12 factors such as educational qualification; consistency in performance; professional knowledge; ability to reason out logically; presentation of ideas coherently; environmental awareness; leadership, potential for decision making; communication skills;

sense of involvement; commitment to the organization. The learned Senior Counsel has submitted that 10 out of the 12 factors have already been assessed and evaluated in the APAR of the petitioner. Therefore, it would not have been possible for the Interview Board to have come to a separate assessment from the one recorded in the APAR of the petitioner. The learned Senior counsel has submitted that out of the above 12 factors also, assessment of six factors, namely educational qualifications, consistency in performance, sense of involvement, commitment to organisation, recognition or appreciation letter of Director/CMD for commendable performance and warning or caution letter issued by the disciplinary authority, had to be confined to records of service of the incumbents and could not be based on variables.

12. The learned Senior Counsel has submitted that the petitioner had been awarded remarks up to 'outstanding' in his PAR and therefore, the sudden downgradation by the Interview Board to a position which was just below the qualifying mark itself exhibits the bias of the Interview Board.

13. The learned Senior counsel has submitted that during the interview, in the absence of any specific questions or discussions with regard to the 12 aspects relevant for Performance Appraisal Reports (PAR), the DPC ought to have considered the marks secured by the petitioner in his Performance Appraisal Reports at least against the 10 aspects appearing in clause 10.5 of the promotion policy. The petitioner had consistently secured higher marks against the aforesaid 10 aspects, which is evident from the PAR of the petitioner of the

last five years. It is the submission of the learned Senior counsel that the DPC did not assess the 12 factors individually, which is evident from the annexure appended to the RTI reply dated 26/4/2022.

The learned counsel further submits that the respondents have not clarified the basis on which the DPC had awarded only 6 marks out of 15 to the petitioner. The petitioner had secured 56 out of 60 marks in his last five years' PAR. In the absence of specific questions on the 12 aspects envisaged in clause 10.5 of the promotion policy, the DPC ought not to have taken an adverse view against the petitioner, contrary to the marks awarded in the performance appraisal report of the petitioner for the last five years. According to the learned senior counsel, the DPC had acted in violation of clause 10.5 of the promotion policy.

14. It is the submission of the Senior counsel that the DPC had awarded fewer marks to the petitioner without adopting any rational criteria just to ensure the disqualification of the petitioner. It has been submitted that their records would reveal that the interview board did not individually record their assessment. Therefore, the average of the marks awarded in the interview could not have been determined. The Learned Senior Counsel has submitted that instead of individually evaluating the candidates on the required attributes, a consensus was reached to award every candidate of the general category who did not qualify in the interview with 6 marks and by doing the same, the objectivity component of the evaluation was lost. However, such an objective assessment is

the essence of a model selection process.

15. Referring to the change brought into Clause 12.8, the learned Senior Counsel has submitted that at the time of consideration of promotion of the petitioner, Clause 12.8 read as follows.

“12.8 Field exposure is essential for consideration of promotion to the grade of E7 & E8. Thus, an executive will be required to have field experience at Project/Power Station/Unit/Office (Field) other than Corporate Office/Regional Office/Liaison Offices for consideration of promotion as follows:

(i)	For promotion to the grade of E5	Minimum of 3 years experience at the level of E2 to E4.
(i)	For promotion to the grade of E6	Minimum of 4 years experience at the level of E2 to E5.
(i)	For promotion to the grade of E7	Minimum of 6 years experience at the level of E2 to E6.
(i)	For promotion to the grade of E8	Minimum of 7 years experience at the level of E2 to E7.

Where the executive does not have sufficient exposure at the time of Consideration of promotion as stipulated above, the executive shall necessarily be transferred to the field for exposure, and promotion will be effective only on joining at the new place of posting.

Where Executive does not join at the new place of posting in the field on promotion within the stipulated period, the promotion would stand automatically cancelled and his case for promotion to the next higher grade will be considered afresh by the next DPC as per policy.

To counter operational difficulties in implementing the Clause relating to Field

exposure for few key functions such as Design and Engineering Division, Company Secretariat Cadre ext., exceptions, if required may be made after approval of CMD by recording proper reasons.

16. The learned Senior counsel has submitted that the bias and arbitrariness of the respondent authorities would be evidenced from the fact that although the promotion policy required a minimum of four years of field exposure for being eligible for consideration for promotion to Grade E-6, the respondent 5, 6, 7, 8, 9 and 12, who were afforded promotions, did not have the requisite field exposure of four years. Yet they had been considered eligible and had also been afforded promotions. It is the case of the petitioner that had he been awarded at least qualifying marks in the interview, he would have scored over the aforesaid respondents. The learned Senior counsel also submitted that some of the aforesaid persons, who were afforded promotions despite not having the requisite field exposure, were not even deputed for the mandatory field postings after the promotions were effected.

17. The learned Senior counsel has submitted that the petitioner had been denied the appropriate marks for additional qualification. By refuting the respondents plea taken in the affidavit in opposition that he had been denied the marks as he did not submit the pass certificate, the learned senior counsel has referred to two other candidates who had been denied marks although they had submitted all the requisite documents on time and another candidate, who had also been afforded promotions and who had been awarded marks, who

according to the learned senior counsel was similarly placed.

18. Though the composition of the DPC had also been assailed, stating that the same was constituted in violation of the provisions of Clause 8.1 of the notice dated 26.02.2022, this Court, on the perusal of the records, had found that the composition of the DPC did not suffer from the vices sought to be pointed out on behalf of the petitioner. Therefore, the arguments made on behalf of the contesting parties are not being elaborated while adjudicating the list.

19. The learned Senior counsel thus submits that the DPC had failed to consider the case of the petitioner for promotions as per the provisions of the relevant policy. Therefore, he has submitted that the impugned promotion process, which gave unlawful advantage to the private respondents and which had denied the petitioner his legal right to be considered for promotions in accordance with law, be interfered with, set aside and quashed. He has submitted that the respondents be directed to afford the promotions to the petitioner with effect from 1.4.2022, with all consequential benefits.

20. Mr PK Tiwari, learned Senior Counsel appearing for NHPC, has countered the submissions made on behalf of the petitioners by referring to clause 10.5 of the promotion policy. He has submitted that, as per the provision, the interview board is required to interview the candidates before it, with a view to ascertaining their suitability for promotion. The provision lays down the various parameters on the basis of which the DPC is required to award marks. The

purpose of holding the interview is to ascertain the suitability of a candidate for the next higher position. In other words, suitability is an essential prerequisite for promotion, and the same is to be determined on the basis of performance in the interview. As per Clause 4.7 of the promotion policy, the promotions are to be based on eligibility and merit, subject to suitability.

He has submitted that the merit is determined on the basis of total marks scored against various heads, namely marks for performance, appraisal marks against seniority, marks for interview, marks for field exposure, and marks for additional educational qualification, bringing the total of the marks to 100. Clause 4.9 of the promotion policy mandates that mere fulfilment of the eligibility criteria would not give any right for promotion or even a right for consideration for promotion.

In its affidavit-in-opposition, the NHPC has taken a stand that Separate marks are not required to be awarded against each of the 12 parameters, and the members of the DPC are not required to record their marks individually against each of the parameters. Explaining the above, the learned senior counsel for the respondents submits that the stand of the NHPC is that Marks had been awarded by the DPC after deliberations between the members and with the consent of all members of the committee. The learned senior counsel has submitted that it is a settled principle that when the rules are silent, the selection committee is not required to record reasons for selection or for non-selection of a person. He has submitted that the same principle would apply

with regard to marks awarded for the interview. To buttress his submission, he has relied upon the case of ***National Institute of Mental Health and Neurosciences versus K Kalyanaraman***, reported in ***(1992) Suppl 2 SCC 481***, wherein at paragraph 7, the Supreme Court held as follows.

“ 7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi over the other candidate. The selection has been made by the assessment of the relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement, the selection made without recording reasons cannot be faulted with. The High Court in support of its reasoning, has, however, referred to the decision of this Court in Union of India v. Mohan Lal Capoor, (1974) 1 SCR 797. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in Capoor case was rendered on 26 September, 1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The Capoor case cannot, therefore, be construed as an authority for the proposition that there should be reason formulated for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection

or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R. S. Dass V. Union of India, 1986 (Suppl) SCC 617 at p. 633 in which Kapoor case ([AIR 1974 SC 87](#)) was also distinguished.

He submits that the same principle of law was reiterated in **Vidyarnath Yadav versus Aditya Narayan**, reported in **(2020) 16 SCC 799**.

21. He has submitted that in the present case, there was no requirement under the promotion policy mandating the disclosure of reasons for the marks awarded in the interview, and as such, the marks awarded by the DPC were in accordance with the Promotion Policy and Rules for NHPC Executives.

22. He has placed reliance on **MADAN Lal and Others v. State of J&K and Ors.** reported in **(1995) 3 SCC 486**, where at para 13, 14 the Apex Court held:-

“Para 13.. Rule // does not provide for any separate assessment of marks for candidates at viva voce examination, faculty-wise... In other words, the Interviewing Committee has to keep in view the overall performance of the candidates at the oral interview, and while doing so, their intelligence, general knowledge, personality, aptitude and suitability have to be kept in the centre. The Rule merely lays down the object of assessing such candidates in the viva voce examination....”

23. He has submitted that in the present case, the promotion policy and Rules for NHPC executives only indicate the criteria to be considered in the interview test without dividing the interview test into distinct subtests. Therefore, the DPC was under no legal obligation to subdivide the marks under various heads. He

has placed reliance on ***Lila Dhar Vs. State of Rajasthan*** reported in **(1981) 4 SCC 159 (Page 166, Para 5 &8)**. He has submitted that the contention that the interview board was required to subdivide the total marks into sub-heads was rejected in ***Keshav Ram Pal (Dr.) vs. UP Higher Education Services Commission, Allahabad***, reported in **(1986) 1 SCC 671**. The Hon'ble Court had observed that the Interview Board was not under any obligation to subdivide the marks under various heads.

24. He has submitted that the principle of law is also well settled that there is a presumption that the Selection Committee has acted fairly. When a Selection Committee recommends the selection of a person, the same cannot be presumed to have been done in a mechanical manner in the absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act. The party that makes any allegation of bias or favouritism is required to prove the same. In this connection, he has relied on ***Union of India vs. Bikash Kumar*** reported in **(2006) 8 SCC 192 (Page 195, Para 14)**.

He has submitted that in the present case, though the petitioner has made an allegation of bias and favouritism, he has failed to establish the same. Moreover, no bias has been alleged against any named individual. The DPC in the present case was comprised of 5 senior officers of NHPC and 1 independent expert from an outside agency. There is no material to indicate any bias against such senior officers.

25. Responding to the allegation of bias and arbitrariness in the grant of uniform and equal marks to all candidates who missed their promotion, he has submitted that the performance of all 12 (twelve) unsuccessful Executives in the interview was not found suitable by the Members of the interview board. Since these Executives, in the unanimous opinion of the Members of the DPC, were not attaining the requisite benchmark and their performance was substantively similar, it was deemed fit to award them 6(six) marks each.

26. Responding to the contention that the marks scored in PAR ought to have been the basis for giving marks in the interview, he has submitted that "suitability" is one of the components of merit, but the assessment of suitability is only by way of interview. Hence, marks scored in the PAR could not be taken into consideration for determining the suitability for promotion, but had relevance for determining the overall merit. He has submitted that a harmonious reading of Clause 4.7 and 10.5 makes the interview the sole basis for the determination of suitability for promotion, whereas marks scored under various heads, including the interview, determined the overall merit of the executive for the purpose of promotion. Such merit can be determined only on the basis of the performance of the candidate in the interview.

27. With regard to the contention of the petitioner that he was not given marks for the additional qualification, the learned Senior counsel for the respondents has submitted that, as per Clause 11 of the Officer Order dated 20.07.2020, a copy of the diploma certificate along with the mark sheet was

required to be submitted to the competent authority to show successful completion of the course. However, the petitioner had submitted only the mark sheet and not a copy of the diploma certificate, and therefore, he was not allotted marks for the additional qualification. He has further submitted that even if the said marks were allotted, the overall position would not change, since the petitioner had failed to obtain the qualifying marks in the interview, thereby rendering him unsuitable for promotion. In view of the above, the learned Senior Counsel has submitted that the writ petition does not deserve any further consideration and would merit a dismissal.

28. The learned counsel appearing for the respondent nos. 5 to 17 has adopted the arguments made by Mr. P K Tiwari, learned senior counsel appearing for the NHPC.

29. Now this Court has considered the submission made on behalf of the contesting parties and also considered the judgments placed herein.

30. The first argument taken up for consideration is the assertion of the petitioner that the DPC had acted in an arbitrary and biased manner when all the unsuccessful candidates in the promotion procedure had been awarded six marks in a uniform manner, while the successful candidates had been awarded varying marks in the interview over and above the minimum qualifying marks. In the affidavit-in-opposition filed on behalf of the respondent authorities, it has been asserted that the DPC in the interview had to assess the suitability of each of the candidates and for this purpose, the Interview Board had put relevant

questions keeping in mind the 12 criteria mentioned in Clause 10.5 of the promotion policy.

In response to specific queries made by this court as to how each of the unsuccessful unreserved category candidates had been awarded the exact same marks, the learned Senior counsel appearing for the respondents has submitted that the Interview Board had initially assessed the candidates on their suitability and based on a general consensus, it was decided that all unsuitable candidates would be awarded six marks uniformly. This Court finds that such a manner of awarding uniform marks after determining, on a consensus, the unsuitability of a candidate is a proposition unheard of in law. The promotion policy had laid down that the DPC would interview the executives and allot marks in the interview by taking into consideration different relevant factors marked out in the promotion policy. It is on the basis of the marks achieved that the suitability or otherwise of a candidate would be determined. If a candidate scored 8 or more marks, he would be deemed suitable for promotion. This methodology is seen to have been adopted for the candidates who were afforded promotion. However, for the candidates who were denied a promotion, it appears that the interview board had first determined their suitability in the negative and thereafter proceeded to award them uniform marks. This would again indicate that, either before interviewing the candidates or halfway through the interview, the Board had to form a consensus to first determine the suitable and the unsuitable candidates, award six marks to all the candidates who were found

unsuitable and thereafter award marks to the different successful candidates to ensure that they remain above the minimum qualifying marks. It is the specific stand that the members of the Interview Board did not allot marks individually. Therefore, it appears in the present case that the interview board first decided the suitability or otherwise of each of the candidates and thereafter awarded consensual marks to the successful candidates.

31. In my considered view, if such a methodology has been followed by the Interview Board, the same cannot be approved. The Interview Board was required to allot marks by taking into consideration different factors, and, thereafter, on the consideration of the marks allotted, the suitability or otherwise of a candidate could have been determined. The marks obtained by each individual candidate had to be assessed, and upon completion of the interview process, the marks allotted would have to be taken into account to determine the suitability or otherwise of the candidate, and the overall merit of the qualified candidates would then be decided on the basis of the total marks achieved by each of the candidates. In the present case, admittedly, the consensus of the interview board decided the suitability first and thereafter allotted uniform marks. The Interview Board has taken a complete reverse process by first determining the suitability and then awarding consensual marks. When the marks are required to determine suitability, the process adopted by the respondents would be one that reverses the entire concept. Any approval to such a reversed method would amount to allowing the Interview Board to "put

the cart before the horse". In my considered opinion, it is the marks that have to determine the suitability of the candidate, while the interview board admittedly resorted to determining the suitability before awarding marks. Such was not the scheme laid down in the promotion policy, and the manner and mode adopted by the Interview Board cannot receive the approval of this Court.

32. Records reveal that respondents No. 5, 6, 7, 8, 9 and 12, in fact, did not have the requisite field exposure for 4(four) years and hence they were not eligible for being considered for promotions to Grade E-6. The respondents' authorities have asserted that a relaxation had been granted to the aforesaid respondents in accordance with the provisions of Clause 12.8 of the promotion policy. Clause 12.8 has already been reproduced hereinabove. Clause 4.6 had required the number of eligible candidates to be considered for promotion not to exceed three times the number of vacancies available in various posts. It is noticed that the respondents had not explained why respondents No. 5, 6, 7, 8, 9 and 12 had been called for consideration by the DPC, although they were not eligible for being considered for promotion and as to why it was deemed fit that they would be allowed to participate, even when an appropriate number of candidates fulfilling the eligibility criteria were available.

33. Be that as it may, the respondents have relied on the provision which is to the effect that in case an executive did not have sufficient exposure at the time of consideration for promotion, the executive was required to be necessarily

transferred to the field of exposure, and promotion would be effective only upon joining at the new place of posting. As per the additional affidavit filed by the respondent authorities on 11th of March, it has been admitted that respondent Nos. 6, 7 and 9 had been transferred as per the departmental policy promotion, and respondent Nos. 8 and 12 had been allotted for posting. It is their stand that the respondent No. 5 had been retained with the approval of the competent authority in terms of Clause 12.9 of the departmental promotion committee. To this effect, the respondents have referred to the communication dated 28.03.2022, which was annexed as annexure R-II to show that the respondent No.5 was engaged in critical works of the Estate Management Services Division and was involved with coordinating with the District Authorities, and his services were required in the Estate Management Services Division. We find force in the submission of the petitioner that the respondent No.5 was not serving in any of the key locations, such as the D&E Division, Cadre etc. and therefore, he would not have been entitled to the relaxation of retention granted to him on his promotion.

34. It is further seen that the office order dated 24.07.2020 was the approval of the competent authority granted to the petitioner to pursue higher studies. The petitioner, by the aforesaid order, had been allowed the academic/professional course subject to the conditions enumerated therein, one of which was that the employee would submit a copy of the degree/diploma certificate along with the marksheet on completion of the academic/professional

course. The promotion policy required that additional marks could be granted to a candidate on his attaining such additional qualification. The petitioner had submitted the available marksheets before the Chairman of the Departmental Promotional Committee praying that he be allowed additional one mark. Although the marksheets of the petitioner were referred to be placed in the personal file of the petitioner, the concerned authorities did not inform the petitioner of the requirement of submitting the passed certificate/diploma certificate and that in the absence of the same the additional marks would not be awarded.

35. No other issues had been raised at the hearing.

36. In view of the finding that the process adopted by the Interview Board, in first determining the suitability and thereafter awarding uniform marks marks to all unsuccessful candidates in the interview, to be unsustainable in law, the impugned selection procedure for promotion to the Grade of E-6 from the executive who were service in the Grade of E-5, assailed in this writ petition deserves interference. Accordingly, the proceedings of the Interview Board with regard to consideration for promotion of the petitioner to Grade E-6 is set aside and quashed and as a consequence, the proceedings of the DPC thereafter, insofar as they relate to consideration of the petitioner for promotion to Grade E-6 is also set aside and quashed. The respondent authorities shall now reinitiate the proceeding for conducting fresh interview in respect of the petitioner for promotions to E-6 Grade and based on the results thereof take up

further proceedings for bringing the promotional process to the Grade of E-6 to its logical conclusion. The promotion orders bearing No. PEE / 082 / 2022 dated 29.03.2022, PEE / 085 / 2022 dated 29.03.2022 and PEE / 088 / 2022 dated 29.03.2022 shall remain subject to the outcome of the fresh proceedings to be taken up for the petitioner and necessary accomodation/modification/adjuments be made to ensure the benefits of promotion to the petitioner, in the event he is found fit for promotion, from the date when other promotees had received the benefits.

37. The writ petition is accordingly disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant