

*CWP No.1660 of 2020(O&M) &
Connected Matters*

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Reserved on :- 09.09.2020

Date of Decision:-06.11.2020

CWP No.1660 of 2020(O&M)

State of Punjab.

.....Petitioner.

Versus

**Central Administrative Tribunal, Chandigarh Bench at Chandigarh &
Ors.**

.....Respondents.

2.

CWP No.1608 of 2020(O&M)

Sh. Dinkar Gupta.

.....Petitioner.

Versus

**Central Administrative Tribunal, Chandigarh Bench at Chandigarh &
Ors.**

.....Respondents.

3.

CWP No.1617 of 2020(O&M)

Sh. Dinkar Gupta.

.....Petitioner.

Versus

**Central Administrative Tribunal, Chandigarh Bench at Chandigarh &
Ors.**

.....Respondents.

4.

CWP No.1651 of 2020(O&M)

State of Punjab.

.....Petitioners.

Versus

**Central Administrative Tribunal, Chandigarh Bench at Chandigarh &
Ors.**

.....Respondents.

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5.

CWP No.3811 of 2020(O&M)

Siddharth Chattopadhyaya.

.....Petitioner.

Versus

Union Public Service Commission & Ors.

.....Respondents.

6.

CWP No.4616 of 2020(O&M)

Union Public Service Commission & Anr.

.....Petitioners.

Versus

Sh. Mohd. Mustafa & Ors.

.....Respondents.

7.

CWP No.4618 of 2020(O&M)

Union Public Service Commission & Anr.

.....Petitioners.

Versus

Sh. Siddharth Chattopadhyaya & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Atul Nanda, Advocate General, Punjab, alongwith
Ms. Rameeza Hakeem, Additional Advocate General, Punjab
for the **petitioner-State of Punjab**
(in CWP Nos. 1651 & 1660 of 2020); and for official
respondent(s)/State (in CWP Nos. 1608, 1617, 3811, 4616 &
4618 of 2020)

Mr. Maninder Singh, Sr. Advocate assisted by
S/Sh. Saurabh Mishra & Prabhas Bajaj, Advocates
for the **petitioner-Sh. Dinkar Gupta** (in CWP Nos. 1608 &
1617 of 2020); and for private **respondent-Sh. Dinkar Gupta**
(in CWP Nos. 1651, 1660, 3811, 4616 & 4618 of 2020)

Mr. Rajiv Atma Ram, Sr. Advocate, assisted by
Mr. Arjun Partap Atma Rama, Advocate

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for the **petitioner-Sh. Siddharath Chattopadhyaya**
(in CWP No. 3811 of 2020); and for **private
respondent-Sh. Siddharath Chattopadhyaya**
(in CWP Nos.1617 & 1651, 4618 of 2020)

Mr. Aman Lekhi, Addl. Solicitor General of India, alongwith
S/Sh./Smt. Naresh Kaushik, Alka Chatrath, Ujjwal Sinha,
Ms. Mehak Huria, Ms. Shikha Sandhu, Mr. Ritwiz Rishabh,
Mr. Nishant Maini, Mr. Aniket Seth &
Mr. Nitin Arora, Advocates

for the **petitioner(s)-UPSC** (in CWPs Nos. 4616 & 4618 of
2020) for the **respondent/UPSC** (in CWP Nos. 1608 & 1660 of
2020)

Mr. Satya Pal Jain, Addl. Solicitor General of India, alongwith
Mr. Dheeraj Jain, Sr. Counsel, Govt. of India
for **respondent(s)/Union of India** (in all cases)

Mr. Deepinder Singh Patwalia, Sr. Advocate, assisted by
Mr. Bikramjit Singh Patwalia, Advocate
for **private respondent-Shri Mohd. Mustafa**
(in CWP Nos. 1608 & 1660, 4616 of 2020)

Ms. Vibha Datta Makhija, Senior Advocate, assisted by
Mr. Vipul Joshi, Advocate
for **private respondent – Sh. Suresh Arora**
(in CWP Nos. 1608, 1617, 3811 & 4618 of 2020).

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JASWANT SINGH, J.

*[The aforesaid presence is being recorded through video conferencing since
the proceedings are being conducted in virtual court]*

1. By this common Order, the aforementioned seven (7) Writ Petitions, are being disposed of, as the same involve similar facts, identical issues and are all directed against the common Order dated **17.01.2020** passed the Ld. Central Administrative Tribunal Regional Bench Chandigarh (hereinafter referred to as the '**Tribunal**') in OA No. 199 of 2019 and OA No. 211 of 2019 whereby the appointment of the Director General of Police (Head of Police Force) {hereinafter referred to "**DGP (HoPF)**" } for the

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State of Punjab has been set aside.

For the purpose of this judgment, the facts are being taken from **CWP No. 1660 of 2020** titled “**State of Punjab versus Central Administrative Tribunal and others**” which with the consent of the parties is taken as the lead case.

Background:

2. The background leading to the present litigation is that **Mohd. Mustafa** and **Siddarth Chattopadhyaya** who belong to the Indian Police Service of 1985 / 1986 batch belonging to the Punjab cadre filed Original Applications assailing an order dated 07.02.2019 (**P-2 Colly/A-11**), wherein the Government of Punjab appointed Dinkar Gupta, an IPS officer of 1987 batch of Punjab cadre, as Director General of Police, Head of Police Force {hereinafter referred to as DGP (HoPF)}, on the basis of the recommendations dated 04.02.2019 (**P-2 Colly/A-10**), made by the Empanelment Committee constituted by the Union Public Service Commission (hereinafter referred to as “UPSC”). The brief facts are as follows :

2.1. The post of DGP (HoPF) in the State of Punjab was to fall vacant on the retirement of Mr. Suresh Arora. In anticipation of such vacancy, steps were taken to select the suitable Officer from among all eligible officers of the Cadre of the DGP/ ADGP.

2.2. The proposals for preparation of panel of names to be considered for appointment to the post of DGP (HoPF), were initiated by the State of Punjab, Department of Home Affairs by addressing a letter dated 19.01.2019 (**P-2 Colly/A-7**) to the UPSC. The proposal referred to the

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orders passed by the Hon'ble Supreme Court in "**Prakash Singh & others v. Union of India & others**" and a list of 12 officers, who were working in the rank of DGP/Additional DGP and have completed 30 years of service, was forwarded. The names of Mohd. Mustafa, Siddarth Chattopadhyaya & Dinkar Gupta appeared at Sl. No. 2, 5 & 6 respectively, in the said List of 12 Officers forwarded with the letter dated 19.01.2019 (P-2 Colly/A-7).

2.3. The UPSC / Empanelment Committee upon the receipt of said proposal conducted its proceedings and vide its recommendations dated 04.02.2019 (P-2 Colly/A-10) forwarded a panel of 3 names, i.e. Dinkar Gupta, M K Tiwari and Mr. V K Bhawra, who were at serial No. 6, 8 & 9 respectively of the list forwarded by the Government. By the order dated 07.02.2019 (P-2 Colly/A-10), the State of Punjab, Department of Home Affairs appointed Dinkar Gupta who was senior-most in the empanelled Officers as its DGP (HoPF).

2.4. Mohd Mustafa filed Original Application O.A. No.199 of 2019 and Siddarth Chattopadhyaya filed O.A. No. 211 of 2019 seeking the quashing of the Order dated 07.02.2019 vide which Sh Dinkar Gupta IPS was appointed as DGP (HoPF) with the assertions that the applicants are more qualified and senior to Sh Dinkar Gupta in respect of the conditions prescribed by the Hon'ble Supreme Court in **Prakash Singh case** (*supra*). It was also further prayed that the recommendations dated 04.02.2019 made by the Empanelment Committee of the UPSC be also quashed.

Separate replies were filed by Union of India, UPSC and the Empanelment Committee, State of Punjab, Dinkar Gupta before the Tribunal refuting the grounds raised by the Applicants.

Impugned Order

3. The Tribunal by the impugned Order herein, dated 17.01.2020, allowed both the Original Applications and held that the procedure adopted by Respondent UPSC and the Empanelment Committee for preparation of the panel for the purpose of selection and appointment of DGP (HoPF) for the State of Punjab is patently opposed to and is violative of the procedure stipulated by the Hon'ble Supreme Court in its judgment dated 22.09.2006 titled "**Prakash Singh & others v. Union of India & others**" (2006) 8 **SCC 1** and as a consequence of such findings, the recommendations dated 04.02.2019 of the Empanelment Committee and order dated 07.02.2019, appointing Dinkar Gupta, IPS of the 1987 Batch, as DGP (HoPF) have been set aside. The Respondent UPSC and the Empanelment Committee were directed to prepare a panel of three senior-most officers, strictly in accordance with the judgment of Hon'ble Supreme Court in **Prakash Singh's case (supra)** with further directions to complete the exercise in this behalf within four weeks from the date of receipt of a copy of the judgment. In nutshell, the findings of the Tribunal in the Order dated 17.01.2020 (P-1) are as under:

- (i) The draft Guidelines do not have any authenticity or legality (Para 48)
- (ii) The Selection Committee for selection to the post of DGP (HoPF) does not have any permission to adopt its own method. In terms of the judgment of the Hon'ble Supreme Court in Prakash Singh's case (supra), the selection of DGP (HoPF) has to be made based on the three factors – the length of service; very good record and range of experience for heading the Police Force with emphasis on seniority. (Para 49)
- (iii) the Draft Guidelines are not contained in any official document, referable to any statute, cannot be permitted to defeat the directions issued by the Hon'ble Supreme Court. (Para 50).
- (iv) The procedure mentioned in Para 5.1, 6.1.2 and 6.1.3 of the

- Counter Affidavit of UPSC / Empanelment Committee is contrary to the law laid down by the Hon'ble Supreme Court and also such not mentioned in Minutes of meeting of Empanelment Committee dated 04.02.2019. (Para 50)
- (v) The Core Policing Areas are not relevant to the selection process (Para 51).
- (vi) The selection process galvanized by the Hon'ble Supreme Court in Prakash Singh's case has been ignored and defeated with impunity. A device procedure was evolved to choose the selection criteria in such a way that desired candidates are selected. (Para 55)
- (vii) In a selection process, when a person who is otherwise fit is sought to be overlooked, an indication is required to be given in a very brief and succinct manner. In present case, the Empanelment Committee does not give any indication as to what weighed in its mind to operate list of 12 Officers which was forwarded by State of Punjab with request to UPSC to send list of 6 officers for it to pick two DGPs while list of all 12 officers was considered for selecting a panel of only 3 AND how the candidates at serial No. 6, 8 & 9 were selected in supercession of their seniors. Failure to give reasons lead to conclusion that there are no valid reasons (Para 63).
- (viii) The reasons mentioned in the Counter Affidavit by UPSC for selecting the empanelled candidates or superceding the seniors are not in accord with the Judgment of the Hon'ble Supreme Court in Prakash Singh's case (supra).(Para 63)
- (ix) The entire selection process and the consequential appointment is contrary to the judgment of the Hon'ble Supreme Court in Prakash Singh's case (supra).(Para 63)
- (x) the Tribunal is not impressed with the pleading that Dinkar Gupta, the empanelled and appointed cadre Officer was named by the SIT constituted by Punjab and Haryana High Court to identify the nexus between senior officers & drug mafia since no specific order was passed nor any finding was recorded nor any proceedings pending against Dinkar Gupta. (Para 64)
- (xi) it would be unfair to attribute any malice or prejudice to the 6th Respondent Suresh Arora, then DGP (HoPF) Punjab on the conclusion of the selection process towards Siddarth Chattopadhyaya(Para 66)

4. Hence, the present set of Writ Petitions, wherein, the UPSC, State of Punjab and Dinkar Gupta have filed one set of litigation being aggrieved against the judgment dated 17.01.2020, while Siddarth Chattopadhyaya has filed writ petition being aggrieved by the rejection of the claim of bias set up against Sh. Suresh Arora, the then DGP (HoPF) being the *ex-officio* member of the Empanelment Committee for the selection of panel for the post of DGP (HoPF), wherein the said Petitioner

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(Siddarth Chattopadhyaya) was considered and found unfit for empanelment.

Pleadings in the CWPs

5. Against the common impugned Order dated 17.01.2020 (P-1), the State of Punjab has filed Civil Writ Petition No. 1660 of 2020 in OA filed by Mohammed Mustafa and CWP No. 1651 of 2020 in OA filed by Siddarth Chattopadhyaya.

5.1. The petitioner State of Punjab has raised common grounds in aforesaid CWPs assailing the impugned judgement dated 17.01.2020 that the Draft Guidelines-2009 followed by the Empanelment Committee, have been approved by the Hon'ble Supreme Court, the Tribunal has substituted its own opinion on the merits of the selection of DGP (HoPF) for that of the Empanelment Committee and has effectively sat in appeal over the decision of the Empanelment Committee, which is impermissible in law and expressly forbidden by Supreme Court in "**UPSC versus M Sathya Priya**" **(2018) 15 SCC 796**, the Tribunal has violated the criteria fixed by the Hon'ble Supreme Court (in Prakash Singh's case) for the empanelment of DGP (HoPF) by negating the criteria of range of experience to Head the Police Force and submerging it in the quality of Service Record as observed in Para 57 of the impugned order dated 17.01.2020, the Selection Committee is not required to record reasons for selection to mention all facts relating to the selection in the Minutes of the Meeting and that the Tribunal has failed to distinguish between the 'Policing Areas' and 'Core Policing Areas' referring to 20 Policing Areas as Core Policing Areas whereas the Core Policing Areas have to be selected from among the Policing Areas and all Policing Areas cannot be Core Policing Areas but the

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Tribunal has failed to appreciate this fact while holding that the Core Policing Areas have been selected in an arbitrary manner.

5.2. The State of Punjab has also taken the technical objections that:

- before approaching the Tribunal, the applicants in OAs before the Tribunal have not availed the alternative remedy under Rule 16 of All India Service (Discipline and Appeal) Rules 1969, by preferring appeal to the Central Government against any order of the State Government which has the effect of superseding them in promotion to a Selection Post. Thus in view of such alternative remedy being available, the Tribunal acted without jurisdiction in entertaining and disposing of the matter.

- Further, under Section 20 (1) of the Administrative Tribunals Act 1985, the Tribunal has travelled beyond the orders of Hon'ble Supreme Court in the Prakash Singh's case (*supra*) by declaring the Draft Guidelines framed by the UPSC in the year 2009 as illegal and arbitrary, सत्यमेव जयते

5.3. It is stand of the State of Punjab that in compliance with Para 2 of the Draft Guidelines - 2009, all officers of the Indian Police Service of the concerned cadre not below the rank of ADG and who have completed atleast 30 years of service as on the date of occurrence of vacancy are considered in order to have the selection in objective manner. It is stated that the assessment of all 12 officers falling within the zone of consideration as defined in UPSC Guideline 2009, for the purpose of empanelment is fully compliant with the directions of the Hon'ble Supreme Court in Prakash Singh's case.

5.4. Reliance is also placed on the proceedings before the Hon'ble Supreme Court in **Parkash Singh's case** (*supra*), wherein, on 16.01.2019,

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the Hon'ble Supreme Court took note of the submissions made by Shri Rakesh Kumar Gupta, then Secretary, UPSC regarding the panel of eligible officer of the rank of DGP or ADGP being drawn up by Empanelment Committee of UPSC. The Hon'ble Supreme Court in its order dated 16.01.2019 clearly expressed satisfaction with the procedure adopted by the UPSC. Based on the above it is submitted that the Draft Guidelines of 2009 are not in abrogation, but are to give effect to the orders of Hon'ble Supreme Court and have met with the approval of the Hon'ble Supreme Court.

6. The other aggrieved parties have also filed their respective Writ Petitions, challenging the judgment dated 17.01.2020 passed by the Tribunal. The gist of the other Civil Writ Petitions is as under :

6.1. **CWP No.1608 of 2020 & CWP No. 1617 of 2020**

CWP No.1608 of 2020 titled as “Dinkar Gupta vs. Central Administrative Tribunal, Chandigarh Bench & Others” has been filed in OA No.60/199/2019 (Mohd. Mustafa vs. Union of India & Others) and **CWP No.1617 of 2020** titled “Dinkar Gupta vs. CAT & Others” in OA No.60/211/2019 (Sidharath Chattopadhyaya vs. Union of India & Others) by Dinkar Gupta against the order dated 17.01.2020 stating that the Tribunal has misinterpreted the judgment rendered by the Hon'ble Supreme Court in **Parkash Singh vs. Union of India, 2006 (8) SCC (1)**.

The lead grounds raised in these Writ Petitions are similar to the grounds raised by the State of Punjab, additionally while defending the action of the UPSC / Empanelment Committee, it is submitted that the Empanelment Committee has adopted cogent & objective criteria which is explained in detail in Para 6.1.2 to Para 6.1.4 of the written statement filed by the UPSC/ Empanelment Committee before the Tribunal. It is submitted

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that the Empanelment Committee devised a rational criteria so as to assess the “range of experience for heading the Police Force”. It is submitted that the reasoning given by the Ld. Tribunal that the core area so identified could not have been looked into by the Empanelment Committee is erroneous and also against the broad mandate of the Hon'ble Supreme Court in **Parkash Singh's** case.

It is submitted that the Ld. Tribunal has gravely erred in holding that the Petitioner (Dinkar Gupta) served in the field of intelligence for more than a decade, whereas, the fact remains that the Petitioner has diverse experience in all core policing areas identified by the Empanelment Committee. In the last 10 years, the petitioner Dinkar Gupta has experience of 2 Years & 5 Months in Intelligence, 2 Years 8 Months in Law & Order (Additional Charge), 1 Year 4 Months in Administration and 3 years in security. Relying on the judgment of Hon'ble Supreme Court in “UPSC vs. K Rajaiah & Others”, 2005(10) SCC 15 and in “UPSC vs. M. Sathiya Priya & Others” 2018(15) SCC 796, it is submitted that the Selection Committee can evolve its own classification and such classification is within the prerogative of this Selection Committee.

6.2. CWP No. 4616 of 2020 & CWP No. 4618 of 2020

Civil Writ Petition No. 4616 of 2020 is filed by the UPSC as Petitioner No. 1 and the Empanelment Committee as Petitioner No. 2 seeking the quashing of the order dated 17.01.2020 passed by the Tribunal in OA No. 199 of 2019 “Mohd. Mustafa versus Union of India and others” and on similar grounds CWP No.4618 of 2020 titled “**Union Public Service Commission & anr. versus Siddarth Chattopadhyaya & others**” is filed against said order in OA filed by Sidharath Chattopadhyaya.

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In addition to the common grounds assailing the impugned Order dated 17.01.2020, the UPSC has relied on various orders passed in the case of **Prakash Singh (supra)**. It is further submitted that the “*the range of experience*” is a constituent part of the component of “*merit*”, the other part being the service records in shape of Annual Performance Appraisal Report.

Countering the finding of illegality of the Draft Guidelines of 2009 by the Tribunal, the UPSC has contended that the members of the Empanelment Committee are constituted from different Departments / State – Central Government and they decide on the components of work experience which would be of critical importance to meet the varied requirements of the State / UT as well as Union of India.

It has been contended that the Hon’ble Supreme Court in **Prakash Singh’s case (supra)** has given the broad criteria for empanelling officers for selection / appointment to the post of DGP (HoPF) and left it to the UPSC to frame detailed modalities for holding such selection and that the Draft Guidelines of 2009 do not contravene the four broad criteria. The UPSC / Empanelment Committee has taken grounds similar to its stand in the written statement filed in CWP 1660 of 2020 of which details have been given herein below.

6.3. CWP No. 3811 of 2020

Siddharth Chattopadhyaya has filed CWP-3811-2020 levelling allegations against Suresh Kumar Arora, the then DGP who had participated in the proceedings conducted by the Empanelment Committee constituted by UPSC regarding the selection of DGP (HoPF) pursuant to which the assailed appointment of Dinkar Gupta as DGP (HoPF) was made by the

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State of Punjab.

7. While taking up the bunch of Writ Petitions (CWP 1608/2020, CWP 1617/2020, 1651/2020 & 1660/2020) filed by State of Punjab and Dinkar Gupta, this Court vide Order dated 21.01.2020 while issuing the Notice of Motion and staying of the operation of the impugned Order dated 17.01.2020, issued the following directions :

“ Chief Secretary, Punjab shall file his affidavit detailing:-

- (i) the **criteria followed for fixing the number of eligible panel officers for consideration** vis-avis the Department of Personnel and Training instructions, if any; and
- (ii) the **material sent to UPSC for assessment of the panel officers** qua the “Range of Experience” criteria.

UPSC is also directed to file an affidavit indicating consideration of relative assessment of the panel officers on the criteria of “Range of Experience. ”

8. In CWP No. 1660 of 2020, the UPSC has filed its written statement on behalf of Respondent No. 3 UPSC and Respondent No. 4 Empanelment Committee wherein reference is also given to the directions issued by the order dated 21.01.2020 passed by this Court in CWP No. 1608 of 2020. The Respondent No. 3 UPSC and Respondent No. 4 Empanelment Committee has taken the following stand:

8.1 The Hon’ble Supreme Court in its Direction No. (2) (Para 31) of the judgement dated 22.09.2006 in **Prakash Singh’s case (supra)**, entrusted to the UPSC, the task of empanelling the Officers for appointment to the post of DGP (HoPF) and the State Government to select / appoint the DGP (HoPF) from amongst the **three senior-most officers of the**

Department empanelled by the UPSC.

8.2. An IA was filed by the UPSC in **Prakash Singh's case** before the Hon'ble Supreme Court seeking **clear** directions regarding modalities for holding selection of DGP (HoPF). In the absence of the prescribed modalities and the time bound directions given to the UPSC at that time, the orders passed by the Hon'ble Bombay High Court in Writ Petition No. 2528/2008 and Writ Petition No. 2552/2008, in the matter of 'A N Roy versus S Chakravarthy', to make appointment to the post of DGP for the State of Maharashtra, the UPSC prepared the 'Draft Guidelines of 2009' laying down the modalities within which those procedures / conditions can function effectively for empanelment of officers of the post of DGP (HoPF).

The Draft Guidelines were filed in the Hon'ble Supreme Court in the year 2009 laying down the following modalities :

- (i) Composition of the Empanelment Committee
- (ii) Zone of consideration
- (iii) Method of Selection for Empanelment
- (iv) Size of Panel
- (v) Proposal to be sent to the Commission
- (vi) Procedure to be observed by Empanelment Committee
- (vii) Appointment from the panel

8.3. The Hon'ble Supreme Court in Prakash Singh's case has specified broad criteria for empanelling Officers for appointment to the post of DGP (HoPF) and left it to the UPSC to frame detailed modalities for holding such selection. The Draft Guidelines-20098 formulated by the UPSC do not contravene the four board criteria to be followed viz.

- *length of service*
- *very good record*
- *range of experience*
- *residual service*

for empanelling officers for the post of DGP (HoPF) emphasized by the

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Hon'ble Supreme Court and in fact supplement the said four broad criteria in complementary manner to fill in the unfilled aspects. It is conceded by the UPSC that all the four criteria laid down by the Hon'ble Supreme Court are to be given consideration through the mechanism of Draft Guidelines.

8.4. The Draft Guidelines are not alien to the directions of the Hon'ble Supreme Court, as erroneously observed by the Tribunal rather the Draft Guidelines supplement the broad criteria and the Tribunal has ignored the Order dated 16.01.2019 passed by Hon'ble Supreme Court in **Prakash Singh's case (supra)** wherein satisfaction has been expressed in respect of the practice being followed by the UPSC in consonance with the earlier judgement dated 22.09.2006 and interim order dated 03.07.2018.

8.5. The Draft Guidelines-2009 have been followed in 28 States uniformly since November 2010 wherein the zone of consideration includes officers belonging to the Indian Police Service of the concerned Cadre not below the rank of ADG, who have completed at least 30 years of service as on the date of occurrence of vacancy who have been assessed on the identified / Core Policing Areas towards their suitability on the 'range of experience'.

8.6. In the present case, the Empanelment Committee met on 04.02.2019 for empanelling Officers for the post of DGP (HoPF) for the State of Punjab and considered 12 eligible Officers not below the rank of ADG completing 30 years of service. It assessed all 12 officers on the four parameters laid by the Hon'ble Supreme Court in order dated 22.09.2006 and interim order dated 03.07.2018. Mohammad Mustafa and Siddarth Chattopadyaya could not find place in the panel because they were assessed 'inadequate' by the Empanelment Committee in the 'range of experience' in

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last ten years in Core Policing Areas of :

- intelligence
- Law and order
- Administration
- Investigation &
- Security

8.7. The Empanelment Committee evolved its own parameters in terms of **Clause 6.1** of Draft Guidelines 2009 for assessing the “**range of experience**” in identified core policing areas keeping in view of the **peculiar and critical circumstances** of the State of Punjab and all the above 5 core policing areas were given consideration and that the Empanelment Committee did not accord primacy to ‘intelligence’ only as erroneously observed by the Tribunal.

8.8. In the subsequent Order dated 13.03.2019 passed by the Hon’ble Supreme Court in **Prakash Singh’s case (supra)**, the Hon’ble Supreme Court has clarified its earlier order dated 03.07.2019 that the recommendation for appointment to the post of DGP by the UPSC should be purely on the basis of **merit** from amongst officers who have a minimum of residual tenure of six months.

8.9. It is further contended by the UPSC, that the record of proceedings of the Empanelment Committee meeting held on 04.02.2019 for empanelment for the post of DGP (HoPF) consist of two parts namely :

- : *Minutes*
- : *Assessment sheets*

wherein while *minutes* are shared / disclosed in the public domain, the *Assessment Sheets* are an unpublished record of the UPSC which is not shared/disclosed in the public domain. However, the assessment of all the 12 officers has been recorded by the Empanelment Committee on the basis of length of service, very good record, range of experience for heading the

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Police Force and residual service. The committee has recorded assessment on the “range of experience” of the eligible officers in **last ten years in said 5 Core Policing areas unanimously selected**, keeping in view the requirements of the State, by Empanelment Committee of the UPSC.

8.10. The UPSC concludes that the ‘range of experience’ is a constituent of “merit”, the other being the service record, as placed before the Empanelment Committee in the shape of a Annual Performance Appraisal Reports of the officers.

9. In compliance with the aforesaid directions passed in CWP 1608 of 2020 & bunch of these Petitions on 21.01.2020, the Respondent State of Punjab has filed the **affidavit** dated 19.02.2020 in which the two issues / aspects have been dealt:

(i) Criteria followed for fixing the number of eligible panel officers for consideration vis a vis DoPT instructions, if any

In this regard, the State of Punjab has stated that the criteria for fixing the number of eligible panel officers for consideration for empanelment for appointment as DGP is as per the requirement of the UPSC as laid down in **Para 2 of the Draft Guidelines** of the UPSC framed in 2009 read with orders pass by the Hon’ble Supreme Court in Writ Petition (Civil) No. 310 1996 i.e. **Prakash Singh’s case** and reliance is placed directions given in sub Para (a) and (f) of the Order dated 03.07.2018 passed by the Hon’ble Supreme Court as under :

(a) *all the states shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police.*

(f) *or directions No. (c) should be considered by the UPSC to mean that the persons are to be empanelled, as far as practicable, from amongst the*

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people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due advantage.

It is stated in the affidavit dated 19.02.2020 that keeping in view the above order dated 03.07.2018, by the letter dated 19.01.2019 the State of Punjab forwarded a list of 12 officers falling within the zone of consideration as per Para 2 of the UPSC Guidelines-2009. In the said list of 12 Officers, the State Government culled out an Eligibility List in compliance with order dated 03.07.2018 of the Hon'ble Supreme Court by only retaining those officers who had 2 years clear service as mentioned in Para (f) of the order dated 03.07.2018, thereby reducing the list to 08 (eight) eligible officers, who would fall within the zone of consideration as per the UPSC Guidelines-2009. The name of Sh. Mohd. Mustafa and Siddarth Chattopadhyaya, the Applicants in Original Application dated 199 of 2019 and Original Application No. 201 of 2019 respectively before the Tribunal was included in the list of 12 Officers as also in the Eligibility List of 8 Officers. It is contended that the Hon'ble Supreme Court has not placed any restriction on the number of officers who can be included within the zone of consideration and in this regard the instructions of the Department of Personnel and Training guidelines regarding the zone of consideration are not applicable in the present empanelment since the procedure established by UPSC through the 2009 Draft Guidelines framed to give effect to orders of the Hon'ble Supreme Court in **Prakash Singh's case (supra)** are being followed.

(ii) Material sent to UPSC for assessment of the panel officers qua the "range of experience"

As regards the material supplied to the UPSC, it is stated in

the affidavit that complete and upto date ACR dossiers of the 8 eligible officers were enclosed in original with the letter dated 19.01.2019 of the State Government. Thereafter, pursuant to the request made by UPSC, the State Government vide letter dated 21.01.2019 forwarded the PAR / ACR dossiers of the 4 officers initially excluded from the Eligibility List along with duly filled in and certified performas provided by the UPSC.

It is stated that the material / records in totality were provided to the UPSC for assessment of the officers, and no material was segregated specifically for the "range of experience" as per Para 5 of the UPSC Guidelines which lays down the complete material to be provided to UPSC by the State Government.

It is added that the "Performance Appraisal Dossier" of Indian Police Service Officers has been defined and prescribed in Rule 2 (g) and 3 of the All India Service (Performance Appraisal Report) Rules 2007 and the relevant Rules are reproduced in the Affidavit which are also reproduced hereinunder for ready reference:

- “...2 (g) “performance appraisal dossier” means the compilation of the performance appraisal reports written on a member of the service, referred to in Rule 3, and include such other documents as may be specified by the Central Government, by general or special order, in this behalf.
3. Maintenance in custody of performance appraisal dossier - a comprehensive performance appraisal dossier shall be maintained for each member of the service by the State Government and the Central Government in the manner specified under these rules and the performance appraisal dossier shall consist of the documents specified in Schedule-I
- Schedule-I
(See Rule 3)
- documents to be maintained in the performance appraisal dossier
- (i) A curriculum vitae to be updated annually on the basis of the performance appraisal reports and a five-yearly curriculum vitae submitted by the officer reported upon.
- (ii) The performance appraisal reports earned throughout

- the career
- (iii) Certificates of training, academic courses attended after joining service, study leave
 - (iv) Details of books, articles and other publications
 - (v) Appreciation letters from Government or Secretary or Head of department or special bodies or Commissions
 - (vi) Reports of medical checkups
 - (vii) All India Service (Discipline and Appeal) Rules 1969 and the final result of inquiry into allegations and charges against a member of the Service.
 - (vii) warnings or displeasure or reprimands of the Government. ”

10. It is pertinent to mention that against the interim Order dated 21.01.2010, passed by this Court in CWP 1608 of 2020, Mohd. Mustafa/Respondent filed the Special Leave Petition No. 2970-2971 of 2020 before the Hon'ble Supreme Court and the same was dismissed as withdrawn by the Order dated 07.02.2020.

11. During the course of further proceedings in this bunch of Writ Petitions, this Court vide its order dated 02.07.2020, passed in CM No. 5578/2020 in CWP 1660 of 2020, raised the following queries from the UPSC:-

1. What is the number fixed for zone of consideration for the empanelment of eligible officers for the post of DGP (HoPF) as per the Draft Guideline 2009?
2. If there is no number fixed for the zone of consideration in Draft Guidelines 2009 then whether the DoPT Guidelines and instructions are relied and followed to regulate the zone of consideration for the consideration of the eligible officers for the empanelment for the post of DGP (HoPF).
3. In the case under (ii) above, if the DoPT guidelines and instructions are not followed and relied then it may clearly be stated as to what is the process / mode followed by UPSC for restricting/ regulating the zone of consideration among all the officers eligible as per the Draft Guidelines 2009?
4. If there is no restriction for the zone of consideration then whether all officers eligible as per the Draft Guidelines 2009 are required to be considered irrespective of their number vis a vis the number of post of DGP (HoPF) to be filed?
5. Does the UPSC insists/ asks for the forwarding of the list / dossiers of all the officers eligible as per the Draft Guidelines 2009 or leaves it to the discretion of the State to forward and

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send the list/ dossiers of officers eligible as per the Draft Guidelines 2009 as the zone of consideration for the empanelment of officers for the post of DGP (HoPF) of different States?

6. What is the pan India practice regarding the number of officers in the zone of consideration for empanelment of DG (HoPF) for different States.
7. UPSC is directed to prepare and produce the Chart regarding the consideration made by UPSC / Empanelment Committee for the post of DGP (HoPF) of different States in the last five years depicting:-
 - (i) How many officers were eligible as per Draft Guideline 2009 for each of such consideration?
 - (ii) How many such officers were called for / considered for empanelment in each such consideration?
 - (iii) Whether the Zone of consideration was restricted/ regulated as per the relevant DoPT guidelines/ instructions and/ or what criteria whatsoever was followed?
 - (iv) What was the inter-se seniority of the empanelled Officers among the officers eligible as per the Draft Guideline 2009?
8. Lastly, if all officers eligible as per the Draft Guidelines 2009 are to be considered without any regulation/ restriction of the zone of consideration among such eligible officers then would such practice not violate the mischief sought to be curtailed/ removed by Prakash Singh's case?

12. The Respondent UPSC (Respondent No.3) in CWP No.1660 of 2020 has filed an **Affidavit dated 20.07.2020 in compliance to the directions issued on 02.07.2020**, wherein, point wise response to the queries posed by the Court have been addressed.

12.1. Regarding the zone of consideration and the number fixed for such zone of consideration, it has been deposed that prior to 22.09.2006, the UPSC was not involved in the selection of DGP (HoPF) and got involved only pursuant to the directions issued by the Hon'ble Supreme Court in WP(C) No.310/ 1996 i.e. **Parkash Singh's case (supra)**. Pursuant to the directions dated 22.09.2006 in the aforementioned case, the UPSC

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formulated the *guidelines* for empanelment of officers for appointment as DGP (Chief of Police) 2009. While formulating the said guidelines, the parameters i.e.

- i. Length of Service
- ii. 'Very Good' Service Record
- iii. Range of Experience for heading the police force

for consideration of eligible officers as laid down in **Parkash Singh's case** have been specifically incorporated.

12.2. The UPSC has submitted that the said **Guidelines-2009** have been considered & **approved by the Hon'ble Supreme Court vide order dated 16.01.2019** (in IA by State of Punjab) and **12.06.2020** (In IA by State of Tripura) in **Prakash Singh's case**. Based on the aforementioned submissions, the UPSC has stated that as per Para 2 of the Guidelines-2009, all officers of IPS of concerned cadre not below on the rank of ADG and those who have completed atleast 30 years of service as on date of occurrence of vacancy are included in zone of consideration for appointment to the post of DGP (HoPF).

12.3. The UPSC has categorically submitted that there are no *guidelines* laid by the DoPT on empanelment for appointment of officers to the post of DGP (HoPF) and the Guidelines of DoPT for Departmental Promotion Committee (DPC) cannot be made applicable / followed as mechanism for empanelment of eligible officers for the post of DGP (HoPF) as the UPSC has evolved its own mechanism by way of 2009 Guidelines to implement the directions passed by the Hon'ble Supreme Court.

12.4. The UPSC has further stated that the zone of consideration as envisaged in Para 2 of the Draft Guidelines of 2009 has been prepared keeping into consideration Para 4(B)(4) of Ministry of Home Affairs

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Guidelines dated 15.01.1999 in respect of Indian Police Service promotion to Senior Scale, Junior Administrative Scale, Selection Grade, Super Time Scale and above Super Time Scales and lays down, "*Principles regarding promotion of IAS & IPS in the State Cadre*". (Annexure R-3/III with the Affidavit dated 20.07.2020). In aforesaid Guidelines dated 15.01.1999, in Para-IV(B)(4), prescribing the zone of consideration for promotion to various grades depending upon the availability of posts, for promotion to grade of DGP, the zone of consideration is all the officers who have put in 30 years of service.

12.5. On the specific query raised by the Court at Sr. No.3 in the order dated 02.07.2020, as to the process / mode followed by the UPSC for restricting/ regulating the zone of consideration among all the eligible officers as per Draft Guidelines 2009, the UPSC has reiterated that the DoPT Guidelines for DPC are not relevant and are not followed as towards the empanelment of eligible officers for post of DGP (HoPF), all eligible officers (irrespective of numbers) whose name figure in the zone of consideration as per UPSC Guidelines 2009 are considered by the Empanelment Committee uniformly keeping in view the directions dated 22.09.2006, 03.07.2018 & 13.03.2019 by the Hon'ble Supreme Court in **Parkash Singh's case (supra)**.

In this regard, specific reliance is placed on the directions passed by the Hon'ble Supreme Court on 03.07.2018 which stipulates that, "*persons are to be empanelled, as far as practicable from amongst the people within the zone of consideration who have got clear two years of service. Merit & seniority shall be given due weightage.*" The said directions dated 03.07.2018 were modified on 13.03.2019, wherein, the

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Hon'ble Supreme Court directed that, "preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have atleast 6 months of service prior to the retirement." Based on the above submissions, the UPSC has summed up that the Hon'ble Supreme Court through its various orders in Parkash Singh's case (*supra*) as well as UPSC Guidelines, the zone of consideration is of officers

- not below of the rank of ADG (may vary from state to state depending upon availability of ADG.
- who have completed 30 years of service.
- who have residual service of atleast 6 months.

12.6. To the query raised by this Court at Sr. No.5 in the Order dated 02.07.2020, regarding the discretion of any State regarding forwarding & sending the list for dossier of officers eligible as per the Draft Guidelines 2009 for the empanelment of officers for post of DGP (HoPF), the UPSC has responded that the State Governments are mandatorily asked by UPSC to forward list of all eligible officers and their relevant documents as per Guidelines of 2009 and the State Government have no say in restricting the zone of consideration and it is mandatory for the State Government to recommend the name of all officers who fulfill the requirement of eligibility specified in guidelines of UPSC.

The UPSC has also annexed a 'chart' (Annexure R-3/IV with affidavit dated 20.07.2020) regarding the consideration made by UPSC/Empanelment Committee for the post of DGP (HoPF) of different states in last 05 years.

12.7. The UPSC has relied that the range of experience, very good service record and length of service are the basis of empanelment as laid

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down in the Judgment dated 22.09.2006 in the **Parkash Singh's case (supra)**. In this regard, the Hon'ble Supreme Court vide order dated 03.07.2018 directed merit & seniority both to be given due weightage and the said order was amended vide Hon'ble Supreme Court order dated 13.03.2019, wherein, it was directed that recommendation of appointment to the post of DGP (HoPF) by UPSC should be *purely on the basis of merit*. The eligible officers recommended for empanelment as DGP (HoPF) are arranged in the panel as per inter-se seniority in the IPS Cadre. All eligible officers are considered by UPSC/ Empanelment Committee to eliminate abuse of discrimination and to ensure that no officer in the zone of consideration is excluded. The range of experience is consequently enlarged to have the widest pool of talent available for the selection in order to avoid retracting from judgment of **Prakash Singh's case (supra)** and subsequent orders dated 03.07.2018 & 13.03.2019.

12.8. The UPSC has relied on a recent IA No.4990 of 2020 filed in WP(C) No.310 of 1996 i.e. **Prakash Singh's case (supra)** before the Hon'ble Supreme Court by the Government of Tripura, seeking relaxation from the minimum service of 30 years criteria provided in the Draft Guidelines and the Hon'ble Supreme Court has by specific advertence to the Guidelines 2009 granted relaxation to the State of Tripura in peculiar circumstances and upheld the guidelines of the Commission by granting one time exemption to the State of Tripura.

12.9. Lastly, the UPSC in the affidavit dated 20.07.2020 claimed privilege on the assessment sheets of the Empanelment Committee under the provisions of Section 123 of the Indian Evidence Act 1872. The assessment sheets are however shown to be available in sealed cover to be

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produced for the perusal of this Court for legal scrutiny and for verifying the bonafides & genuineness of privilege & facts.

13. The UPSC in CWP No. 4618 of 2020 has filed rejoinder dated 16.03.2020 to the Short Affidavit filed by Siddhartha Chattopadhyay (Respondent No.1), wherein, it is submitted as under :-

- i. All the members of Empanelment Committee reach a consensus, as to what norms have to be applied for assessing the suitability of the officers in light of the circumstances and situation peculiar to the State and are essential for manning the post of DGP (HoPF) in that State.
- ii. Thereafter, the Committee proceed to assess the suitability of officers based on criteria on length of service, very good service record, range of experience for heading the Police Force and residual service on the assessment sheet which is an internal confidential record.
- iii. The Assessment Sheet / Working Sheet is signed by all the Members of the Committee.
- iv. Based on the signed Assessment Sheet, the Minutes are prepared & signed. Both the Minutes and the Assessment Sheet are made part of the file.
- v. The Minutes merely record the gist of what is decided at the meeting and are the Memorandum of Proceedings which do not contain detailed reasons for the decision.
- vi. The Minutes of Committee are revealed as per practice & norms being followed, the existence of the Assessment Sheet is not revealed/ mentioned since the same is part of internal working of the Commission.
- vii. The Commission claims privilege for production of such Assessment Sheet.

The UPSC has denied that the assessment sheet is concocted and *post facto* created. The Deponent-Shri Ashok Parshad, Under Secretary, UPSC has deposed that he was present before the Tribunal on 08.01.2020 and on that day the existence of Assessment Sheet was informed to the Tribunal and the statement made by Respondent No.1 Siddhartha Chattopadhyay in this regard that the deponent Ashok Parshad, Under Secretary, was not present in the Tribunal on 08.01.2020 and the existence of Assessment Sheet was not informed to the Tribunal is false & denied. The Deponent Ashok Parshad, Under Secretary, UPSC, has also deposed that in the affidavit that on 08.01.2020 Smt. Alka Chatrath, Advocate of

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UPSC had informed the Tribunal that the core policing area have been recorded in the Assessment Sheet and informed the bench that the Assessment Sheet can be produced in a sealed cover if directed and the Hon'ble Mr. Justice L Narsimah Reddy verbally gave liberty to produce the Assessment Sheet before the Principal Bench at New Delhi. On 15.01.2020 , the Deponent Ashok Parshad, Under Secretary, UPSC personally handed over the Commission's letter dated 15.01.2020 to Shri R. V. Sinha, Nodal Panel Counsel of Commission at CAT, Principal Bench, New Delhi regarding the production of minutes of Empanelment of Committee & Assessment Sheet in a sealed cover alongwith privilege claim before Hon'ble Mr. Justice L Narsimah Reddy, CAT, Principal Bench, New Delhi on which an e-mail communication dated 16.01.2020 was received from Shri R V Sinha to the UPSC intimating that the matter was mentioned before the Hon'ble Chairman on 16.01.2020 seeking permission to file the record of the Commission in terms of Order dated 08.01.2020 at Chandigarh and on such permission being granted, the records were handed over to his PPS Shri Anand Singh. Such documents were returned in the envelope in post lunch observing that the Hon'ble Chairman has seen it and required them to return the same. On the above submissions it is deposed that the contention regarding fabrication of records as an afterthought is totally baseless & unfounded.

Arguments of the Parties

14. Although the lead case was CWP 1660 of 2020 filed by the State of Punjab but the arguments were opened by Sh Aman Lekhi, Ld. Addl Solicitor General, Government of India appearing for UPSC and the other counsel have more or less adopted the arguments with some additions;

and have also submitted their written submissions, of which the gist is as under:

15. Union Public Service Commission

- i. The impugned order dated 17.01.2020 is structured by the false assumptions that Draft Guidelines 2009 issued by UPSC pursuant to the judgment of the Hon'ble Supreme Court in Parkash Singh's case (supra) are non-est being in contravention of the judgment. In this regard, submission is supported by the fact that Supreme Court has adverted to these guidelines in its orders and UPSC has enforced these guidelines uniformly in all appointments of DGP across the country in last 11 years.
- ii. No specific malafides or bias has been raised and composition of High Level Committee does not leave any scope for malafides or bias to come into place as the members of the Selection Committee are from varied sources and different backgrounds from relevant field.
- iii. As per the UPSC, the Tribunal has passed the impugned decision dated 17.01.2020 on complete misreading of judgment of Hon'ble Supreme Court in Parkash Singh's case (supra) as also the order dated 03.07.2018 passed therein which emphasizes on merit alone having due regard to seniority.
- iv. The impugned order dated 17.01.2020 has been passed in contravention of the principles laid by the Hon'ble Supreme Court in respect of scope of judicial review of expert bodies in relation to matter of selection / exams and reliance is placed on judgment in M. Sathiyapriya, S.K. Goyal & R.S. Dars. Reliance is also placed on "*Durga Devi & Others vs. State of HP & Others*".
- v. The impugned order is also assailed on the ground that the Tribunal has not adverted to relevant aspects highlighted in the counter affidavit by UPSC and ignored the fact of assessment mentioned in the minutes and in particular the submission that assessment sheets are not in public domain in larger public interest and such non disclosure has been upheld by Hon'ble Delhi High Court in Writ Petition (Civil) 13808 of 2019 "*Jagmohan Singh Rajiv vs. Union of India*".
- vi. The Draft Guidelines-2009 incorporate all the four broad components laid by the Hon'ble Supreme Court in Prakash Singh's case and other features added towards the working of the modalities towards the exercise of empanelment of officers for appointment as DGP (HoPF) do not violate the broad components and are on a uniform basis.
- vii. The Empanelment Committee is an impartial body of high ranking officers who have assessed the Officers for empanelment for appointment as DGP (HoPF) for the State of Punjab on 04.02.2019, duly recorded in the Minutes of Meeting. In this regard the Tribunal is wrong in observing that the minutes of Meeting are not reflecting any merit whereas the fact of the matter is that the merit is not required to be shown in the Minutes of the Meeting which are only the memorandum of proceedings and do not contain detailed reasons for the decision while the

- Assessment Sheets are the internal working sheets where such deliberations are made. It is argued that the argument that there are no reasons given for the assessment / empanelment of officers is also flawed as no reasons are required to be given towards the assessment and empanelment of one officer over the other officer.
- viii. It is argued that the Draft Guidelines-2009 are '*sui generis*' as the same are the modalities framed towards implementing the broad parameters laid by the Hon'ble Supreme Court in Prakash Singh's case (*supra*) in the directions issued by the Hon'ble Supreme Court under Article 142 of the Constitution entrusting the task of empanelling the officers for the post of DGP (HoPF) and checks and balances have been created in the Draft Guidelines -2009.
 - ix. Mr Aman Lekhi, the Ld Senior Counsel has argued that it is nobody's case that the Draft Guidelines are bad, rather a comparison is drawn by the Private Respondents / Applicants in OAs that as per the Draft Guidelines 2009 and the Core Policing Areas, they are better in comparison to the empanelled Officers and are projecting the arguments as it suits them as per the situation for and against the Draft Guidelines.
 - x. The findings of the Tribunal are also flawed on the ground that the Tribunal assumed that 'seniority' is the genesis for empanelment of Officers for appointment as DGP (HoPF) whereas the judgment in Prakash Singh's case (*supra*) read with the various orders in the IA therein shows the stress on 'merit' with due regard to 'seniority'.
 - xi. The Tribunal has completely ignored the Order dated 16.01.2019 passed in the IA filed by the State of Punjab in Prakash Singh's case (*supra*) wherein satisfaction regarding the procedure for empanelment through the Committee adopted by the UPSC is recorded by the Hon'ble Supreme Court.
 - xii. It is held by the Tribunal also that no malafides is pleaded or made out in the case and there is no foundation and basis for bias made out or pleaded in the case.
 - xiii. There is no basis or foundation that the criteria adopted by way of Core Policing Areas so adopted by the Empanelment Committee are tailor made and that the SIT report so relied has no relevance and concern with the Empanelment Committee meeting.
 - xiv. It is lastly contended that there are inherent contradictions in the impugned judgment dated 17.01.2020 which leaves to the conclusion that proper reasoning is missing in the judgment and conclusions have been reached without any basis.

The UPSC has also submitted written submissions in their CWP No.4618 of 2020 supporting their arguments.

16. State of Punjab

The State of Punjab have adopted the arguments made by the Union Public Service Commission. The Ld. Advocate General Punjab has

raised additional submissions on the following points:

- i. The order dated 03.07.2018 passed in Parkash Singh's case (supra) mandates that all the Legislation / Rules of the State Government or the Central Government running counter to the directions of the Hon'ble Supreme Court are kept in abeyance. In view of the above, the Punjab Police Act, 2007 and / or the DOPT Rules & Regulations were not be applicable in context of appointment of DGP (HoPF).
- ii. The Hon'ble Supreme Court in Parkash Singh's case (supra) has observed that it has power to exercise jurisdiction under Article 32 read with Article 142 & 144 of the Constitution of India to issue guidelines to be followed and be operative till the new legislation is enacted by the State Governments. In this regard, reliance is placed on Para 29 of Parkash Singh's judgment (2006) 8 SCC 1.
- iii. The State of Punjab relies on Article 321 of the Constitution of India to submit that an act of the parliament or state legislature can provide for additional functions to be performed by UPSC or the State PSC as respects the service of the Union or the State. It was in this context reference is made to the UPSC Guidelines as no enactment has been made in this regard and in the absence thereof the Supreme Court under Article 142 of the Constitution of India entrusted the UPSC with the responsibility for appointment of DGP in the States conforming to the judgment in Parkash Singh's case.
- iv. In view of the above submissions, it is contended by the State of Punjab that the legal framework of UPSC Guidelines is sui generis and cannot be curtailed by any rules or regulations issued by DOPT and in this regard, reliance is also placed on the judgment of Hon'ble Supreme Court in "*Paramjit Kaur vs. State of Punjab*" (1999) 2 SCC 131.
- v. In the background of the aforesaid legal submissions, the State of Punjab has contended that they have strictly complied with the guidelines of the UPSC and in reference thereto the State of Punjab has sent information with respect to all officers falling within the zone of consideration as defined in Para 2 of the UPSC Guidelines without leaving any eligible candidate. It is submitted by the State of Punjab that the finding of the tribunal that 12 names were forwarded with anticipation of a panel of 06 names is completely erroneous and relies on letter dated 19.01.2019 sent by State of Punjab to the UPSC demonstrating that the State had sent the names, Bio-data, ACRs of all such officers who were fulfilling the rank criteria being working in the rank of DGP/ ADGP, completed 30 years of service as per the seniority and gradation list of 01.01.2019. Regarding the argument in respect of panel of 06 officers sought by the State of Punjab it has been contended that the request for panel of 06 officers to be returned was made on the premise that since there were two sanctioned DGP Posts in Punjab, therefore, a panel of 06 names would be required. It is the stand of State of Punjab that there was no connection between the number of officers in the zone of consideration and the size of the panel and the same was only the presumption of the State that the size of the panel would be

- twice the number of sanctioned posts of DGP.
- vi. It is also submitted by the State of Punjab that the non forwarding of the details of any of the officers who fell within the zone of consideration would have amounted to violation of Article 14 & 16 of the Constitution of India and in this regard reliance is placed on the judgment of the Hon'ble Supreme Court in "*B. Amrutha Laxmi vs. State of Andhra Pradesh & Others*" (2013) 16 SCC 440.
 - vii. The State of Punjab has countered the argument that the core policing areas criteria was tailor made to favour some officers and in this regard reference is made to Para 4.17, Ground XII and Para 8(Relief Sought) in OA No.60/199/CH/2019. In this regard, it is submitted that the original applicant has alleged in its replication to UPSC's affidavit before CAT that no criteria in nature of "Core Policing Areas" was at all considered by UPSC while on the other hand it is contended that the suitability of the candidates was assessed in a completely tailor made fashion which runs contrary to each other.

17. Dinkar Gupta, the writ petitioner in CWP No.1608 of 2020 & CWP No. 1617 of 2020:

- i. The written submissions furnished by the UPSC are adopted & reiterated and reliance is placed on the affidavit dated 14.02.2020 and 20.07.2020 filed by the UPSC.
- ii. It is submitted that the UPSC Guidelines of 2009 are framed by UPSC pursuant to directions by the Hon'ble Supreme Court under Article 142 of the Constitution of India issued in case of Parkash Singh (supra). The said guidelines of 2009 have been placed before the Hon'ble Supreme Court.
- iii. Reliance has been placed on the subsequent orders passed by the Hon'ble Supreme Court in Parkash Singh's case (supra) with specific reference to order dated 13.03.2019 (2019) 4 SCC 1, wherein, the Hon'ble Supreme Court has emphasized that the appointments to the posts of DGP shall be purely on merit.
- iv. The UPSC guidelines have been uniformly applied in terms of the directions issued by the Hon'ble Supreme Court and from 2009 onwards has been applied on 28 occasions.
- v. In reference to the issue regarding State of Punjab, wherein, a panel of 3 candidates have been prepared by the UPSC and applying the principles of seniority, the name of Petitioner in CWP No.1608 of 2020 has been placed at Sr. No.1 at the said list and the principles of "merit & seniority" has been duly applied in the present case. Regarding the zone of consideration, it is submitted that the zone of consideration by UPSC is completely conditioned by requirement of minimum of 30 years of experience which has been specifically endorsed by Hon'ble Supreme Court in Parkash Singh's case supra.
- vi. It is contended that the Tribunal did not possess jurisdiction to quash the guidelines framed by UPSC pursuant to directions issued by the Hon'ble Supreme Court under Article 142 in Parkash Singh's case (supra) and the observations by Tribunal that the draft guidelines do not have authenticity or legality are totally erroneous.

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- vii. The Tribunal also committed serious error in concluding that the empanelment committee did not proceed within parameters laid down by the Hon'ble Supreme Court.
- viii. The Tribunal committed error in concluding that though no reasons are required to be recorded by the Selection Committee still gave its conclusion to the contrary and disregarded the law laid down in Union of India vs. Samar Singh & Others (1996) 10 SCC 555 and National Institute of Mental Health & Neurosciences vs. Dr. K. Kalyana Raman & Others" (1992) Supp. (2) SCC 481.
- ix. In this regard it is contended that though reasons were not required to be given but still the reasons were duly recorded for assessing the range of experience of the candidates in the assessment sheet and in this regard reliance is placed on Para 15 of written statement dated 14.02.2020 filed by UPSC in CWP No.1660 of 2020.
It is contended that the assessment sheets are claimed to be unpublished record which is not shared/ disclosed in public domain but the same were placed before the Tribunal in a sealed cover and in these circumstances there was no occasion to hold that there existed no reasons on the record. In this regard, reliance is placed on Para 14 of written statement dated 14.02.2020 filed by UPSC in CWP No.1660 of 2020.
- x. It is concluded that in view of the settled law by the Hon'ble Supreme Court the findings of the Tribunal are entirely unsustainable and liable to be set aside.

18. Mohd. Mustafa (Respondent No.5 in CWP No.1660 OF 2020

- i. It is submitted that the power of judicial review is an inherent power with the Hon'ble High Court exercising jurisdiction under Article 226 of the Constitution of India.
- ii. It is argued that the present appointment of DGP (HOPF) made by the UPSC has not been made in exercise of its powers & functions under Article 320 of the Constitution of India and in the selection committee which has done the selection/ recommendation, one of the members of UPSC alone has been appointed as President. On that premise, it is contended that it is extremely false to say that the UPSC has given its recommendation & guidelines with the stamp of approval from the Hon'ble Supreme Court.
- iii. It is argued by the Respondent No.5 that the dispute is regarding the procedure & method adopted by the empanelment committee which is stated to be not akin to the procedure & method adopted by UPSC. It is submitted that once on the method of selection of empanelment, the committee has found the Respondent No.5 to be fit then it could not declare him unfit subsequently on the basis of procedure to be observed by them.
- iv. The Respondent No.5 has argued that the Hon'ble Supreme Court in Parkash Singh's case (supra) gave very categoric directions that the selection was to be done on the basis of length of service, very good record range of experience, residual tenure & merit coupled with seniority and on these parameters the committee found the Respondent No.5 to be

fit but thereafter on the parameters formulated by the Committee which are alien to the directions of the Hon'ble Supreme Court, the Respondent No.5 is declared unfit to be empanelled. Thus, it is contended that the criteria for assessment is alien to the directions of the Hon'ble Supreme Court which is formulated by the Empanelment Committee under Para 6 of Guidelines and not by UPSC.

- v. It is the case of the Respondent No.5 that the stand taken by the UPSC/ Empanelment Committee that the assessment was done on the basis of parameters like intelligence, law & order, administration, investigation & security is not borne from the minutes of meeting at all and no such documents have been shown to this Court that such an assessment was on the basis of the aforesaid criteria, therefore, such a stand is only an afterthought.
- vi. It is contended that the criteria on the aforesaid 5 parameters was tailor made. It is argued that the criteria of selection has to be formulated prior to the selection process and in any case before the dossiers of candidates are brought before the selection committee in order to eliminate bias & malafides. Whereas, in the case in hand the dossiers of the candidates were available with empanelment committee on 19.01.2019 while only on 04.02.2019 the parameters were formulated and as such the parameters are tailor made.
- vii. It is argued that the core policing areas consisting 20 parameters out of which the empanelment committee who have dossiers of the candidates, picked up five of these core policing areas which have no nexus with the work profile of the DGP of the State of Punjab out of which four were tailor made qua the selected candidates and on this basis the assessment, recommended his case for empanelment.
- viii. The Respondent No.5 has relied on a detailed comparative chart placed on record showing the range of experience even in the short listing core policing areas, wherein, it is claimed that the Respondent No.5 is having much larger & wider range of experience than the selected candidate. With the aforesaid submissions the writ petitions by UPSC, State of Punjab & Dinkar Gupta have been countered.

19. Siddhartha Chattopadhyay (Respondent No.5 in CWP No.1651 of 2020 and Petitioner in CWP No.3811 of 2020.

19.1. Shri Rajiv Atma Ram, Ld. Senior Advocate appearing for Respondent No.5- Siddhartha Chattopadhyay in Civil Writ Petition No.1651 of 2020 and as Petitioner in CWP No.3811 of 2020 addressed his arguments that it was only after Respondent No.5 moved Civil Misc. Applications against the then DGP Shri Suresh Arora and Dinkar Gupta in the pending CWP No.20359 of 2013 mentioning that Shri Suresh Arora & Shri Dinkar

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Gupta are having links with drugs mafia and having benami properties that the then DGP Suresh Arora became biased against Siddhartha Chattopadhyay. In this context, Suresh Arora being member of Empanelment Committee and having participated in empanelment of Officers for DGP (HoPF) for State of Punjab in question caused prejudice to Siddhartha Chattopadhyay.

19.2. It is argued that the Punjab Specific Criteria was framed after the dossiers were made available to the Empanelment Committee and have been seen by them, whereas, the same is in contravention in law as the criteria has to be framed prior to the last date for submission of application for consideration by the Selection Committee. On the above basis it is argued that the criteria laid by the Hon'ble Supreme Court in **Parkash Singh's case (*supra*)** has to be followed without any addition, wherein, the merit & seniority were to be given due weightage and if at all additional criteria was to be framed, the same could be done before receipt of dossiers of the 12 candidates and the said criteria has to be for all the states and could not be applicable to the State of Punjab alone.

19.3. It is argued that in case any criteria of Core Policing Areas had been formulated the same was required to be mentioned in the Minutes of Meeting dated 04.02.2019 but the same has not been done.

19.4. Another argument raised was that there are no reasons forthcoming from the minutes for the rejection of Respondent No.5 Siddhartha Chattopadhyay and that the claim of the UPSC to have shown the assessment sheets and the records of the meeting of the empanelment committee to the Hon'ble Chairman of the CAT, are incorrect & false and the UPSC cannot claim privilege over the records.

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19.5. The legal argument has been addressed on the doctrine of privilege, the doctrine of waiver, the arbitrary consideration and the selection criteria being adopted by the UPSC.

The argument has been raised that the selection conducted by the Empanelment Committee cannot to be that of the UPSC. On the doctrine of waiver reliance has been placed on the judgment of Hon'ble Supreme Court in **“Manak Lal vs. Dr. Prem Chand Singhvi”** 1957 AIR (SC) 425, **“Supreme Court Advocates- on-Record Association & Another vs. Union of India”** (Recusal Matter) (2016) 5 SCC 808, **“State of Punjab vs. Davinder Pal Singh Bhullar & Others”** (2011) 14 SCC 770 and **“Inderpreet Singh Kahlon & Others vs. State of Punjab & Others”** (2006) 11 SCC 356.

On rebuttal to the claim of privilege in respect of the Assessment Sheets by the UPSC, the Ld. Senior Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in **“State of Punjab vs. Sodhi Sukhdev Singh”** 1960 AIR (SC) 493, **“State of UP vs. Raj Narain & Others”** 1965 AIR(SC) 865, **“Peoples Union for Civil Liberties & Another vs. Union of India & Others”** 2004 AIR (SC) 1442, **“State of Haryana vs. K. C. Bunger”** 2009 (1) SCT 800, a Single Bench decision by this Court, to claim that the document claimed to be privileges must relate to the affairs of the state and its disclosure must be against the interest of the state or public interest.

On the Selection Criteria reliance is placed on **“Ramjit Singh Kardam vs. Sanjeev Kumar & Others”** 2020(2) SCT 491, **“K Manjusree vs. State of A.P. & Another”** 2008(2) SCT 6, **“Himani Malhotra vs. High Court of Delhi”** 2008(7) SCT 11, and **“Kamal Kumar Gupta vs.**

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State of Haryana & Others” 1991 AIR (Punjab) 118.

20. Suresh Arora, Respondent No.5 in CWP No.3811 of 2020

Written submissions have also been filed by Suresh Arora, Respondent No.5 in CWP No.3811 of 2020 filed by Sidharth Chattopadhyaya. The counsel for Sh. Suresh Arora has contended that he being DGP Punjab at the relevant time was required to be part of the Empanelment Committee as per the UPSC Guidelines and as per the letter dated 24.01.2019 issued by Empanelment Committee pursuant to which the State Government directed the DGP (HOPF) to be available for Empanelment Committee by the operation of law. The Respondent No.5 has claimed that he was the member of the High Powered Selection Committee on the basis of doctrine of necessity and in this regard reliance is placed on **Ashok Kumar Yadav vs. State of Haryana, (1985) 4 SCC 417** and **(2009) 1 SCC 337**.

It is further argued that Sidharath Chattopadhyaya and Mohd. Mustafa are estopped from raising the plea of bias as both the officers were aware of the composition of the Empanelment Committee atleast w.e.f. 16.01.2019 in Parkash Singh’s case was passed by the Hon’ble Supreme Court, dismissing the IA filed by the State of Punjab seeking to fill the post of DGP (HoPF) *dehors* the Draft Guidelines -2009 and as per the Punjab Police Act 2007. They were also aware of the correspondence dated 24.01.2019 & 28.01.2019, between UPSC and State of Punjab giving the composition of the Empanelment Committee while the same was also published in the newspapers in the entire state. It is contended that it is only upon the non selection that the false plea of bias has been raised.

It is argued that the selection is based on fair, reasonable & transparent procedure and there is no basis or foundation or any likelihood

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of bias which has been cogently evidenced by materials on record and there is no personal interest involved in the matter.

The counsel appearing on behalf of Sh. Suresh Arora has relied on judgment of the Hon'ble Supreme Court in **Ashok Kumar Yadav Vs. State of Haryana (1985) SCC 417** that a member of a high-powered Selection Committee, which has a Constitutional status, will be required to be a part of the said Committee by virtue of doctrine of necessity. Unless very close relative of such a member is in zone of selection, such a member will not be required to recuse himself. The emphasis is on the fact that UPSC is a Commission with a constitutional status under Article 320 of the Constitution of India, and as such the functioning of the same can be interfered with only on extremely grave grounds.

The plea of the applicability of the doctrine of waiver is sought to be supported by "**Manak Lal Vs. Prem Chand Singhvi & Ors.**" (1957) **SCR 575** that once the applicant had taken the chance of getting a favourable report, and had failed, he was estopped from raising the plea of bias, and had thus waived the same. Similarly reliance is placed on the impartial unbiased conduct on "**Kumaon Mandal Vikas Nigam Ltd. V. Girja Shanker Pant**" (2001) **1 SCC 182**.

Questions for Determination

21. From the conjoint reading of the pleadings and the arguments raised by the parties, the following questions fall for determination by before this Hon'ble Court Issues:

- (1) **What is the scope of judicial review / interference by the High Court under Article 226 of the Constitution of India, 1950 against the decision of the Administrative Tribunal**

(in short “Tribunal”)?

- (2) (a) Whether the Draft Guidelines 2009 issued by the UPSC detailing the procedure and modalities for selection of panel for DGP (HoPF) are patently opposed and violative of the directions issued in Prakash Singh’s case (supra) and the findings of the Tribunal contrary to the same are sustainable?
- (b) Whether the Core Policing Areas being adopted by the Empanelment Committee for assessment on the aspect of ‘range of experience’ State wise on cases to case basis are in contravention of the Supreme Court directions in Prakash Singh’s case (supra) and whether the 5 Core Policing Areas chosen in the present case are is legal and valid ?
- (c) Whether in view of the findings of this Court to the issues at (a) and (b) above, the findings of the Tribunal are sustainable?
- (3) (a) What is the scope of judicial review in matter of the empanelment and selection by the Selection / Empanelment Committee?
- (b) Whether the Tribunal exceeded the said power of judicial review in selection of DGP (HoPF) by the UPSC in February 2019?
- (4) Whether the impugned order dated 17.01.2020 of the Tribunal is liable to be set aside and the consequential relief?

Analysis

- (1) What is the scope of judicial review / interference by the High Court under Article 226 of the Constitution of India, 1950 against the decision of the CAT?

22. Before advertng to the merit of the impugned Judgment dated 17.01.2020 passed by the Tribunal, it is necessary to consider the law settled by the Hon’ble Supreme Court regarding the scope of judicial review under Article 226/227 of the Constitution of India for the issuance of the Writ of Certiorari against the orders passed by the Courts/Tribunals.

22.1. In the case of “Syed Yakoob v. K.S. Radhakrishna & Ors.” (1964 AIR 477), a Constitution Bench of the Hon’ble Supreme Court held that a *writ of certiorari* is issued for correcting the errors of jurisdiction

committed by the Courts or Tribunals in cases **where they:**

- (a) *act without jurisdiction*
- (b) *exceed their jurisdiction or*
- (c) *fail to exercise their jurisdiction or*
- (d) *exercise their jurisdiction illegally or improperly.*

In Para 7 of the said Judgment, it was held as under :

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for **correcting errors of jurisdiction** committed by inferior courts or Tribunals: these are cases where orders are passed by inferior courts or tribunals **without jurisdiction**, or is **in excess of it**, or as a **result of failure to exercise jurisdiction**. A writ can similarly be issued where in **exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly**, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. **An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.** In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact

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recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque[(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168]

Emphasis supplied

It was thus laid by the Hon'ble Supreme Court that the jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the High Court is not entitled to act as a Court of Appeal. An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact, unless it is shown that in recording the said finding, the Tribunal had **erroneously refused to admit admissible and material evidence** or **had erroneously admitted inadmissible evidence** which has influenced the impugned finding or where a finding of fact **is based on no evidence**. In the above circumstances, the error of fact will be regarded as an error of law which can be corrected by a writ of certiorari.

It is in this context that that difference between an "Appeal" and "Judicial Review" assumes significance wherein an 'appeal' is continuation of the original proceedings and is concerned with the merits of the case and requires examination of the correctness of the findings of both fact and law while 'Judicial review' is concerned with the validity of the order than the merits of the case.

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22.2. The grounds on which interference by the High Court is available in writ petitions have by now been well established. In **Basappa v. Nagappa, 1955 SCR 250**, the Hon'ble Supreme Court of India has observed that a writ of certiorari is generally granted when a Court has acted **without or in excess of its jurisdiction**. It is available in those cases where a tribunal, **though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice** where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but **a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction**, when shown, can be so corrected.

In **Dharangadhara Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152** the Hon'ble Supreme Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, **such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence**.

Likewise, in **State of Andhra Pradesh v. S. Sree Ram Rao, AIR 1963 SC 1723**, the Hon'ble Supreme Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified.

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22.3. Further reliance is placed on judgment of Hon'ble Supreme Court in **Anup Kumar Kundu v. Sudip Charan Chakraborty, 2006 (1) SCT 54**, in support of argument that the matter which is not under challenge before the Tribunal, cannot be called in question in writ jurisdiction while considering validity of orders of the Tribunal. The Hon'ble Supreme Court of India in **Hari Vishnu Kamath v. Ahmad Ishaque, (SC) (Constitutional Bench), AIR 1955 SC 233** observed as under:-

“ 21. Then the question is whether there are proper grounds for the issue of 'certiorari' in the present case. There was considerable argument before us as to the character and scope of the writ of 'certiorari' and the conditions under which it could be issued. The question has been considered by this Court in 'Parry and Co. v. Commercial Employees' Association, Madras', AIR 1952 Supreme Court 179 : -'Veerappa Pillai v. Raman and Raman Ltd.'. AIR 1952 Supreme Court 192 ; - 'Ebrahim Aboobaker v. Custodian General of Evacuee Property New Delhi', AIR 1952 Supreme Court 319 , and quite recently in AIR 1954 Supreme Court 440. On these authorities, the following propositions may be taken as established: (1) 'Certiorari' will be issued for **correcting errors of jurisdiction**, as when an inferior Court or Tribunal **acts without jurisdiction or in excess of it, or fails to exercise it**. (2) 'Certiorari' will also be issued when the Court or Tribunal **acts illegally in the exercise of its undoubted jurisdiction**, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of 'certiorari' acts in exercise of a **supervisory and not appellate jurisdiction**. One consequence of this is that the Court will not review findings or fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not

choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior Court were to re-hear the case on the evidence, and substitute its own findings in 'certiorari.'" These propositions are well settled and and not in dispute.

(4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or Tribunal is erroneous in law. This question came up for consideration in- '**Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw**', 1951-1 KB711 , and it was held that when a Tribunal made a "speaking order" and the reasons given in that order in support of the decision were bad in law, 'certiorari' could be granted. It was pointed out by Lord Goddard, C. J. that that had always been understood to be the true scope of the power. (1878) 4 AC 30, and - '**Rex v. Nat Bell Liquors Ld**', 1922-2 AC 128 , were quoted in support of this view. In 1878-4 AC 30, Lord Cairns L. C. observed as follows :

" If there was upon the face of the order of the court of quarter sessions anything which showed that that order was erroneous, the Court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it upon the face of it, and if the court found error upon the face of it, to put an end to its existence by quashing it "

In 1922-2 AC 128, Lord Summer said:

" That supervision goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise ”.

The decision in 1951-1 KB 711, was taken in appeal, and was affirmed by the Court of Appeal in -'Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw', 952-1 KB 338. In laying down that an error of law was a ground for granting certiorari' the learned Judges emphasised that it must be apparent on the face of the record. Denning, L. J. who stated the power in broad and general terms observed :

"It will have been seen that throughout all the cases there is one governing rule: 'certiorari' is only available to quash a decision for error of law 'if the error appears on the face of

the record.”

The position was thus summed up by, Morris, L. J. :

“ It is plain that certiorari' will not issue as the cloak of an appeal in disguise. It does not lie in order to bring an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law 'where revealed on the face of an order or decision', or irregularity, or absence of, or excess of, jurisdiction where shown.”

In AIR 1952 Supreme Court 192, it was observed by this Court that under Article [226](#) the writ should be issued,

“ in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is 'an error apparent on the face of the record'.”

In 'AIR 1954 Supreme Court 440 ', the law was thus stated :

“ An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a 'manifest error apparent on the face of the proceedings', e. g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision.”

23. It may therefore be taken as settled that a writ of 'certiorari' could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

The Division Bench of this Court in **Union Territory, Chandigarh v. Central Administrative Tribunal, Chandigarh, 2001 (3) SCT 602**, has also adjudicated upon the

issue regarding scope of writ jurisdiction to interfere with the orders of Tribunals. The relevant observations made by the Hon'ble division bench reads as under:-

8. Before advertng to the respective arguments, we consider, it necessary to observe that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. A finding of fact recorded by an inferior Court of Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of certiorari.

22.4. It is relevant to note, that the High Court's jurisdiction while excising the powers conferred under article 227 of the Constitution of India been summed up by the Hon'ble Supreme Court of India in, **Shalini Shyam Shetty v. Rajendra Shankar Patil, 2010 (8) SCC 329**. The relevant observations made by the Hon'ble Supreme Court reads as under:-

“ 62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article [227](#) of the Constitution may be formulated :

(a) A petition under Article [226](#) of the Constitution is

different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts **cannot, on the drop of a hat**, in exercise of its power of superintendence under Article [227](#) of the Constitution, **interfere with the orders of tribunals** or Courts inferior to it. **Nor can it, in exercise of this power, act as a Court of appeal** over the orders of Court or tribunal subordinate to it. In cases where an **alternative statutory mode of redressal has been provided, that would also operate as a restrain** on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, **'within the bounds of their authority'**.

(f) In order to ensure that law is followed by such tribunals and Courts by **exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them**.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a **patent perversity** in the orders of tribunals and Courts subordinate to it or where

there has been a **gross and manifest failure of justice** or the **basic principles of natural justice have been flouted**.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of **L. Chandra Kumar v. Union of India & others, reported in 1997(2) S.C.T. 423 : (1997) 3 SCC 261** and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section [115](#) of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality. ”

22.5. That after going through the settled position in law and after taking into consideration the relevant factors, following principles w.r.t. scope of interference of the High Court against the orders of the Tribunal under writ jurisdiction, can be safely deduced:-

- (i) The High Court is **not an Appellate Authority** over the decision of the Administrative Tribunals;
- (ii) While exercising the power of judicial review, the High Court **cannot be oblivious to the conceptual difference between appeal and review;**
- (iii) A writ of certiorari is issued for correcting the errors of jurisdiction committed by the Courts or Tribunals in cases **where they:**
 - (a) **act without jurisdiction**
 - (b) **exceed their jurisdiction or**
 - (c) **fail to exercise their jurisdiction or**
 - (d) **exercise their jurisdiction illegally or improperly.**
- (v) An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact, unless it is shown that in recording the said finding, the Tribunal had **erroneously refused to admit admissible and material evidence or had erroneously**

admitted inadmissible evidence which has influenced the impugned finding or where a finding of fact **is based on no evidence**.

- (v) The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that **exercise of discretion itself is perverse or illegal** in the sense the Tribunal did not follow an earlier decision of the Tribunal or binding authority of the High Court or the Supreme Court with reference to finding of facts and law;
- (vi) When the Tribunal disposes of the original application by applying the binding precedents of the High Court as well as the Supreme Court, it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be whether the **binding principle has been appropriately applied or not**; the Tribunal's decision which is rendered in ignorance of the statutory law including subordinate legislation as well as the law laid down by the Supreme Court must be held to suffer an error apparent on the face of the record and requires judicial review;
- (vii) Whether or not an error is error of law apparent on the face of the record must always depend upon the facts and circumstances of each case and upon the nature and scope of legal provision which is alleged to have been misconstrued or contravened;
- (viii) The matter which is not under challenge before the Tribunal, cannot be called in question in writ jurisdiction while considering validity of orders of the Tribunal; and
- (ix) A mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 227; the supervisory jurisdiction conferred on High Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

In our considered view, the Courts in exercise of jurisdiction under Article 226 of the Constitution of India shall be guided by aforesaid culled out principles in exercise of powers of judicial review on the decisions of the

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Administrative Tribunals.

- (2) (a) **Whether the Draft Guidelines 2009 issued by the UPSC detailing the procedure and modalities for selection of panel for DGP (HoPF) are patently opposed and violative of the directions issued in Prakash Singh's case (supra)?**

23. Before dealing with this issue and the rival contentions of the parties, thereto, it is necessary to have the analysis of **Prakash Singh's Judgment (supra)**. The parties are *ad idem* that the criteria to be followed for such consideration for the empanelment / selection of the DGP (HoPF) are given by the Hon'ble Supreme Court in its judgment dated 22.09.2006 rendered in case of "**Prakash Singh & others v. Union of India & others**" {reported as **(2006) 8 SCC 1**} and the subsequent directions passed in the interim Applications passed in the said case.

Judgment dated 22.09.2006 in Prakash Singh's case

23.1. In the judgment passed in **Prakash Singh's case (supra)**, the Hon'ble Supreme Court makes reference to the National Police Commission Reports wherein in the Second Report it was noticed that the crux of the Police Reform is ***to secure professional independence for the Police to function truly and efficiently as an impartial agent of the law of the land and at the same time, to enable the government to oversee the police performance to ensure its conformity to the law.*** It is in this context, the Report observed that a supervisory mechanism without scope for illegal, irregular or malafide interference with police function has to be devised. **Para 5** of the Hon'ble Supreme Court judgment in **Prakash Singh's case** as reported in **2006 (4) RCR (Criminal) 439, 2006 (8) SCC 1** is relevant and reproduced as under:

- "5. In the second report, it was noticed that the crux of the police**

reform is **to secure professional independence for the police to function truly and efficiently as an impartial agent of the law of the land** and, at the same time, **to enable the Government to oversee the police performance to ensure its conformity to the law**. A supervisory mechanism without scope for illegal, irregular or mala fide interference with police functions has to be devised. It was earnestly hoped that the Government would examine and publish the report expeditiously so that the process for implementation of various recommendations made therein could start right away. The report, inter alia, noticed the phenomenon of frequent and indiscriminate transfers ordered on political considerations as also other unhealthy influences and pressures brought to bear on police and, inter alia, **recommended for the Chief of Police in a State, statutory tenure of office by including it in a specific provision in the Police Act itself and also recommended the preparation of a panel of IPS officers for posting as Chiefs of Police in the States**. The report also recommended the constitution of the Statutory Commission in each State the function of which shall include laying down broad policy guidelines and directions for the performance of preventive task and service-oriented functions by the police and also functioning as a forum of appeal for disposing of representations from any police officer of the rank of Superintendent of Police and above, regarding his being subjected to illegal or irregular orders in the performance of his duties. ”

23.2. Further, the importance of rule of Law and the independence of Police towards its commitment, devotion and accountability has been referred to mention in Para 12 of judgment in Prakash Singh's case as under:

“ 12. The commitment, devotion and accountability of the police has to be only to the rule of law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay. ”

Relevant to the issue in controversy in this case, the Hon'ble Supreme Court

in Para 29 of the judgment observed as under :

130. Article 32 read with Article 142 of the Constitution empowers this Court to issue such directions, as may be necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by this Court. The decision in Vineet Narain case [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] notes various decisions of this Court where guidelines and directions to be observed were issued in the absence of legislation and implemented till the legislatures pass appropriate legislations.

The aforesaid observations are to be read with the directions issued and mentioned in the preceding Paragraph referring to directions (2) issued in the *ibid* judgment and also further affirmed in the Order dated 03.07.2018 passed in IA filed in Prakash Singh's case.

23.3. It is in this background that the directions were issued by the Hon'ble Supreme Court under Paragraph 31 (2) of the judgment in **Prakash Singh's case** as under:

“ 31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforesaid position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations:

X x x x

Selection and minimum tenure of DGP

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their **length of service, very good record and range of experience for heading the police force**. And, once he has been selected for the job, he should have a **minimum tenure** of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

X x x ”

The Hon'ble Supreme Court issued the directions that a DGP (HoPF) **shall be selected from amongst the three senior-most officers of the**

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Department who have been empanelled for promotion by the UPSC and

while making such consideration shall take into account :

- the **length of service**,
- **very good record** and
- **range of experience** for heading the Police Force.

It is relevant to notice that after judgment dated 22.09.2006 various IAs were filed by various States / Parties in Prakash Singh's case (*supra*), wherein different orders are passed of which the crux of some of the orders is mentioned below:

23.4. By the Order dated **11.01.2007**, the Hon'ble Supreme Court observed that the directions regarding selection of DGP (HoPF) has to be complied with not later than 4 weeks from the date of the aforesaid order. In these circumstances, the UPSC filed an IA before the Hon'ble Supreme Court in the year 2007 seeking the express directions from the Hon'ble Supreme Court regarding the modalities for holding such selection as reproduced below:

- (i) **zone of consideration**
- (ii) **eligibility**
- (iii) **validity period of panel**
- (iv) **applicability of the provisions of present guidelines etc.**

While the outcome of the said IA was pending, there were developments wherein some State Governments forwarded references to the UPSC for empanelment for the post of DGP (HoPF). During this period vide order dated 05.02.2009 in Writ Petition No. 2528 of 2008 "*A N Roy versus S Chakravarthy and others*" directions were issued and the UPSC based on such directions prepared the **Draft Guidelines, 2009** so as to give effect to the Direction (No. 2) of the Hon'ble Supreme Court in **Prakash Singh's case (*supra*)**. The said Draft Guidelines were placed on record

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before the Hon'ble Supreme Court in the year 2009 itself, and since then uniformly followed in all the cases for selection of panel for appointment to the post of DGP (HoPF).

23.5. Many States including the State of Punjab filed Interlocutory Applications seeking amendment of the directions so issued in the judgment dated 22.09.2006 regarding the selection procedure to be followed for the post of DGP (HoPF).

Through an order dated **03.07.2018**, the Hon'ble Supreme Court while dealing with the Interlocutory Applications filed in **Prakash Singh case (supra)** and refused to modify the directions issued in its judgment dated 22.09.2006 and made observations that "**merit and seniority should be given due weightage**" and any legislation / Rule framed by any of the States or the Central Government, which runs contrary to the direction shall remain in abeyance.

In the order dated **03.07.2018**, the following directions were issued :

" Having heard learned counsel for the parties, we pass the following directions:

- (a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;
- (b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh's case (supra) and intimate to the States;
- (c) The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;
- (d) None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh's case(supra);
- (e) An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the

date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction.

- (f) Our direction No.(c) should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.
- (g) Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.

The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories. If any State Government/Union Territory has a grievance with regard to these directions, liberty is granted to them to approach this Court for modification of the instant order. ”

23.6. In this regard, the **I.A. No.144172 / 2018** filed by the State of Punjab, seeking further modification of the order dated 03.07.2018 was dismissed by the Hon'ble Supreme Court, through an order dated **16.01.2019** with the following observations :

“ On an in-depth consideration, we are left with no doubt that the said directions, keeping in mind the spirit in which the Court has proceeded to issue the same, as set out in Paragraph 12 of the judgment in Prakash Singh (supra) (already extracted), are wholesome and if the same are implemented, it will sub-serve public interest until such time that the matter is heard finally. In this regard, we had taken note of the submissions made by Mr. Rakesh Kumar Gupta, Secretary, Union Public Service Commission (U.P.S.C.), who has appeared personally on the request of the Court made yesterday (15.1.2019). Mr. Gupta has stated before the Court that after the judgment was rendered in Prakash Singh (supra), **a panel of eligible officers in the rank of D.G.P. or the Additional D.G.P. had been drawn up by a committee of the U.P.S.C., in as many as 12 States and further that the said committee consisted of representatives of the U.P.S.C., the Central Government and the State Governments concerned.** Mr. Gupta further submitted that subsequent to the directions of this Court, dated 3.07.2018, similar panels have been drawn up for two States and at present, proposals have been received from two more States for the purpose of drawing up such panels.

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The above practice which has been followed further fortifies our view that, for the present, the directions in Prakash Singh (supra) read with the order of this Court, dated 3.7.2018, would not require any correction or modification. ”

23.7. The Order dated 13.03.2019 passed by the Hon'ble Supreme Court in Prakash Singh's case (*supra*) is relied by the UPSC to submit that the Hon'ble Supreme Court has clarified its earlier order dated 03.07.2018 that the recommendation for appointment to the post of DGP by the UPSC should be purely on the basis of *merit* from amongst officers who have a minimum of residual tenure of six months. The extract of the Order dated 13.03.2018 is as under :

“ the recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers who have a minimum residual sum of six months i.e. officers who have at least 6 months of service prior to the retirement. ”

23.8. In a recent IA No.4990 of 2020 filed in WP(C) No.310 of 1996 i.e. Prakash Singh's case (*supra*) before the Hon'ble Supreme Court by the Government of Tripura, prayer to relax the eligibility conditions of officers of IPS for 30 years completed service (***as provided in Para 2 of the Draft Guidelines 2009***) to 25 years of service was made as there were not sufficient number of officers with 30 years of service available for inclusion in the zone of consideration for empanelment to the post of DGP (HoPF) for the State of Tripura.

The Hon'ble Supreme Court dated 12.06.2020 (Annexure R-3/V with Affidavit dated 20.07.2020 by the UPSC), while advertng to the Draft Guidelines-2009 has granted special one-time relaxation for the State of Tripura, by relaxing the eligibility criteria from 30 years of service to 25

years of service.

24. The Tribunal, in the present case, has noted the following factors towards the scope of its Judicial Review towards the manner of empanelment / selection and appointment of DGP (HoPF) for the State of Punjab in question that :

- (i) The Tribunal is conscious of the fact that it cannot function as the Appellate Authority (Para 42)
- (ii) The committee is conferred with the power to make selection and as long as its decision is not tainted with any factor like malafide, no interference is permissible (Para 42).
- (iii) ***“The small area of scrutiny would be as to whether broad parameters of selection have been followed and whether any serious infraction of law has taken place”*** (Para 42).

24.1. Based on the aforementioned Point (iii), the Tribunal scrutinized the procedure adopted towards the empanelment and the appointment of the DGP (HOPF) in question. As mentioned in detail in Para 3 of this Judgment, some relevant findings of the Tribunal are that the Draft Guidelines 2009 do not have any authenticity or legality whatsoever (Para 48); the permissibility of adopting its own procedure is blocked in the context of the selection to the post of DGP (HoPF) (Para 49) for which two factors are considered :

- ***firstly***, the Hon'ble Supreme Court in Parkash Singh's case (supra) has *specified the three factors*, even while emphasizing the importance of seniority and did not permit any other factors; and
- ***secondly***, any doubt regarding such selection was removed by the Hon'ble Supreme Court in order dated 03.07.2018 passed in Parkash Singh's case (supra) stating that any legislation / Rule framed by the State or Central Government running counter to the direction shall remain in abeyance.

24.2. The Tribunal further held that the Draft Guidelines-2009 which are not contained in any official document, referable to any statute, cannot be permitted to defeat the directions of the Hon'ble Supreme Court regarding selection / appointment of DGP (HoPF) (Para 50) and the procedure (based on Draft Guidelines 2009) stated to be adopted in Para 5.1, 6.1.2 and 6.1.3 of the written statement filed by the UPSC before the Tribunal is contrary to law laid down in Prakash Singh's case and also do not find mention in the minutes of the meeting dated 04.02.2019.

24.3. The consideration on the basis of Core Policing Areas is negated and held that even if the Core Policing Areas are assumed to be relevant to selection process still there is no basis on which the 5 areas : *Intelligence, Law and Order, Administration, Investigation, Security* were selected (Para 51).

24.4. The Tribunal held that reasons are required to be recorded in case a person is found fit but sought to be overlooked and superseded and in present case in the Minutes of Meeting dated 04.02.2019 by Empanelment Committee do not give any indication as to what weighed to supersede the seniors.

On the above findings the entire selection process and consequential selection of the Dinkar Gupta is stated to be contrary to the judgment passed in Prakash Singh's case and the Order dated 03.07.2018 passed therein.

25. It would be apposite to refer to the Draft Guidelines-2009 framed by the UPSC to carry out the directions of the Hon'ble Supreme Court in **Prakash Singh's case (supra)**.

25.1. The Draft Guidelines-2009 are stated to be incorporating the

four broad principles laid by the Hon'ble Supreme Court while incorporating the mechanism by adequate checks and balances to assess the Officers for appointment as DGP (HoPF). The Draft Guidelines-2009, provides for :

- (i) **Clause 1** provides for the composition of the Empanelment Committee which is composed of high ranking officers from varied backgrounds;
- (ii) **Clause 2** provides for the Zone of consideration which incorporated the broad parameters of length of service, etc.
- (iii) **Clause 3** provides the selection to be based on merit being made on the selection post and assessing the suitability based on 'very good service record' based on the Annual Reports and the 'range of experience'.
- (iv) **Clause 4** refers to the size of the panel wherein it provides that number of officers to be included in a panel shall not exceed twice the sanctioned cadre post in State in rank of Chief of Police or Three whichever is more
- (v) **Clause 5** provides for the details and record to be sent with the proposal to the UPSC by the State concerned and provides for complete documentation and information pertaining to the Officer qua his service
- (vi) **Clause 6** provides for the Procedure for carrying out the assessment for suitability and provides liberty to Empanelment Committee to adopt its own method and suitability on the broad parameters including the range of experience.
- (vii) **Clause 7** provides for the Appointment of DGP (Chief of Police) from the Panel is to be made by the State Government.

The Draft Guidelines-2009 issued by the UPSC incorporates the four board criteria to be followed viz. *length of service, very good record, range of experience* and *residual service*. The Hon'ble Supreme Court while giving the broader parameters have left the process and procedure to be followed to make the said assessment purely in the domain of the UPSC who have framed the Draft Guidelines incorporating the said parameters uniformly in a transparent manner.

25.2. The following Clauses are important around which the issues in controversy revolve :

“ 1. Composition of the Empanelment Committee.

A Committee consisting of the following may be constituted for empanelling officers for appointment as DGP (Chief of Police) of the State Government:-

- (i) Chairman or in his absence, Member, UPSC- President
- (ii) Home Secretary to Govt of India or his nominee not below the rank of Special Secretary to Govt. of India
- (iii) Chief Secretary of the State Government concerned.
- (iv) Director General of Police of the State Government concerned.
- (v) An Officer from amongst the head of CPOs/CPMFs not belonging to the cadre for which selection is being made, nominated by the Government of India, Ministry of Home Affairs.

The Chairman or the member of the commission shall preside at all meetings of the Committee. The proceedings of the Committee shall be valid only if the Chairman or the member of the commission is present and more than half the members of the committee attend the meeting.

2. Zone of Consideration.

Officers belonging to Indian Police Service of the concerned Cadre **not below the rank of ADG** and who have **completed at least 30 years of service** as on the date of occurrence of vacancy for which the Panel is prepared. However, where the Chief of the Police is not in the rank of DG, officers of the rank of Chief of the Police and one rank below who have completed at least the number of years of service stipulated by GOI/MHA for promotion to that rank, as on the date of occurrence of vacancy, shall be eligible.

3. Method of Selection for empanelment.

- (i) Selection shall be merit based,
- (ii) **Suitability** of officers to be included in the panel shall be adjudged **on the basis of very good record and range of experience** for heading the police force.

4. Size of Panel

The number of officers included in the Panel shall not exceed twice the number of sanctioned cadre posts for the State in the

rank of the Chief of the Police OR three, whichever is more.

5. Proposal to be sent to the Commission

The State Government shall send a proposal to the Commission for convening the meeting of the Empanelment Committee, complete in all respects, at least three months in advance of the occurrence of the vacancy. The proposal shall be sent with the following records:-

- (i) Seniority list of officers duly notified.
- (ii) A list of officers who meet the eligibility conditions. If some of the officers appearing in the seniority list are not included in this eligibility list, reasons thereof must be furnished.
- (iii) Bio-data of the officers in the zone of consideration indication the posts held, nature of duties, performed, academic and professional achievements etc.
- (iv) Details of disciplinary/criminal proceedings pending against the officers with the date of issue of charge-sheet to the officers/filing of charge sheet in the court of law and details of suspension, if any.
- (v) Statements of adverse remarks in the ACRs of officers which are yet to be communicated but either the time limit to represent is or yet over or a decision on the representation of the officer is pending.
- (vi) Statement of penalties, if any, imposed on the officer in his service career with specific period of currency.
- (vii) Complete and up-to-date ACR dossiers of the eligible officers. A statement indicating the year-wise availability of ACRs may be furnished with valid reasons for non-availability of ACRs, if any further, if some of the ACRs are not reviewed or accepted by the competent Authority, valid reasons may be furnished for the same. [Certificate to this effect should also be recorded and placed in the respective ACR folders]. If some of the ACRs are written in regional language, an English translation of the same duly authenticated by an officer of the rank of Principal Secretary to the State Government may be furnished.
- (viii) Court directions, if any, having a bearing on the empanelment.
- (ix) The Integrity Certificate on the lines prescribed by GOI/MHA letter No.14/23/65-AIS (III) Dated 28.07.1966.

6. Procedure to be observed by the Empanelment Committee.

6.1 Each Committee shall adopt its own method and

procedure for objective assessment of the suitability of officers in the zone of consideration. The committee shall make assessment of the ACRs of officer with reference to the last 10 years preceding the date of meeting of the Committee. Only those officers assessed by the Committee as at least “**Very Good**” for each of the preceding 10 years shall be considered for inclusion in the panel. The Committee shall also take into account **the range of experience relevant for heading the police force** as reflected in the bio-data of the officers for determining their suitability for inclusion in the panel.

6.2 The Committee shall also take into consideration the penalties imposed if any, on the officers and shall exclude from the Panel any officer who is under suspension or against whom disciplinary/criminal proceedings are pending for whose Integrity Certificate has been withheld by the State Government or who has been under a penalty other than 'Censure' during the last 10 years or a penalty of 'Censure' during the last three years. ”

From the bare reading of the aforesaid clauses of the Draft Guidelines-2009, it shows that all the broad parameters of **length of service, very good record** and **range of experience** for heading the Police Force are incorporated. The method of the Selection as provided under Clause 3 read with Clause 6, which provides for the procedure to be adopted by the Empanelment Committee, shows that to carry out the assessment towards the suitability of the Officers in the zone of consideration for empanelment for appointment as DGP (HoPF), the ACR provides inputs towards the ‘very good service record’ and to assess the suitability on ‘range of experience’ for which flexibility was required keeping in view the peculiar requirements of each states, the Empanelment Committee is given the liberty to adopt its own method and procedure for objective assessment of the suitability of officers in the zone of consideration relevant for heading the Police Force of that state.

25.3. In the Draft Guidelines-2009, the checks and balance has been kept in form of the composition of the Empanelment Committee having

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high ranking officers from varied backgrounds in field of Policing and working under chairmanship of the Chairman / Member UPSC. The composition of the Empanelment Committee given in Clause 1 of the Draft Guidelines 2009, as reproduced above, itself reflects the heterogeneous character where the State Government concerned or its representatives are mere members who are part of the decision making alongwith majority of other independent members of the Committee who are uninfluenced from the authority, command and protocol of the State Government concerned. This was the intent and effect of the directions given by the Hon'ble Supreme Court in **Prakash Singh's case (supra)** which has been effectively implemented to curb the executive control, political influence & interference and to provide insulation to the Police administration to work without interference for ensuring the Rule of Law.

The Hon'ble Supreme Court was apprised of the Composition of the Empanelment Committee undertaking the empanelment of DGP (HoPF) which finds mention in the Order dated 16.01.2019 and the Hon'ble Supreme Court has noted its satisfaction to the adopted procedure.

25.4. Further, the assessment of the Officers in the zone of consideration for empanelment towards appointment as DGP (HoPF) is in respect of the method of selection as provided in Clause-3 of the Draft Guidelines-2009 i.e. of "very good service record" and of the "range of experience". Towards the objective assessment of the Officers fulfilling the eligibility criteria, the Empanelment Committee under Clause 6.1 of the Draft Guidelines-2009, adopts its own method and procedure for objective assessment of the suitability of officers in the zone of consideration, to *empanel / select for empanelment the Officer to head the Police Force.*

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The parameter of ‘very good service record’ having been fulfilled from the ACRs of the Officers, the parameter of ‘range of experience’, being another constituent of merit is fulfilled by evaluation and assessing the Officer of its performance on the Policing Areas in the performance evaluation. By granting liberty to the Empanelment Committee to devise its own method and procedure under Clause 6.1, the Draft Guidelines grants the necessary flexibility to the Committee to choose the relevant attributes from amongst Policing Areas which are core to the peculiar requirements on State to State basis. To assess the suitability of Officer for empanelment towards appointment as DGP (HoPF) of that particular State, the said Core Policing Areas, chosen by consensus by the Empanelment Committee, become part of assessment towards the “range of experience” relevant to the suitability of the Officer to be appointed as DGP (HoPF) of that state and effectively address issues on those core areas pertinent to the State. This aspect is purely in the domain of the experts who have knowledge and experience in Policing and has been left to the experts – members of the Empanelment Committee. The application and selection of the Core Policing Areas towards assessment of suitability for empanelment on the “range of experience” in selection of DGP (HoPF) of a particular State are identified by not an individual member but collectively by the Empanelment Committee.

26. To analyze the aforementioned findings of the Tribunal and the rival contentions of the parties in respect of the Draft Guidelines-2009, the following backdrop sequence of uncontested facts is necessary to consider the legality or authenticity of the Draft Guidelines-2009 :

- The Hon’ble Supreme Court in the judgement dated 22.09.2006

in Prakash Singh's case (*supra*), issued directions under Article 142 of the Constitution of India, entrusted task and responsibility for empanelment for the post of DGP (HoPF) to the UPSC.

- UPSC filed an IA in Prakash Singh's case before the Apex Court seeking expressed directions regarding modalities for holding selection of DGP (HoPF).
- In the circumstance of time bound directions given to the UPSC by the Hon'ble Bombay High Court in the pending Writ Petitions, the UPSC prepared the 'Draft Guidelines-2009' for empanelment of DGP (HoPF).
- The Draft Guidelines were filed in the Hon'ble Supreme Court in the year 2009 itself, laying down the following modalities :
 - (i) Composition of the Empanelment Committee
 - (ii) Zone of consideration
 - (iii) Method of Selection for Empanelment
 - (iv) Size of Panel
 - (v) Proposal to be sent to the Commission
 - (vi) Procedure to be observed by Empanelment Committee
 - (vii) Appointment from the panel
- The Apex Court specified broad criteria for empanelling Officers for appointment to the post of DGP (HoPF) and left it to the UPSC to frame detailed modalities for holding such selection.
- The draft Guidelines-2009 supplement the broad criteria of *length of service, very good record, range of experience & residual service* for empanelling officers for the post of DGP (HoPF), in complementary manner to fill in the unfilled aspects.
- In the Order dated 16.01.2019 passed by the Apex Court in Prakash Singh's case (*supra*) satisfaction has been expressed in respect of the practice being followed by the UPSC in consonance with the judgement dated 22.09.2006 and 03.07.2018 while referring to '*a panel of eligible officers in the rank of D.G.P. or the Additional D.G.P. had been drawn up by a Committee of the U.P.S.C, in as many as 12 states and further that the said committee consisted of representatives of the UPSC, the Central Government and the State Governments concerned....*'
- The Order dated 13.03.2019 passed by the Apex Court in Prakash Singh's case (*supra*) wherein the Hon'ble Supreme Court has clarified its earlier order dated 03.07.2018 that the

recommendation for appointment to the post of DGP by the UPSC should be purely on the basis of **merit** from amongst officers who have a minimum of residual tenure of six months

- Order dated 12.06.2020 passed by the Apex Court in IA No.4990 of 2020 filed in Prakash Singh's case (*supra*) wherein in reference to the Draft Guidelines-2009, prayer to relax the eligibility conditions of officers of IPS for 30 years completed service to 25 years of service was made as there were not sufficient number of officers with 30 years of service available for inclusion in the zone of consideration for empanelment to the post of DGP (HoPF) for the State of Tripura and the Apex Court has granted special relaxation for the State of Tripura only, by relaxing the eligibility criteria from 30 years of service to 25 years of service.

27. Except the Order dated 12.06.2020 which is a subsequent development, the Tribunal has completely ignored the aforesaid facts that apparently demonstrate that the Draft Guidelines-2009 implement and supplement the broad parameters laid by the Hon'ble Supreme Court in its judgment dated 22.09.2006 and subsequent orders passed in various IAs. The Draft Guidelines-2009 were placed before and considered by the Hon'ble Supreme Court in various Interlocutory Applications.

27.1. It is the matter of record that the after passing of the directions by the Hon'ble Supreme Court in its judgment dated 22.09.2006 under Article 142 entrusting the responsibility to empanel the Officers for appointment as DGP (HoPF) in **Prakash Singh's case (*supra*)** :

- (i) the order dated 11.01.2007 was passed by Hon'ble Supreme Court directing the UPSC to carry out the directions in time bound manner,
- (ii) an Interlocutory Application was filed by the UPSC in Prakash Singh's case seeking expressed directions regarding modalities for holding selection of DGP (HoPF),
- (iii) the directions were issued by the Hon'ble Bombay High Court in Writ Petition No. 2528/2008 and Writ Petition

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No. 2552/2008, in the matter of ‘A N Roy versus S Chakravarthy’, directing the UPSC to make appointment to the post of DGP for the State of Maharashtra in time bound manner,

In pursuance and compliance of the aforestated directions, the UPSC prepared the ‘Draft Guidelines of 2009’ laying down the modalities for effectively and uniformly implementing the 4 broad parameters for empanelment of officers of the post of DGP (HoPF) and placed the said Draft Guidelines on record before the Hon’ble Supreme Court. All these facts have not been rebutted by the private respondents / Applicants in OAs.

27.2 The Draft Guidelines having been placed before the Hon’ble Supreme Court by the UPSC in year 2009 itself, the various IAs and Misc Applications wherein the reference to the conditions flowing out of the Draft Guidelines 2009 have been considered by the Hon’ble Supreme Court and appropriate directions have been issued in Orders dated 03.07.2018, 16.01.2019, 13.03.2019 etc. pointing towards the approval of the Draft Guidelines-2009. In this regard, the Order dated 12.06.2020 passed by the Hon’ble Supreme Court in IA No.4990 of 2020 filed in Prakash Singh’s case (*supra*) wherein in reference to the Draft Guidelines-2009, prayer to relax the eligibility conditions of officers of IPS Cadre in Stte of Tripura for 30 years completed service to 25 years of service was made and the Hon’ble Supreme Court has granted special relaxation for the State of Tripura, by relaxing the eligibility criteria from 30 years of service to 25 years of service. In this backdrop, the Draft Guidelines 2009 cannot be held to be lacking authenticity or legality. The findings so recorded by the Tribunal in this regard are erroneous and against the evidence on record.

27.3. Based on the aforestated discussion and observations, we

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proceed to deal the arguments of the Private Respondents Mohd Mustafa and Siddhartha Chattopadhyay.

27.3.1. It is argued and submitted that the appointment of DGP (HoPF) made by the UPSC has not been made in exercise of its powers & functions under Article 320 of the Constitution of India and in the Empanelment Committee there is only one members of UPSC who has been appointed as President, therefore the recommendation & assessment cannot be said to be made by UPSC and does not have the stamp of approval from the Hon'ble Supreme Court.

The above argument is unsustainable as the UPSC is conducting the exercise of empanelment of Officers for appointment as DGP (HoPF) based on the directions issued by the Hon'ble Supreme Court in **Prakash Singh's case (supra)** under Article 142 of the Constitution of India and same cannot be related to and sought to be based on exercise of power under Article 320 of the Constitution of India.

27.3.2. It is argued by the Respondent No.5 that the dispute is regarding the procedure & method adopted by the Empanelment Committee wherein once the committee on the basis of length of service, very good record range of experience, residual service has found the Respondent No.5 to be fit then it could not declare him unfit subsequently on the basis of procedure to be observed by them. In this regard the counsel for Mohd Mustafa is assuming the eligibility to fall in the zone of consideration and the assessment of suitability, inter-alia, on the parameters of 'range of experience' delineated through 'Core Policing Areas' on State to State basis as synonymous. The candidate / Officers may be eligible in the zone of consideration to be considered but their empanelment is based on their

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suitability assessed by Empanelment Committee on relevant parameters to be assessed to find then 'fit' or 'unfit' for empanelment. The eligibility to fall in the zone of consideration and the assessment of suitability being at variance having its own consequences of "consideration" in earlier case and "empanelment" in latter case as well as this court having found the procedure and method adopted for assessment of suitability based on the core Policing areas leaves no strength in the argument.

The criteria on the aforesaid 5 parameters of Core Policing Areas alleged to be tailor made to suit a particular candidate have no basis and foundation as the same is chosen unanimously in the present case by the Committee of experts having varied backgrounds and not prone to influence, connivance or interference which has neither been pleaded nor proved in the present case.

27.3.3. Even the argument that the criteria of selection to be formulated prior to the selection process and in any case before the dossiers of candidates are brought before the selection committee in order to eliminate bias & malafides. It is nobody's case attributing any bias or malafides to a multi-member body of high ranking officers not this court found any bias or malafides in the present case. The dossiers of the candidates were processed, wherever required, the additional information was sought for and supplied to the UPSC by the State of Punjab well in advance before 04.02.2019 based on scrutiny of record. The Empanelment Committee based on the adoption of its own method and procedure unanimously chose the Core Policing Areas to assess the suitability of Officers to head the Police Force for the State of Punjab on the range of experience which is an attribute of 'merit' and has to be assessed accordingly. We don't find any

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error in such procedure and reject the argument.

27.3.4. The argument of the Core Policing Areas consisting 20 parameters out of which the Empanelment Committee which was having dossiers of the candidates, picked up five Core Policing Areas which have no nexus with the work profile of the DGP of the State of Punjab to be tailor made qua the selected candidates vitiating the empanelment is also without merit because in fact, there are 20 Policing Areas from which the Core Policing Areas are chosen by the Committee by collective decision on state to state basis based on the state specific requirements, the situations and circumstances existing in each state where a insurgency infested state, a drug infested state or a state with communal or ethnic disturbances may have varies requirements needed for in the incumbent cannot be the same and sacrosanct for all the States and needs flexibility towards adoption for assessment. The flexibility is provided through the liberty to adopt its own method and procedure by the Empanelment Committee. The arguing respondents have no case that the entire Committee was in connivance and having some vested interest against the Respondent No. 5 and 6 or some favour for Respondent Dinkar Gupta.

27.3.5. The argument that the list of 12 Officers was forwarded by State of Punjab with request to UPSC to send list of 6 officers for it to pick up two DGPs, while the Empanelment Committee considered the said 12 officers for selecting a panel of only 3 for appointment of DGP (HoPF) only would pale into insignificance in view of the provisions of Clause -2 providing for the 'zone of consideration' in the Draft Guidelines -2009 which requires that all cadre Officers having 30 years of service and not below the rank of ADGP are to be considered.

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27.3.6. The submission of the Respondent No.5 relying on a detailed comparative chart placed on record is an attempt to seek assessment through this Court to act as a Court of Appeal over an expert domain and impermissible towards the judicial review against decision of the Selection Committee.

27.3.7. Sh Rajiv Atma Ram Senior Counsel appearing on behalf of Siddhartha Chattopadhyay has taken additional grounds of bias which affected the consideration before the Empanelment Committee. Said argument of bias raised before the Tribunal has been rejected. Infact, in the given facts and circumstances discussed in the previous paragraphs, the detailed process involving many members of the Committee belonging to the high ranks and from multiple agencies, there cannot be any scope or chance of bias. In this regard, the Hon'ble Supreme Court *in Union of India v. S.P. Nayyar*, (2014) 14 SCC 370, has held that :

13. The bias and mala fide acts can be adjudged only on the basis of evidence. The assessment of character roll by one or the other officer, giving a general grade such as "Good" cannot be the sole ground to hold that the officer was biased against the person whose character roll is assessed. In the instant case, there is nothing on record to suggest that Appellant 3, E.N. Ram Mohan was biased against the respondent. Merely because he assessed the ACR of the respondent as "Good" as against assessment of "Very Good" made by IO it cannot be said that he was biased against the respondent.

14. The Departmental Promotion Committee consists of a Chairman and the members. Even if bias is alleged against the Chairperson, it cannot be presumed that all the members of the Committee were biased. No ground has been made out by the respondent to show as to why the assessment made by the DPC is not to be accepted. The High Court failed to notice the aforesaid fact and wrongly discarded the assessment made by the DPC.

The issue of bias raised by this Writ Petitioner is rebutted on the basis of the doctrine of waiver. Though relied by the Ld. Senior Counsel for this Writ

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Petitioner, the principles enunciated in “**Manak Lal vs. Dr. Prem Chand Singhvi**” 1957 AIR (SC) 425, by the Hon'ble Supreme Court, lays that once the aggrieved person knew the material facts and must he deem to have been conscious of his legal right in the matter, his failure to take the plea of bias at the earlier stage of the proceedings creates an effective bar of waiver against him. The Hon'ble Supreme Court in Manak Lal's case (*supra*) held that, “it seems clear that the Appellant wanted to take a chance to secure a favorable report from the Tribunal which was constituted and when he found that he was confronted with an unfavorable report, he adopted the device of raising the present technical point.”

Similarly, in “**Supreme Court Advocates- on-Record Association & Another vs. Union of India**” (Recusal Matter) (2016) 5 SCC 808 wherein the Hon'ble Supreme Court held that it is well established principle of law that an objection based on bias of the adjudicator can be waived and the Courts generally do not entertain such objection raised belatedly by the aggrieved party. In the said judgment, while placing reliance on “*Wakefield Local Board of Health vs. West Riding & Grimsby Railway Co.*” (1865) LR1 QB 84 and “*R v. Byles, Xpholiidge*, (1912) 77 JP 40 *and others*”, it has been held that the right to object to a disqualified adjudicator may be waived, and this may be so even where the disqualification is statutory. It was held that the Court normally insists that the objection shall be taken as soon as the party prejudiced knows the facts which entitle him to object. If, after he or his advisors know of the disqualification, they let the proceedings continue without protest, they are held to have waived their objection and the determination cannot be challenged. The said principles of the doctrine of waiver are supported by

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the Hon'ble Supreme Court's judgment in "**State of Punjab vs. Davinder Pal Singh Bhullar & Others**" (2011) 14 SCC 770 and "**Inderpreet Singh Kahlon & Others vs. State of Punjab & Others**" (2006) 11 SCC 356.

In the present case the Tribunal has negated the plea of bias by this Writ Petitioner in O.A. No.211/2019 regarding the participation of Suresh Arora in the selection process. It is held that this Writ Petitioner has not been able to demonstrate that Suresh Arora being member of the Empanelment Committee has taken any steps adverse to him and in absence of any such evidence there cannot be any inference of any prejudice being caused to this Writ Petitioner and the plea of bias was thus rejected. It was held by the Tribunal that being a senior officer in the Administration, this Writ Petitioner was very much aware that the DGP of a State would be part of Selection Committee and raising such an allegation and plea of bias was held to be unfair after the conclusion of the selection process.

The above enunciation fully applies on the case of this Writ Petitioner as Siddhartha Chattopadhyay on 16.01.2019 itself was fully aware and knew that the empanelment of the DGP (HoPF) is now going to be carried by the UPSC / Empanelment Committee as per its guidelines where the serving DGP (HoPF) {then held by Suresh Arora} is an ex-officio member without there being any nomination or direction to join the Empanelment Committee by the State Government, remained quiet and silent about it without any protest and rather waited till 04.02.2019 / 07.02.2019 till the time his non-empanelment came to his knowledge and he raised this issue in the Original Application. It is not the case of this Writ Petitioner that he was never aware of the fact that Suresh Arora is a part of the composition of the Committee which is going to undertake the

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empanelment of Officers for appointment as DGP (HoPF) for the State of Punjab. Thus, in the given facts and circumstances, the plea of bias is not available to Siddhartha Chattopadhyay and even if so presumed to be available has not been proved in the present case.

Still further, Siddhartha Chattopadhyay being fully aware & conscious of the constitution of the Empanelment Committee, as per Draft Guidelines-2009, comprising Sh Suresh Arora, the then DGP as *ex-officio* member, well before the consideration by the Empanelment Committee would be precluded from raising plea of bias subsequent to his non empanelment. The Hon'ble Supreme Court in this regard in ***Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309***, has summed up the law on the issue that once the aggrieved person has participated in the selection process, then he cannot turn back and challenge the process. The relevant paras from the said judgment clinches the issue, read as under :

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

19. One of the earliest judgments on the subject is *Manak Lal v. Prem Chand Singhvi [AIR 1957 SC 425]* . In that case, this Court considered the question whether the decision taken by the High Court on the allegation of professional misconduct levelled against the appellant was vitiated due to bias of the Chairman of the Tribunal constituted for holding inquiry into the allegation. The appellant alleged that the Chairman had appeared for the complainant in an earlier proceeding and, thus, he was disqualified to judge his conduct. This Court held that by not having taken any objection against the participation of the Chairman of the Tribunal in the inquiry held against him, the appellant will be deemed to have waived his objection. Some of the observations made in the judgment are extracted below: (AIR pp. 431-32, paras 8-9)

“8. ... If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate

some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the Tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time. ...

9. *From the record it is clear that the appellant never raised this point before the Tribunal and the manner in which this point was raised by him even before the High Court is somewhat significant. The first ground of objection filed by the appellant against the Tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant Dr Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time. ... Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.”*

20. In *G. Sarana v. University of Lucknow* [(1976) 3 SCC 585 : 1976 SCC (L&S) 474], this Court held that the appellant who knew about the composition of the Selection Committee and took a chance to be selected cannot, thereafter, question the constitution of the Committee.

21. In *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644], a three-Judge Bench ruled that when the petitioner appeared in the examination without protest, he was not entitled to challenge the result of the examination. The same view was reiterated in *Madan Lal v. State of J&K* [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] in the following words: (SCC p. 493, para 9)

“9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at

the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

22. In *Manish Kumar Shahi v. State of Bihar* [(2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , this Court reiterated the principle laid down in the earlier judgments and observed: (SCC p. 584, para 16)

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

23. The doctrine of waiver was also invoked in *Vijendra Kumar Verma v. Public Service Commission* [(2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] and it was held: (SCC p. 156, para 24)

“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter

also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.

28. Based on the directions issued in the judgment dated 22.09.2006 and various orders by the Hon'ble Supreme Court in Prakash Singh's case (*supra*) as discussed in detail above, **the Draft Guidelines-2009 issued by UPSC detailing the procedure and modality for selection of panel for appointment as DGP (HoPF) is not opposed to and violative of the direction issued in Prakash Singh's case (*supra*) and it also cannot be said that the permissibility of adopting its own procedure by UPSC / Empanelment Committee is blocked in the context of the selection to the post of DGP (HoPF). The findings given by the Tribunal in this regard are narrow and by overlooking and ignoring material evidence on record by way of various IAs filed by States / Parties, orders and directions passed therein by the Hon'ble Supreme Court in**

Prakash Singh's case from time to time.

(2) (b) Whether the Core Policing Areas being adopted and considered by the Empanelment Committee towards the empanelment of Officers for appointment as DGP (HoPF) State wise on cases to case basis are in contravention of the Supreme Court directions in Prakash Singh's case supra and the 5 Core Policing Areas chosen in the present case are legal and valid ?

29. In the judgment dated 22.09.2006 and the subsequent orders passed by the Hon'ble Supreme Court has specified broad criteria for empanelling Officers for appointment to the post of DGP (HoPF) and left it to the UPSC to frame detailed modalities for holding such selection. Towards the detailed modalities for holding the selection, the Draft Guidelines-2009 were formulated by the UPSC within the framework of the four board criteria to be followed viz.

- length of service
- very good record
- range of experience
- residual service

29.1. The UPSC has argued and submitted that the '**range of experience**' is a constituent of "**merit**", the other being the service record, as placed before the Empanelment Committee in the shape of a Annual Performance Appraisal Reports of the offices. The 'range of experience' is examined and assessed on the basis of the chosen Policing Area attributes identified by the Empanelment Committee, by consensus keeping in view the relevance to and requirement of the State concerned, which are termed as '**Core Policing Areas**'.

29.2. The UPSC in their rejoinder dated 16.03.2020 (in CWP No.

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4618 of 2020) have submitted that all the members of Empanelment Committee reach a **consensus**, as to what norms have to be applied for assessing the suitability of the officers in light of the circumstances and situation peculiar to the State and are essential for manning the post of DGP (HoPF) in that State. The Hon'ble Supreme Court has in the broad criteria so provided in Prakash Singh's judgment dated 22.09.2006 in Para 31 (2) and also qualified the range of experience to be assessed and evaluated **for heading the Police Force**. It is, no doubt, reasonable to claim that each state has its own peculiar situations and circumstances and accordingly certain attributes of Core Policing Areas will have precedence and prominence over others in the Police Administration in that particular state and it is the domain of the experts to cull out the Core Policing Areas which have more prominence / precedence than others in respect of that particular state to be evaluated for empanelling the Officers for appointment as DGP for heading the Police Force.

29.3. The State of Punjab in compliance with the directions passed in CWP 1608 of 2020 on 21.01.2020, has submitted by way of affidavit, the information / material sent to UPSC for assessment of the panel Officers qua the "**range of experience**". The complete and up to date ACR dossiers, without any segregation, of all officers fulfilling the criteria were enclosed in original with the letter dated 19.01.2019 and dated 21.01.2019. The Performance Appraisal Dossiers (PARs) of the concerned officers prepared in terms of parameters in Para 5 of the UPSC Guidelines 2009 were provided to the UPSC. It is added that the "*Performance Appraisal Dossier*" of Indian Police Service Officers has been defined and prescribed in Rule 2 (g) and Rule 3 of the All India Service (Performance Appraisal

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Report) Rules 2007 wherein the compilation of the performance appraisal reports written on a member of the service including such other documents as may be specified are maintained.

29.4. The comprehensive information, in terms of Clause-5 of the Draft Guidelines-2009, of the Officers is called for and is available with the Empanelment Committee to make assessment of each Officer on each and every attribute of the 'Core Policing Area' chosen by them collectively by consensus. The Empanelment Committee having evolved its own parameters, in terms of Clause 6.1 of Draft Guidelines-2009, for assessing the "range of experience" in Core Policing Areas works independently towards such evaluation / assessment and in present case no external factors have neither been shown nor pleaded. In the present case involving the State of Punjab, Empanelment Committee in 'range of experience' chose the Core Policing Areas of :

- *intelligence*
- *Law and order*
- *Administration*
- *Investigation*
- *Security*

based on their collective decision by unanimous decision regarding which there is no allegation of any collusion or malafides of the Committee albeit of one member of the Committee cannot be found fault with as the selection of the Core Policing Areas is well within the domain of the expert Empanelment Committee.

29.5. We also cannot lose sight of the fact that it is also a pleaded case of the private respondents Mohd Mustafa and Siddharth Chattopadhyaya that even on the Core Policing Areas chosen by the

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Empanelment Committee, they have better merit than the empanelled officers. In OA No. 60/199/2019 filed by Mohd Mustafa the main prayer made is to quash the Order dated 07.02.2019 in view of the fact that he is more qualified and senior to Dinkar Gupta and fulfills the conditions as prescribed by the Supreme Court **as well as the parameters laid by the Empanelment Committee.** The private respondents / Applicants in Original Applications before the Tribunal have sought consideration and review of issue on comparative merit on the parameters laid by the Empanelment Committee on one hand while on the other hand have raised the plea that the parameters set by the Empanelment Committee were tailor-made to suit Dinkar Gupta.

29.6. In addition, argument has been raised that the Punjab Specific Criteria was framed after the dossiers were made available to the Empanelment Committee and have been seen by them. It is argued that the choosing of Punjab specific criteria after having seen the dossiers is in contravention of law as the criteria has to be framed prior to the last date for submission of application for consideration by the Empanelment Committee. On the above basis, it is argued that the criteria laid by the Hon'ble Supreme Court in **Parkash Singh's case (supra)** has to be followed without any addition, wherein, the merit & seniority were to be given due weightage and if at all additional criteria was to be framed, the same could be done before receipt of dossiers of the 12 candidates and the said criteria has to be for all the states and could not be applicable to the State of Punjab alone.

It is further argued that in the proceedings of the Empanelment Committee dated 04.02.2019, there is no mention about any additional

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criteria other than the criteria framed by the Hon'ble Supreme Court in **Parkash Singh's case (supra)** and in case any criteria of Core Policing Areas had been formulated the same was required to be mentioned in the Minutes of Meeting dated 04.02.2019 but the same has not been done.

29.7. The argument raised regarding *tailor made criteria* attributed to the Empanelment Committee has no basis and foundation being pleaded or proved before this Court and is rather a bald statement of fact which when pleaded needs, in normal course of pleadings, a strict standard of proof. It is settled law that the Courts have to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding of malafides. The argument is thus rejected on this score alone.

Further, the argument that Punjab specific criteria has been formulated after receiving the dossiers of the Officers in the zone of the consideration for the post of DGP (HoPF) for the State of Punjab in question is also without any force. On that basis, no allegation of bias or malafides is raised against the Empanelment Committee consisting of multiple members and such allegation on the members of the Empanelment Committee i.e. the then Chief Secretary, Punjab and the DGP Chief of Police Punjab is also without force as these Officers being head of the administrative set up of the State Administration and Police Administration respectively based on their position always have access to and are aware of the dossiers of the officers under their supervision, command and control.

Even the argument regarding the assessment on the core

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policing areas not mentioned in the Minutes of Meeting dated 04.02.2019 regarding the empanelment of DGP (HoPF) for the State of Punjab in question is without any force of law, any rule or regulation. In this regard we are in agreement with Sh. Aman Lekhi, Se Counsel for UPSC that there is no requirement in the Rules, regulations, Draft Guidelines-2009, or any other law on the subject or judgment that the assessment made by the Selection (Empanelment) Committee has to be recorded in the Minutes of the Meeting. This argument is also consequently, rejected.

29.8. An agreement with the plea of tailor made criteria, Punjab specific criteria after receipt of dossiers, non mentioning of the assessment on Core Policing Areas in Minutes of Meeting would amount to the acceptance that there were malafides, collusion and concert among the members of the Empanelment Committee, **which has neither been pleaded nor proved but has been raised as an argument without any basis or foundation.** This court deprecates such plea raised in the arguments on the sole factor that we are dealing with the UPSC and its Empanelment Committee wherein the high ranking officers connected with Police Administration are involved who are independent of each other and no instance / effect of collusion even in arguments have been shown that all the high ranking senior members of the Committee have joined hands and worked commonly towards ousting the claim of Mohd Mustafa / Siddharth Chattopadhyaya.

29.9. The aforestated discussion and observations finds strength from the decision of the Hon'ble Supreme Court in "**Union Public Service Commission versus M Sathiya Priya and others**", **(2018) 15 SCC 796 (Para 20)** that the recommendations of the Selection Committee cannot be

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challenged except on the ground of mala fides or serious violation of the statutory rules and the courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a court of appeal. The Hon'ble Court further observed that "This discretion has been given to the Selection Committee only, and the courts rarely sit as a court of appeal to examine the selection of a candidate; nor is it the business of the court to examine each candidate and record its opinion. Since the Selection Committee constituted by UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness."

In *Union of India v. A.K. Narula* (2007) 11 SCC 10 (SCC P. 17, Para 15) the Hon'ble Supreme Courts holds that *"The guidelines give a certain amount of play in the joints to DPC by providing that it need not be guided by the overall grading recorded in CRs, but may make its own assessment on the basis of the entries in CRs.Where DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by DPC, the court will not interfere..."*

Further in **"*M.V. Thimmaiah v. UPSC*" (2008) 2 SCC 119** the Hon'ble Supreme Court observed in Para 30 that, *"We fail to understand how the Tribunal can sit as an appellate authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. ..."* Similar were the findings and observations of the Hon'ble Supreme in **"*UPSC versus H L Dev*" (1988) 2**

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305 and wherein, the Hon’ble Supreme Court upholding the norms to apply in making the assessment and how the categories are assessed in the light of relevant records, which is a function of the selection committee.

30. In this view of the matter, we answer the question accordingly, that the Core Policing Areas chosen by the expert Empanelment Committee of High Ranking Officers from different departments and Organizations most of whom are adept in Police Administration to assess the Officers on the ‘range of experience’ for empanelment for appointment as DGP (HoPF) cannot be said to be in contravention of the broad criteria of assessment i.e. *length of service, very good record, range of experience and residual service* laid by the Hon’ble Supreme Court in Prakash Singh’s case (supra) and on this ground, in the instant case, selection of the Core Policing Area by the said Empanelment Committee cannot be said to be illegal.

(2) (c) — Whether in view of the findings of this Court to the issues at (a) and (b) above, the findings of the Tribunal are sustainable?

31. In view of the findings given to the issues determined at (2) (a) and (b) above, we are of the considered opinion that the findings of the Tribunal regarding the Draft Guidelines-2009 and framing of the criteria in respect of Core Policing Areas for the purpose of assessing the officers for empanelment and consequent appointment as DGP (HoPF) are not sustainable and are hereby set aside.

(3)(a) SCOPE OF JUDICIAL REVIEW IN MATTER OF THE EMPANELMENT AND SELECTION BY THE SELECTION / EMPANELMENT COMMITTEE

32. Having considered the peculiar facts of the instant case towards

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the determination of the issues, it is also necessary to discuss the law on the scope and ambit of judicial review in respect of the selection by the Promotion / Selection / Empanelment Committee.

32.1. In Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan (1990) 1 SCC 305, it was observed as follows: (Para 12 Page 309-310):-

“ 12. ... it is not the function of the court to hear appeals over the decisions of the Selection Committees **and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject.** The court has no such expertise. ... in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction. ”

In **Badrinath vs. Govt. of T. N., (2000) 8 SCC 395**, the Hon'ble Supreme Court held as under :

40. Unless there is a **strong case for applying the Wednesbury doctrine** or **there are mala fides**, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, **if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable**

person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed.

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

The Hon'ble Supreme Court has restricted the scope of judicial review against the assessments / decisions by the Selection Committees and held that the courts cannot sit in appeals over the decision of the selection committee and to venture into the comparative merits of the candidates which is to be left in the domain of the duly constituted selection committee consisting of experts. The exception to the exercise of power of judicial

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view has been narrowed down to cases wherein the facts divulge strong case for applying the Wednesbury doctrine or the assessment so made is proved to be malafides. The Hon'ble Supreme Court while laying a narrow opening for exercising power of judicial review also cautioned that such a power of review is restricted in rare and exceptional case only. In the present case, the Draft Guidelines-2009 by the UPSC, the 5 Core Policing Areas are held to be proper and valid in the preceding discussion and there is no malafides / collusion alleged against the Empanelment Committee, leaves no scope of interference in the selection / empanelment made by the Empanelment Committee towards the assessment of the officers for empanelment for appointment as DGP (HoPF) for the State of Punjab in February 2019.

32.2. In “**National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman**”1992 Supp (2) SCC 481, the Hon'ble Supreme Court held that the expert committee's finding should not be lightly interfered. It was held as follows: (SCC page 482):-

“ The function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. Where selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility and there is no rule or regulation brought to the notice of the Court requiring the Selection Committee to record reasons, **the Selection Committee is under no legal obligation to record reasons in support of its decision of selecting one candidate in preference to another. 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.** ”

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On the same lines regarding the Selection Committee having no obligation of to record reasons in favor of the its selection / empanelment, the Hon'ble Supreme Court in ***Major General I.P.S. Dewan vs. Union of India (1995) 3 SCC 383*** held that the principle that administrative orders affecting rights of the citizens should contain reasons but the same cannot be extended to matters of selection and unless the rules so require, the Selection Committee / Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. The relevant extract of the judgment at page 389 is as under:

18.Unless the rules so require, the Selection Committee / Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. If the said decision is sought to be relied upon with respect to the adverse remarks made against the appellant, the attack should fail for the reason that the memo containing adverse remarks in this case does set out the particulars in support of the same. It is equally relevant to note that no allegation of mala fides or arbitrariness has been levelled against the Chief of the Army Staff who made the said remarks.

Further, in ***Union Public Service Commission v. Hiranyalal Dev, (1988) 2 SCC 242***, the Hon'ble Supreme Court while dealing with the meeting of the Selection Committee for preparing a select list for promotion to the joint IPS Cadre of Assam, Meghalaya as contemplated by the Indian Police Service (Appointment by Promotion) Regulations, 1955, has observed that there is no requirement of recording of reasons in cases of selection and in a selection process unlike in promotion there is no supercession. The Hon'ble Supreme Court was dealing with a situation, as also applicable in the

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present case, wherein the Tribunal held that in case of supersession, the Selection Committee is liable to record reasons. The Hon'ble Supreme Court observed that the said view is erroneous and in a selection where a candidate is selected in preference to the other, it could not be said that it amounted to supersession. In Para 7 Page 245, the Hon'ble Court observed as under :

“ 7. Turning now to the next point, while the Tribunal has not rested its decision on the ground that the Selection Committee had not given reasons for not selecting Respondent 1 the Tribunal has made a declaration of law to this effect that it was obligatory on the part of the Selection Committee to have recorded the reasons for superseding those who were senior. In the first place, the Tribunal was in error in taking the view that it constituted supersession. The Selection Committee was making a selection and when someone was selected in preference to the other, it could not be said that it amounted to supersession of a junior by a senior. The concept of supersession is relevant in the context of promotion and not in the context of selection. Besides, the Tribunal has also committed an error in taking the view that the law enjoined the Selection Committee to record the reasons and failure to do so would vitiate the selection. It appears that the Tribunal did not properly realise the effect of the relevant provision having been amended at the time when the Selection Committee made its selections and that so far as the amended provision in concerned, the question is concluded by the decision of this Court in R.S. Dass v. Union of India [1986 Supp SCC 617] wherein this Court, while dealing with the provisions of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which are in pari materia with Indian Police Service (Appointment by Promotion) Regulations, 1955 applicable in the instant case, has taken the view that it is not

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necessary to record the reasons for not selecting a person who is in the arena. ”

The functioning of the Selection Committee is held to be purely administrative and the Selection Committee / Experts are not required to record any reasons in support of their decision of preferring one candidate over the other unless the recording of reasons thereof is a statutory requirement.

32.3. Further in *M.V. Thimmaiah vs. UPSC, (2008) 2 SCC 119*, in Para 30, it was held as under :

“ 30. We fail to understand **how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise.** This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. **One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection.** It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions. Our attention was invited to a decision of this Court in *R.S. Dass* [1986 Supp SCC 617 : (1987) 2 ATC 628] wherein at para 28 it was held as follows: (SCC pp. 638-39)

“ 28. ... It is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. **But that does not justify presumption regarding arbitrary exercise of**

power. The machinery designed for preparation of select list under the regulations for promotion to all-India service, ensures objective and impartial selection. **The Selection Committee is constituted by high-ranking responsible officers presided over by Chairman or a member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection.** The recommendations of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. **Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power. ”**

The Hon'ble Supreme Court has held that the Tribunal/ Court cannot sit as Appellate Authority to call for the personal records and itself constitute selection committee. The Hon'ble Supreme Court was conscious of the fact while making such observations that the wide powers available with the selection committee are liable to be abused but that does not in itself

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justified presumption regarding arbitrary exercise of powers and posed confidence in the selection committee constituted by high ranking responsible officers to doubt that they would act in unfair & partial manner collectively to favour some person and held that where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the same is made on extraneous considerations then the Courts have ample powers against such arbitrary exercise of power.

32.4. In **UPSC vs. M. Sathiya Priya, (2018) 15 SCC 796**, it is held as under :

“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a

candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.

18. We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Acton “Power tends to corrupt, and absolute power corrupts absolutely”. The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinised the experience, Annual Confidential Reports and other relevant factors which were required to be considered before selecting the eligible candidates for IPS. The Selection Committee had in fact scrutinised the merits and demerits of each candidate taking into consideration the various factors as required, and its recommendations were sent to UPSC. It is the settled legal position that the courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints—self-imposed, undoubtedly—of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

19. No doubt, the Selection Committee may be guided by the classification adopted by the State Government but, for good reasons, the Selection Committee may evolve its own classification which may be at variance with the grading given in the Annual Confidential Reports. As has been held by this Court in *UPSC v. K. Rajaiah* [*UPSC v. K. Rajaiah*, (2005) 10 SCC 15 : 2005 SCC (L&S) 738] , the power to classify as “Outstanding”, “Very Good”, “Good” and “Unfit” is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Authorities in the Annual Confidential Reports is not binding on the Selection Committee. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of grading at variance with that of the State Government, reasons be recorded. But having regard to the nature of the function and the power confined to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision. It is relevant to note that no allegations of malice or bias are made by the first respondent at any stage of the proceedings against the Selection Committee or UPSC.

20. This Court has repeatedly observed and concluded that the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a court of appeal. This discretion has been given to the Selection Committee only, and the courts rarely sit as a court of appeal to examine the selection of a candidate; nor is it the business of the court to examine each candidate and record its opinion. Since the Selection Committee constituted by UPSC is manned

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by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness. ”

On the same lines are the observations made by the Hon’ble Supreme Court in **Union of India vs. S.P. Nayyar, (2014) 14 SCC 370, in**

Para 14. The relevant paras reads as under:-

“11. It is settled that the High Court under Article 226 of the Constitution of India cannot sit in appeal over the assessment made by the DPC. If the assessment made by the DPC is perverse or is not based on record or proper record has not been considered by the DPC, it is always open to the High Court under Article 226 of the Constitution to remit the matter back to the DPC for recommendation, but the High Court cannot assess the merit on its own on perusal of the service record of one or the other employee.

12. The selection to the post of Additional DIG is based on merit-cum-suitability which is to be adjudged on the basis of ACRs of different candidates. The merit position can be adjudged by the Selection Committee on appreciation of their character roll. In absence of the character roll of other candidates, who were also in the zone of promotion, it is not open to the High Court to assess the merit of one individual who moves before the High Court, to give a finding whether he comes within the zone of promotion or fit for promotion.

13. **The bias and mala fide acts can be adjudged only on the basis of evidence.** The assessment of character roll by one or the other officer, giving a general grade such as “Good” cannot be the sole ground to hold that the officer was biased against the person whose character roll is assessed. In the instant case, there is nothing on record to suggest that Appellant 3, E.N. Ram Mohan was biased against the respondent. Merely because he assessed the ACR of the respondent as “Good” as against assessment of “Very Good”

made by IO it cannot be said that he was biased against the respondent.

14. The Departmental Promotion Committee consists of a Chairman and the members. **Even if bias is alleged against the Chairperson, it cannot be presumed that all the members of the Committee were biased. No ground has been made out by the respondent to show as to why the assessment made by the DPC is not to be accepted. The High Court failed to notice the aforesaid fact and wrongly discarded the assessment made by the DPC.** ”

Thus, it is consistent and settled law that it is not open to the Tribunal and the High Court to sit over the assessment made by the Selection Committee as an Appellate Authority or venture into the comparative merit of the candidates. In the aforesaid case, “**Union of India vs. S P Nayyar**” (*supra*), wherein, the issue involved the selection to the post of Additional DIG, the Court held that even if bias is alleged against the Chairman (one person in the Committee) it cannot be presumed that all the members of the committee were biased. Further, in **M. Sathiya Priya case** (*supra*) again in respect of the selection committee consisting of experts, it is mentioned that when a high level committee & expert body has considered the merit of each candidate, assessed their grading and considered their cases then it is not open to the Tribunal/ Court to sit over the assessment made by the selection committee as an appellate authority. The selection committee is even given the prerogative to evolve its own classification of the assessment of service record of the candidates concerned and no reasons are required to be recorded though it is stated to be desirable that in cases where the gradation of the Selection / Empanelment Committee is at variance from the grading of the State Government than it would be desirable to record

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reasons but no legal requirement for such reasons to be recorded have been stressed or mandated where the DPC has proceeded in a fair, impartial & reasonable manner by applying the same yardsticks and norms to all candidates and there is no arbitrariness in the process of such assessment.

32.5. Further, in **UPSC vs. K. Rajaiah (2005) 10 SCC 15** wherein in Para 9 (Page 20-21) it has been held by the Hon'ble Supreme Court as follows:

“ 9. ... That being the legal position, the Court should not have faulted the so-called downgradation of the first respondent for one of the years. Legally speaking, the term ‘downgradation’ is an inappropriate expression. The power to classify as ‘outstanding’, ‘very good’, ‘good’ and ‘unfit’ is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government **but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs.** That is what has been done in the instant case in respect of the year 1993-1994. **Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons.** But having regard to the nature of the function and the power confided to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision.”

In **Union of India vs. A.K. Narula, (2007) 11 SCC 10** the Hon'ble

Supreme Court in similar circumstances observed in Para 15 as under:

“ 15. The guidelines give a certain amount of play in the joints to DPC by providing that it need not be guided by the overall grading recorded in CRs, but **may make its own assessment** on the basis of the entries in CRs. DPC is required to make an overall assessment of the performance of each candidate separately, but **by adopting the same standards, yardsticks and norms**. It is only when the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness, that the selection calls for interference. **Where DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by DPC, the court will not interfere** (vide SBI v. Mohd. Mynuddin [SBI v. Mohd. Mynuddin, (1987) 4 SCC 486 : 1987 SCC (L&S) 464] , UPSC v. Hiranyalal Dev [UPSC v. Hiranyalal Dev, (1988) 2 SCC 242 : 1988 SCC (L&S) 484] and Badrinath v. State of T.N. [Badrinath v.State of T.N., (2000) 8 SCC 395 : 2001 SCC (L&S) 13]).

33. **The cumulative reading of the aforestated settled law on the issue of judicial review by the Tribunal/ Court in case of selection by a selection committee, is that the courts cannot sit in appeal against the assessment by the selection committees and there is a limited scope of interfere only in cases where a strong case for applying the Wednesbury doctrine or case of malafides is made out. Regarding the bias by one of the members, it has been held that the allegations of bias against one member even if taken at its face value will not imply that the entire committee consisting of the high level officers / experts is all collectively biased against the aggrieved person. Even the application of Wednesbury principle and interference on grounds of malafides is**

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cautioned to be exercised in exceptional & rare case being made out for such interference.

(3)(b) WHETHER THE TRIBUNAL EXCEEDED THE SAID POWER OF JUDICIAL REVIEW OF THE SELECTION OF DGP (HOPF) BY THE UPSC FOR THE STATE OF PUNJAB IN FEBRUARY 2019 ?

34. We have discussed the Draft Guidelines-2009 formulated by the UPSC while considering Issue (2) and have concluded based on the various directions issued in the judgments and Orders in various IAs in Prakash Singh's case (supra) that the Draft Guidelines 2009 have been formulated by the UPSC in order to comply with and fulfill its responsibility and duty entrusted by the Hon'ble Supreme Court by way of directions under Article 142 of the Constitution of India.

35. The Empanelment Committee was constituted for the empanelment of DGP (HoPF) for the State of Punjab in January 2019, based on the composition given in *Para 1* of the Draft Guidelines 2009. The members of the Empanelment Committee reached a consensus regarding the norms to be applied for assessing the suitability of the officers in the light of circumstances and situations peculiar to the State of Punjab and are essential for heading the Police Force in the State of Punjab. As claimed by the UPSC in a comprehensive rejoinder-affidavit dated **16.03.2020** filed in CWP 4618 of 2020, the said Committee assessed the suitability of the officers based on the criteria of length of service, very good service record, residual service and range of experience for heading the police force on the assessment sheets which are the working sheets and are an internal confidential record. The assessment sheets/working sheets are signed by all members of Committee and based on such signed Assessment

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Sheets/Working Sheets, the Minutes of Meeting are prepared and signed. The Minutes of Meeting along with the Assessment Sheets are made part of the file wherein the minutes record the gist of what is decided while the Assessment Sheets/Working Sheets support such gist. The Minutes of Meeting are Memoranda of proceedings which are not required to and do not contained the reason of such decision. This Court while considering the above factors have to take into consideration that the aforesaid exercise is stated, rather affirmed by way of above affidavit dated 16.03.2020, to have been undertaken by high ranking officers of the Ministry of Home Affairs (Home Secretary or his nominee), the head of a Central Para Military Force who is adept in border management, internal security situations as also the policing by way of law and order and police administration in a Committee headed by Chairman/Member of UPSC along with the Ex-Officio State Representatives i.e. the DGP and the Chief Secretary of the concerned State and the Committee as such having in depth knowledge about the functioning of the police, the prevailing situation and circumstances as also the fundamentals of police administration.

36. To negate the proceeding by the Empanelment Committee and the procedure undertaken as mentioned in Para 5.1, 6.1.2 and 6.1.3 of the written statement of UPSC / Empanelment Committee dated 03.05.2019 before the Tribunal, as referred to and mentioned in Para 46 and 47 of the impugned Order 17.01.2020 passed by the Tribunal, to be contrary to the law laid down by Prakash Singh's case would be entering into the domain of the experts, who are formulated into an Empanelment Committee; as would also be running contrary to the settled interpretation involving the selection committee by the Hon'ble Supreme Court in "UPSC vs. M.

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Sathiya Priya” (2018) 15 SCC 796, wherein reliance is placed on Para 17 to 20 of the said judgment reproduced hereinabove in Para 32.4.

In these circumstances finding of the Tribunal that the procedure stated to be adopted in Para 5.1, 6.1.2 and 6.1.3 of the Counter Affidavit to be contrary to Prakash Singh’s case is erroneous and without consideration of the relevant factors on the issue in question and thus is liable to be set aside.

37. The suspicion being raised by the Tribunal regarding the Core Policing Areas and the 5 chosen / adopted Core Policing Areas, in the present case, to be without basis is also unfounded and an encroachment on the expert domain regarding the devising of the procedure for carrying out the selection for Empanelment of officers for appointment as DGP (HoPF) as provided under Clause 6.1 of the Draft Guidelines-2009 which are reproduced in **Para 25** above and held to be legal and valid in **Para 28** above and needs no further discussion.

38. The findings by the Tribunal that the selection process galvanized in Prakash Singh’s case has been ignored and defeated in the selection/Empanelment in question as also the direction of the Hon’ble Supreme Court that primacy is to be accorded to the senior and there cannot be any indiscriminate supersession of the Senior has been violated in the present case is erroneous and has been passed by ignoring the relevant Order dated 13.03.2019 passed by the Hon’ble Supreme Court in one of the IAs. The UPSC has relied that the Hon’ble Supreme Court, by its order dated 13.03.2019, has itself clarified its earlier order dated 03.07.2018 that the recommendation for appointment to the post of DGP (HoPF) should be purely on the basis of merit. The findings of the Tribunal in the impugned

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Order dated 17.01.2020, giving primacy and rather sole consideration to seniority is erroneous and is liable to be set aside.

39. Even on the question of reasons to be recorded in case of a senior officer having being over looked and superseded particularly towards the empanelment for the post of DGP (HoPF) is a misnomer because in the process and procedure involving selection by high ranking officers, a particular officer having being found better and more suitable than the other on the objective assessment on the areas involving particular situation and circumstances is also the domain of the experts which cannot be ventured under judicial review unless the question is being raised and proved regarding malafides and collusion. No such allegation being raised in present case on the members working collectively as a committee and having taken collective decision.

Further, the observations of the Hon'ble Supreme Court in Para 7 of the judgment in "**Union Public Service Commission v. Hiranyalal Dev**", **(1988) 2 SCC 242**, as reproduced above in Para 32.2, is very relevant that in cases of selection and preference of one candidate over the other does not amount to supersession and such selection of a candidate although junior, does not require the recording of reasons. The said observations of the Hon'ble Supreme Court in case of **Hiranyalal Dev (supra)** also nullifies the finding of the Tribunal in Para 63 of the impugned Judgment dated 17.01.2020 that reasons were required to be recorded in a brief and succinct manner when a senior who is eligible is sought to be overlooked in preference to the juniors. It is settled law that no reasons are required to be recorded in case of selection / preference of one candidate over the other, by the Empanelment Committee and such a view is support by the relied

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judgments **Hiranyalal's case (*supra*)**, “**National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman**” **1992 Supp (2) SCC 481**, and **Major General I.P.S. Dewan vs. Union of India (1995) 3 SCC 383** as discussed above in Para 32.2.

40. Another aspect that deserves consideration in the present case is that the officers, forming part of the zone of consideration, have earned their respective promotion upto the rank of DGP/ADGP. For empanelment / appointment as DGP (HoPF), they are eligible to be considered in a selection process undertaken by the UPSC through the Empanelment Committee. The officers of the rank of DGP / ADGP who have 30 years of service, having very good record and residual minimum service of 6 months are included in such selection process where they are assessed on the chosen / adopted core policing areas for the ‘range of experience’ towards their suitability to be empanelled for appointment as Head of the Police Force for a particular State. The Tribunal has held that any exercise beyond the consideration of the Officers on their length of service, residual service, very good record and even in respect of the range of experience to head the Police Force is bad and illegal. Such a narrow and pedantic approach itself implies that if the Officer who is senior with length of service at his side, having requisite residual service, very good record will have to be accepted and empanelled and there is no scope with the UPSC / Empanelment Committee to objectively assess that such an officer is having the range of experience to head the Police Force and whether on all parameters and the Core Policing Areas required for that State, such an Officer is more suitable and more adequate to be empanelled. Thus, in this regard the findings of the Tribunal that there is no other consideration allowed and any other

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consideration is blocked, is erroneous and cannot be held to be valid, thus is liable to be set aside.

In an assessment towards the suitability on a selection post as head the Police Force, the evaluation is to be made by the experts keeping in consideration the requirement of the particular state and in their expert domain, vision and wisdom may prefer one candidate over the other and such assessment is beyond the purview and scope of interference by the Courts. This selection of empanelment is based on objective assessment made by the Empanelment Committee on the method & procedure adopted by the Empanelment Committee itself in terms of Clause 6.1 of the Draft Guidelines-2009, by reaching a consensus and without there being any scope of collusion or conspiracy in a multi-member body with members who are very high ranking officers from different organizations. The empanelment of an officer for appointment as DGP (HoPF) is not an individual decision but a collective decision by the Empanelment Committee. In the present case, there is no basis, foundation or pleading that the Empanelment Committee was having any malafides against the Private Respondents Mohd. Mustafa or Siddharth Chattopadhyay or have colluded to oust these candidates from the selection process. The Tribunal harbouring a notion and giving a finding in the impugned Order dated 17.01.2020 that once the Officer is fulfilling the parameters i.e. the length of service, residual service, very good record and range of experience, then any other consideration is blocked is also unfounded and liable to be set aside.

41. The Tribunal, in the impugned Order dated 17.01.2020, has set aside the procedure adopted towards empanelment on 04.02.2019 and the appointment of Dinkar Gupta as DGP (HoPF) by the Order dated

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07.02.2019. It is settled that the comparative merit of the candidates is not to be gone into but by venturing into the basis and foundation of assessment on the Core Policing areas and questioning Clause 6.1 of the Draft Guidelines 2009, the Tribunal has entered into the domain of the experts as to their assessment pointing towards the empanelled or the non-empanelled Officers which was an exercise completely internal to the Empanelment Committee and is not even required to be recorded in the Minutes of Meeting. The Private Respondents Mohd. Mustafa or Siddharth Chattopadhyay have neither pleaded nor proved a case to venture in the domain of the experts and such an exercise by the Tribunal and on this score, the findings of the Tribunal in Para 63 of the impugned judgment dated 17.01.2020, that the reasons mentioned by UPSC for selecting the empanelled candidates or superseding the seniors are not in accord with the Judgment of the Hon'ble Supreme Court in Prakash Singh's case are bereft of a valid consideration of the relevant factors and law on the subject and is as such liable to be set aside.

42. The Tribunal has held the procedure prescribed under Clause 6.1 of the Draft Guidelines -2009 to be illegal and unlawful being in contravention of the directions and guidelines in Prakash Singh's case (*supra*) and on that basis held in Para 50 of the order dated 17.01.2020, that the procedure mentioned in Para 5.1, 6.1.2 and 6.1.3 of the Counter Affidavit of UPSC / Empanelment Committee before the Tribunal, is contrary to the law laid down by the Hon'ble Supreme Court. It has been rightly argued by Sh Maninder Singh, Ld. Sr Advocate, that no challenge has been made to the procedure towards the selection of the DGP (HoPF) for the State of Punjab and Clause 6.1 of the Draft Guidelines -2009 and in

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absence of such challenge, the procedure under Clause 6.1 and on that basis the Draft Guidelines-2009 which are not under challenge cannot be held to be illegal and in contravention of the directions in Prakash Singh's case (*supra*). We are in agreement with the argument of Sh Maninder Singh Sr Advocate and from the perusal of the pleadings, there is no challenge to the procedure (Clause 6.1) and the Draft Guidelines-2009, thus any findings regarding the illegality of Draft Guidelines-2009 which are uniformly adopted pan India cannot be sustained and is liable to be set aside.

43. It is argued by the UPSC / State of Punjab that in the Order dated 16.01.2019 passed by the Hon'ble Supreme Court in an IA filed by the State of Punjab against the Order dated 03.07.2018, refers to the procedure of assessment through the Empanelment Committee of UPSC and the Hon'ble Supreme Court recorded its satisfaction towards the procedure adopted towards empanelment for DGP (HoPF). But, in the impugned judgment dated 17.01.2020 passed by the Tribunal though reference is made to the said Order dated 16.01.2019 still the Tribunal has ignored the said Order towards the discussion and deliberation resulting in the impugned findings in the Order dated 17.01.2019.

From the facts and documents on record, as also the facts recorded in the impugned Order dated 17.01.2019, the aforesaid argument finds substantiation that the Tribunal though mentioning the Order dated 16.01.2019 in its recording of facts has completely overlooked and ignored the said Order in its consideration of the validity of the procedure / assessment by the Empanelment Committee as per the Draft Guidelines-2009. We find that the Order dated 16.01.2019 has a strong bearing on the deliberation and conclusions in respect of the issues in controversy and also

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on the findings in the impugned order dated 17.01.2020. Thus, in recording the impugned finding, the Tribunal had erred in ignoring and overlooking the relevant consideration which has influenced the impugned findings and thus the findings of the tribunal on this score are perverse and illegal & are liable to be set aside.

44. There are other issues like privilege, the consideration not made by the UPSC and the procedure so adopted not stamped by the Hon'ble Supreme Court are raised by the parties which are not dealt with or not forming part of the determination of the claims of the Original Applicants made by the Tribunal. However, since we are determining the issue on all aspects we will deal with the each such issue concisely.

The claim of privilege is made by UPSC in respect of the 'assessment sheets' on which the members of the Empanelment Committee have applied their mind towards the assessment of the officers towards the empanelment for appointment as DGP (HoPF). The UPSC has filed an affidavit dated 16.03.2020, affirming that while *minutes of meeting* are shared / disclosed in the public domain, the *Assessment Sheets* are an unpublished record of the UPSC which is not shared/disclosed in the public domain. However, the assessment of all the 12 officers has been recorded by the Empanelment Committee on the basis of length of service, very good record, range of experience for Heading the Police Force and residual service. The committee has recorded assessment on the range of experience of the eligible offices on core policing areas in the last 10 years and relied on the judgement wherein the Hon'ble Supreme Court upholding the norms to apply in making the assessment and how the categories are assessed in the light of relevant records, which is a function of the selection committee.

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The UPSC claims by the affidavit of its Officer that the record of assessment was handed over to Tribunal at Delhi but such fact doesnot find any mention in the impugned Order dated 17.01.2020. The UPSC has also placed the said Assessment Sheets before this court in sealed cover for its perusal.

We have no reason to disbelieve the rejoinder affidavit dated 16.03.2020 supported by Annexure P-20 to P-22 filed in CWP 4618 of 2020, on behalf of UPSC. In view of our findings to the issues decided above regarding the Guidelines, our scope of interference and judicial review, once we are satisfied with the procedure adopted then the assessment sheets does not remain of much relevance specially when the Hon'ble Supreme Court has settled the law that the courts have not to sit as a appellate authority looking into the minute details in the domain of the experts and imposing their view on the view of the experts and pertinently when no bias, malafides or collusion of the Empanelment Committee has neither been pleaded nor proved in the entire proceedings before the Tribunal or before this Court.

45. The issue that the UPSC has not taken the decision as per its constitution under Article 309 of the Constitution of India, 1950 in view of the argument addressed that exercise conducted towards the empanelment of the Officers for appointment as DGP (HoPF) has been carried out pursuance to the directions of the Hon'ble Supreme Court under Article 142 of the Constitution of India in the order dated 22.09.2006, 16.01.2019 and other Orders in Prakash Singh's case (*supra*). On the issue of the zone of consideration, based on the Order dated 22.07.2020 passed by this Court, the UPSC has filed detailed affidavit relying on Para 2 of the Draft

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Guidelines 2009 and the non applicability of the DoPT guidelines to which no rebuttal has been filed by the other parties.

46. In view of the above discussion and observations, this court is of the considered view that the findings of the Tribunal that the entire selection process and consequential appointment of DG to the contrary to the judgment of the Hon'ble Supreme Court and orders passed in 03.07.2018 and 16.01.2019 is erroneous and liable to be set aside.

Thus the Tribunal has exceeded its jurisdiction regarding judicial review of the selection process by transgressing in the expert domain super imposing its own opinion and is against the settled law on the subject discussed in the preceding Paragraphs and the issue No. 3(b) is answered in these terms.

Issue No. 4

47. From the discussion & the findings on the Issues at (1), (2) & (3) hereinabove, towards the conclusion on **Issue (4)** we are of the considered view that the Tribunal **erred** in holding that the Draft Guidelines-2009 and the procedure adopted by the UPSC / Empanelment Committee for the selection of the DGP (HoPF) for the State of Punjab in January-February 2019 was in contravention of the **Prakash Singh's judgment** (supra). The procedure adopted by UPSC / Empanelment Committee and the Minutes of meeting of the Empanelment Committee dated 04.02.2019 and consequential Order dated 07.02.2019 by State of Punjab are held **to be valid and legal**. The Tribunal exceeded its power of judicial review by transgressing into the domain of law and against the settled position of law regarding the judicial review of the decisions / recommendations of the Selection Committee. **Thus,**

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CWP No. 1617 of 2020 “Dinkar Gupta versus Central Administrative Tribunal and others”;

CWP No. 1651 of 2020 “State of Punjab versus Central Administrative Tribunal and others”;

CWP No. 1660 of 2020 “State of Punjab versus Central Administrative Tribunal and others”;

CWP No. 4616 of 2020 Union Public Service Commission versus Mohd Mustafa and others;

CWP No. 4618 of 2020 Union Public Service Commission versus Siddarth Chattopadhyaya,

are allowed and consequentially, the quashing of the procedure adopted by UPSC / Empanelment Committee and the Minutes of meeting of the Empanelment Committee dated 04.02.2019 and consequential Order dated 07.02.2019 by State of Punjab **are set aside** and to that extent, the impugned order dated 17.02.2020 passed by the tribunal is set aside.

CWP No. 3811 of 2020 titled as **Siddarth Chattopadhyaya** versus **State of Punjab and others** is **dismissed** while upholding the findings of the Tribunal returned *qua* the rejection of the plea of bias.

48. Before parting with the judgment, we are compelled to observe that the open ended zone of consideration provided in Clause-2 of the Draft Guidelines-2009, without limiting the number of eligible officers to be considered for appointment against solitary post of DGP (Head of Police Force), is prone to the possibility of mischief, apart from generating resentment among senior Officers, which precisely, in our view, the

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judgment in **Prakash Singh's case** was seeking to address and remove. In service jurisprudence, it is well recognised and accepted that in case of appointment by selection from a given source, the zone of consideration is fixed keeping in view the number of posts to be filled. No doubt the provisions of Draft Guidelines-2009 have been placed and approved by the Hon'ble Supreme Court, as also upheld by us hereabove, however, with utmost humility, in order to strengthen the implementation of the true intent of the directions of the Hon'ble Supreme Court passed in **Parakash Singh's case**, we request UPSC to consider this aspect towards necessary modifications, if any, after seeking approval from Hon'ble Supreme Court.

No orders as to the costs.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

November 06th, 2020

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>