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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.956/2001
MA 2316/2003
MA 2317/2003

New Delhi this the 1st December, 2005

Hon'ble Mr. M.P. Singh, Vice Chairman (A)
Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Ms. Hamida Rano Abdi
(By Advocate Shri S.K. Sinha)

..Applicant

VERSUS

Union of India and Others

..Respondents

1. To be referred to the Reporter or not.

✓
Yes / No

2. To be circulated to other Benches or not.

✓
Yes / No.


(Mukesh Kumar Gupta)
Member (J)

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Hon'ble Mr. M.P.Singh, Vice Chairman (A)
Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Ms.Hamida Rano Abdi,
C/O F-102, Pragati Vihar Hostel,
Lodi Road,
New Delhi-110003

..Applicant

(By Advocate Shri G.D.Gupta, Senior counsel
along with Shri S.K.Sinha)

VERSUS

1. Union of India through its
Secretary to the Govt.of India
Deptt.of Bio-Technology,
Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003
 2. Dr.(Mrs.)Anita Biswas,
R/0 290, Tagore Park,
Model Town-1, Delhi-110007
 3. Sh.Arvind Duggal, Director,
C/0 Deptt.of Bio-Technology,
Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003
 4. Dr.A.J.Minawe, Director,
C/0 Deptt.of Bio-Technology,

Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003
 5. Sh.T. Madhav Mohan, Director
C/0 Deptt.of Bio-Technology,
Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003
 6. Dr.R.R.Sinha, Director
C/0 Deptt.of Bio-Technology,
Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003
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7. Dr.K.S.Charan, Director
C/O Deptt.of Bio-Technology,
Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003

8. Dr.T.V.Ramaniah, Director
C/O Deptt.of Bio-Technology,
Floor-7, Block No.2, CGO Complex,
Lodi Road, New Delhi-110003

..Respondents

(By Advocate Shri R.N.Singh along with
Shri J.B. Pandey counsel for respondent No.1)
(None for respondents 2 to 8)

ORDER

Mr. Mukesh Kumar Gupta, Member (J)

By the present OA, applicant basically challenges the Office Memorandum dated 20.9.1999 communicating certain adverse remarks from her Annual Confidential Report (ACR) for the year 1998 - 1999 as well as the Office Memorandum dated 16.7.2001 rejecting her representation dated 18.10.1999 with all consequential benefits.

2. During pendency of the OA, applicant preferred Misc.application No.2317/2003 seeking amendment of the existing prayer clause. The amended prayer reads as follows:

"(A) allow this Original Application of the applicant with costs;

(B) issue appropriate direction or directions, order or orders

(i) quashing the impugned Office Memo. dated 20th September, 2000 communicating adverse remarks to the applicant from the confidential report for the year 1998-99 and Office Memo.dated 16th July, rejecting the representation of the applicant dated 18th October, 1999 against the said adverse remarks;

(ii) declaring the adverse remarks communicated to the applicant vide Office Memo. dated 20th September, 2000 are liable to be expunged and consequently the applicant is entitled for promotion to the post of Director with effect from the date from which her colleagues including juniors were promoted with all consequential benefits;

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(iii) further declaring the non-promotion of the applicant to the post of Director in the selection held on 8th October, 1999 and in October, 2000 is wholly illegal and declaring the applicant entitled to be promoted to the post of Director in the said selection with all consequential benefits;

(iv) directing the respondents to expunge the adverse remarks communicated to the applicant vide Office Memo. dated 20th September, 1999 and consequently promote the applicant to the post of Director with effect from the date from which her colleagues including juniors were promoted with all consequential benefits;

(v) further directing the respondents to consider a review DPC as on October, 1999 and to consider the case of the applicant, firstly, without the said adverse remarks and, secondly, by taking her appropriate performance into account while considering her case for promotion by the review DPC and if thus she is fit, she may be ordered to be promoted to the post of Director with effect from the date from which her colleagues/juniors were promoted with all consequential benefits;

(vi) declaring that the grading "GOOD" as given in the confidential report for the years 1994-95, 1996-97, 1997-98 and 1998-99 as shown in the chart attached with the counter reply amounts to adverse remarks since grading "GOOD" was lower than the grading "VERY GOOD", which happens to be bench mark for promotion to the post of Director and since the said grading amounted to adverse remarks were not communicated, the same are liable not to be relied upon without being communicated first;

(vii) Further declaring that since the grading in the confidential report for the period prior to 1995, i.e., prior to promotion of the applicant as Senior Scientific Officer and since were must be "VERY GOOD", the same ought to have been relied upon for consideration of the case of the applicant for promotion to the post of Director with effect from the date from which her colleagues including juniors were promoted with all consequential benefits;

(viii) Otherwise declaring that the said "GOOD" grading cannot be relied upon without being communicated to the applicant and without being given her a reasonable opportunity of being submitted representation against the same;

(ix) Further declaring that accordingly the applicant becomes liable to be considered in the selections held in October, 2000 and in case she is found fit, she may be ordered to be promoted to the post of Director with effect from the date from which her colleagues including juniors were promoted with all consequential benefits;

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(x) Further declaring the instructions to the effect that an employee/officer cannot be considered for promotion subsequent to his/her own selection in a particular year after the expiry of one year as bad in law and are liable to be quashed to that effect;

(C) issue such other and further direction or directions, order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case".

3. Similarly Misc. Application No. 2316 of 2003 was filed seeking permission to urge certain additional grounds in support of the claim laid in the OA.

4. The facts sans unnecessary details are as under:

The applicant who holds the Master Degree in Bio-Chemistry and Ph.D in that very subject, was initially appointed as Senior Scientific Officer, Grade-1 in September, 1989 based on selection in open competition by direct recruitment, and promoted to the next higher post of Principal Scientific Officer w.e.f. 1.1.1995 under the Flexible Complementing Scheme. Immediately thereafter she was selected for the post of Doctorate Research Training (Genetics) in University of Adelaide, South Australia on deputation for a period of one year. The next higher promotional post is that of Director, which is required to be filled up by Flexible Complementing Scheme as in situ promotion after five years of regular service in the grade of Principal Scientific Officer. The Recruitment Rules governing the recruitment to the said post are called Group 'A' Gazetted Posts (Non-Ministerial Scientific and Technical) Recruitment Rules, 1989. Vide Office Memo. dated 2.8.1999 applicant alongwith others was asked to furnish her performance for the last five years so that she could be considered for the aforesaid promotional post. Pursuant to the above, she has submitted her application vide note dated 10.8.1999 and

furnished the required performance report. Interview was held for the said post on 8.10.1999 but she was not called for to attend such interview. On verbal inquiry, she was informed that since she had not obtained the minimum required marks to be called for interview as per the norms fixed for calling the candidates for interview under the Flexible Complementing Scheme vide Memo. dated 13.12.1988, she was not eligible for such interview. There had also been certain adverse remarks in her confidential report for the year 1998-99, communicated to her vide Memo. dated 20.9.1999, against which she submitted a detailed representation dated 18.10.1999. Since no reply was forthcoming, even after reminders, the aforesaid OA was instituted challenging the Memorandum dated 20.9.1999.

5. As the applicant's representation had been pending with the department, the said OA was disposed of in limine vide order dated 9.5.2001 with direction to respondents to consider her representation and pass a reasoned and speaking order within a time limit prescribed thereunder.

6. Pursuant to the said direction, the respondents considered her representation and issued Office Memorandum dated 16.7.2001, communicating that: "The Competent authority, having carefully considered the representation dated 18.10.1989" against the adverse remarks in the Annual Confidential report (April '98 to March '99) communicated to her, vide O.M. of even no. dated 20.9.1999, "has decided to maintain status quo ante". Immediately thereafter, applicant filed MA 1622/2002 seeking revival of the aforesaid OA, which was disposed of by reviving the OA vide order dated 27.8.2002 with direction to applicant to

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incorporate the necessary amendment in accordance with law. Pursuant thereto, applicant filed the amended OA on 1.11.2002.

7. In this amended OA it is stated that the perusal of adverse remarks communicated vide Memorandum dated 20.9.1999 would show that they were mostly such as one could not develop the same overnight. The same were basically malafide with a determined purpose of somehow depriving the applicant of her promotion to the post of Director, and they were communicated just at the time when she was going to be considered for promotion. Apart from malafide, the remarks made were factually incorrect. Reporting Officer who wrote the confidential report for the year 1998-99 was Dr. (Mrs.) Amita Biswas, who had also written the report for the year 1997- 98 but at that time nothing adverse was communicated. The applicant was not communicated any flaws or deficiency in her performance for the said year i.e. 1998-99. In any case, since the applicant had submitted her representation within a month, the same ought not to have been operated till the said representation was disposed of in terms of DOP&T OM No. 21011/1/77-Estt. Dated 30.1.1978. Evidently vide Memo. dated 3.2.2000 she was informed that her representation regarding expunging adverse remarks in the ACR for the year 1998-99 was under consideration of the competent authority, i.e. the Hon'ble Minister, Science and Technology, but in the meantime, interviews were held and promotion to the said post of Director were eventually made vide Notification dated 31.12.1999, which did not include the applicant's name. Thereafter another selection was held on 24th October, 2000 and she was not called for interview even in the said selection, which eventually nominated two persons viz., Dr.K.S.Charak and Dr.T.S.Ramanaiah, who were juniors to her. They were subsequently promoted. Since the respondents passed

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Office Memo. dated 16.7.2001 and decided to maintain "status quo ante" and as no reason was forthcoming, she submitted representation dated 20.7.2001 to elicit the reasons for passing the said order. However, the applicant did not receive any reply to the same. The respondents were bound to communicate the reasons for rejecting her representation. Another selection was held on 23.11.2001 and this time, she was selected and ordered to be promoted as Director vide Notification dated 31.12.2001 w.e.f. 1.1.2002. She joined the said promotional post of Scientific 'F' in the scale of Rs. 16,400-20,000 on 1.1.2002 (F.N).

8. Respondent No.1 contested the claim laid in the present OA and raised four preliminary objections, namely,

- (i) OA is barred under Rule 10 of the CAT (Procedure) Rules, 1987 as the applicant seeks multiple relief;
- (ii) OA is hopelessly time barred and suffers from delay and latches;
- (iii) Applicant has not approached this Tribunal with clean hands and suppressed material facts ;
- (iv) OA is without any cause of action as the impugned OM dated 16.7.2001 was issued by the competent authority in compliance of the directions of this Tribunal vide order dated 23.5.2001, after careful consideration of the relevant facts, rules and instructions and material on records in accordance with law on the subject.

On merits, it was stated that the entries in the ACRs were suggestive in nature. As per the guidelines for "Flexible Complementary Scheme" issued vide OM dated 11.12.1990, firstly the Committee had to do screening on the basis of ACRs and the candidate should obtain the required marks. If the concerned candidate obtains the minimum required marks then he/she crosses the first stage, and secondly the Committee

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considers recommendation of the Head of Division/Department based on a self assessment report of the officer, followed by interview, and if a candidate obtains 70 marks, including minimum 30 marks in interview, he/she can be recommended for promotion. Applicant's representation was considered objectively and was disposed of by the Hon'ble Cabinet Minister in the Ministry controlling the cadre of the applicant.

9. In reply filed to above MAs, the respondents stated that even if the applicant had been awarded 10 out of 10 for the confidential report of the year 1998-99, the total marks would have been 36, and even then applicant would not have qualified for screening and interview as 40 marks are the minimum required marks in terms of aforesaid OM. The applicant should have obtained 40 marks in ACRs of five years to be screened for interview in the first attempt. This minimum ^{marks} requirement gets increased to 44 on completion of 6 years and 48 on completion of 7 years. No minimum marks is prescribed after 8 years of service. Therefore, the rating 'good' cannot be considered as an adverse. As such, there is no question of benchmark for each year and the grading 'good' is not an adverse entry and it was not communicable to applicant, stated respondents. With reference to OM dated 11.12.1990 (Anexure R.1), it was also pointed out that para 3 of the said OM prescribed the minimum marks to be obtained at different levels to be screened and for the post of Director and above, 40 marks are required for five years ACR. As per para 2, the ACR is to be graded on a 10 point scale.

10. The applicant by submitting her rejoinder reiterated contentions raised in the OA. We have heard both the learned counsel at length and perused the pleadings, besides original records placed before us, minutely.

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11. Shri G.D.Gupta, learned Senior Advocate assisted by Shri S.K.Sinha with reference to Annexure R-4, which are the minutes of the Screening Committee held on 24.10.2000, strongly contended that applicant had been assigned 6 marks for the ACR 1998-99, though the respondents who conveyed the adverse remarks in the said year, were required not to consider the said CR particularly when her representation preferred, in terms of DOP&T OM dated 30.1.1978 with the time limit prescribed therein was pending. Para 5 of the said OM prescribed time limit within which the representation against the adverse remarks should be decided. Three months time from the date of its submission, is outer limit prescribed thereunder. The said para also requires that such adverse remarks should not be "deemed as operative, if any representation filed within the prescribed limit is pending". Learned Senior Advocate laid much emphasis on these aspects and stated that admittedly the applicant's representation dated 18.10.1999 had been pending with the respondents till it was rejected vide Memorandum dated 16.10.2001 and, therefore, the same ought not to have been considered by the DPC held prior to the aforesaid date. It was further contended that the said adverse remarks had been taken into consideration by the DPCs held on 8.10.1999 as well as on 24.10.2000, and such glaring illegalities and violation cannot be upheld. The next forceful submission made was that the applicant was required to obtain only 36 marks and not 40 marks, out of 5 ACRs as per Para 3 of the OM dated 11.12.1990, which provided the guidelines for in-situ promotion of Scientists under the 'Flexible Complementary Scheme'. The great stress was laid to suggest that if impugned adverse remarks were not communicated for the year 1998-99, the applicant, who was only assigned 6 marks for the said ACR, would have secured 10 marks for the said year

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and as such would have attained 36 marks, required for such consideration. At this stage, we may note that as per the minutes of the Screening Committee held on 24.10.2000, the Committee in question considered applicant's ACRs for years 1994-95, 1996-97, 1997-98, 1998-99 and 1999-2000. It was clarified by the respondents that for the year 1995-96 there had been no CR, as the applicant, during the relevant period, was on foreign training. Minimum CRs which are required to be considered as per the rules in vogue were for 5 preceding years, and if in any case any CR for the last 5 preceding years is not available, a CR preceding to 5 years should be taken into consideration to complete the number of CRs required to be considered. The last submission made was that the nature of the ACR indeed goes to show that the same was not such which one could develop overnight. For this purpose, our attention was drawn to the contents of adverse remarks communicated to her vide Memo. dated 20.9.2000, which read as follows:

"Sub: Communication of adverse remarks in the ACR of Dr.(Ms.) Hamida Bano Abdi, PSO, for the year April '98 to March '99 -

The undersigned is to communicate the following adverse remarks recorded in the ACR of Dr.(Ms.) Hamida Bano Abdi, PSO, for the period 1.4.98 to 31.3.99:-

	<u>Items</u>	<u>Remarks</u>
<u>Part-III</u>		
(A) 2	Quality of output	
	Please comment on the Officer's quality of performance having regard to standard of work and programme objectives, and constraints, if any.	1. Good, but she has difficulty in her communication as well as expression skill.
(C)	Attributes	
3.	Initiatives	

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Please comment on the capacity and resourcefulness of the officer in handling unforeseen situations on his/her own and willingness to take additional responsibility and new areas of work.

Resourcefulness - Poor not capable of taking additional load.

5. Communication skill (Written and Oral)

Please comment on the ability of the officer to communicate and on his/her ability to present arguments.

Not upto the mark, needs improvement.

PART IV

GENERAL

3. General assessment

Please give an overall assessment of the officer with reference to his/her strength and shortcomings and also by drawing attention to the qualities, if any, not covered by the entries above.

She is a dedicated officer but due to lack of her communication skill she could not achieve her best.

PART -V

General remarks with specific comments about the general remarks given by the reporting authority and remarks about meritorious work of the officer including the grading.

Yes. She needs guidance and must be asked to take more initiative.

5. Has the officer any special characteristics, and/ or any abilities or aptitude which would justify his/her selection for special assignment or out of turn promotion? If so, specify.

Must work hard and keep herself abreast with the developments.

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Regarding the good points in the ACR, in column C(i) "Attitude to Work", it is stated that she is a dedicated officer willing to learn more and and in column C(2) - "Decision making ability", it is mentioned that she takes note of pros and cons while taking decision.

3. As provided under the rules, Dr.(Ms.) Hamida Bano Abdi, PSO, if she so desires, can submit a written representation against these remarks to the Hon'ble Minister (S&T) within a period of one month from the date of this OM., failing which it will be presumed that she has no comments to make".

12. Learned Senior Advocate with vehemence contended that as per the law laid down by the Hon'ble Supreme Court in **U.P. Jal Nigam Vs. Prabhat Chandra Jain** (AIR 1996 SC 1661), when the entries in the confidential report are down graded, the authority is under an obligation to record reason for downgrading on personal file of employee concerned, which law has been grossly violated in the facts and circumstances of the present case. A great stress was laid on the observation made in Para 3 therein that: "it may be emphasized that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true". It was further urged that if there was any deficiency or dereliction in the standard of her performance, the same ought to had been brought to her notice in time and since this was not done, there was no justification to record adverse entries particularly when the respondent No.2 who had written her confidential report for the year 1997-1998 had not reflected such an adverse remarks in the same column as of the impugned ACR i.e. 1998-1999.

13. Reliance was placed on (1996) 10SCC 369 -**M.A.Rajasekhar Vs. State of Karnataka**, wherein it has been held that the object of making adverse remarks is to assess the competence of an officer on merits and

performance of an officer concerned so as to grade him/her in various categories as outstanding, very good, good, satisfactory and average, etc. When there were specific instances of shortcomings recorded in the confidential report, the officer should be confronted and such instances should have been pointed out to the delinquent official so that he/she could have an opportunity to improve his/her mistake. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent. In the said judgment of **M.A.Rajasekhar's** case (supra), the appellant therein was communicated that he "does not act dispassionately when faced with dilemma", which aspect had not been pointed out with reference to any specific instance and, therefore, the appeal was allowed and adverse remarks were expunged.

14. Reliance was also placed on 1997 SCC (L&S) 903 : 1997 (4) SCC 7 **State of UP Vs. Yamuna Shanker Mishra and Another** wherein it had been stressed that the officer entrusted with the duty to write a confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within the knowledge of such officer. Before forming an opinion to make adverse entry in the confidential report, the reporting /reviewing officer should share the information which does not form part of the record with the officer concerned, so that he gets an opportunity to correct the errors of the judgment, conduct behaviour, integrity or corrupt

proclivity. If, despite giving such an opportunity, the officer fails to perform the duty, correct his/her conduct or improve himself, necessarily the same may be recorded in the confidential reports. The Learned Senior Advocate took pains to point out that instances which have been termed as adverse remarks in the confidential report, had never been brought to applicant's notice and, therefore, the aforesaid law was grossly violated. Our attention was also drawn to order passed by the Hon'ble Supreme Court in SLP (C) 2713/2002- **Union of India Vs. S.M.Verma** dated 28.1.2002, wherein while issuing notice, it was observed that: "Learned counsel draws our attention to the observations of this Court in paragraph 3 in **U.P. Jal Nigam Vs. Prabhat Chandra Jain** 1996 (2) SCC 363, and submits that down grading by one step from 'very good' to 'good' will not be regarded as an adverse entry and need not, therefore, be communicated". Subsequently the said SLP was dismissed vide order 5.4.2002 by observing that: "The Special Leave Petition is dismissed", and without any other observation.

15. Shri G.D. Gupta, Learned Senior Advocate, with reference to above order vehemently contended that since the question framed by the Hon'ble Supreme Court in the above mentioned case had not been agreed, this Tribunal should also follow the said law. Reliance was also placed on **Gurdial Singh Fiji Vs. State of Punjab and Anr.** (1979 (1) SLR 804 & 103(2003) DLT 105 (DB).

16. Shri R.N. Singh, learned counsel appearing for Respondent No.1, per contra disputed the contentions so raised by the applicant and contended that as per applicant's own understanding she was required to obtain 40 marks as stated by her vide MA No.2316/2003 particularly para-

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1. There was no scope for prescribing 'bench mark' under the Flexible Complementing Scheme as the marks required to be obtained by a candidate varies depending upon the number of years of service. As per Memorandum dated 11.12.1990, issued by the Department of Science & Technology, providing guidelines for assessment for in-situ promotion of scientists under the F.C.S, on completion of 5 years service and for consideration for promotion to the post of Director and above, the candidate is required to obtain 40 marks for becoming eligible for interview, which gets increased to 44 and 48 marks on completion of 6 and 7 years of service respectively. No minimum mark is prescribed on completion of 8 and above years of service. As such there is no fixed marks required to be obtained by a candidate for all times. It would be expedient, at this stage, to notice the relevant excerpts of the guidelines issued by Department of Science & Technology vide OM dated 11.12.1990:

"2. The Screening of Officers eligible for assessment may be done on the basis of Annual Confidential Reports (ACRs) for the period under review. The ACRs may be graded on a 10 point scale as follows.

<u>Sl. No.</u>	<u>Grading</u>	<u>Marks</u>
1.	Outstanding	10
2.	Very Good	8
3.	Good	6
4.	Average	4
5.	Poor	0

3. The minimum marks to be obtained on the basis of the above gradings at different levels to be screened in are as below:

Grade	No. of Years			
	5	6	7	8 & Above
SSO II	34	38	No min. marks	
SSO I	36	40	44	No min. marks

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PSO	36	40	44	No min. marks
Director & above	40	44	48	No min. marks"

17. It was further contended that none of the judgements cited are applicable in the facts and circumstances of the present case as none of the said judgements deal with the specific issue of promotion under F.C.S. With reference to applicant's consistent gradings in CRs, which had been taken into consideration by the DPC held in the year 1999 as well as in the year 2000, it was pointed out that the applicant was rated 'Good' for the years 1994-95, 1996-97, 1997-98 and 1998-99 and, therefore, even if the ACR for the year 1995-96 had been in existence, the applicant's performance could not have improved her rating as 'Outstanding'. With reference to the CR for the year 1995-96, it was pointed out that there is no provision under the Rules and instructions to write an ACR particularly for the period when an Officer is on foreign training. A certificate dated 04.09.2000 was issued by the Under Secretary of the concerned Ministry indicating that the ACR in respect of the applicant for the period 10.2.95 to 10.2.96 could not be written as she was on foreign training during that period. ACR for the period 11.2.96 to 31.3.96 could not be written for the officer, as the period was less than three months. Further more, from the remarks made by the Reviewing Officer, viz., Secretary, Department of Bio-Technology in the ACRs for the years 1996-97 and 1997-98, it was pointed out that there existed remarks that the applicant was capable of doing very good with some encouragement and she would have to work hard and keep herself abreast with the developments. It was also emphasized that the applicant needs guidance and should be asked to take more initiative.

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18. We have given thoughtful consideration to all these aspects and carefully perused the original records, namely, the minutes of the selection committee as well as the applicant's ACR Dossier. On bestowing our consideration to all aspects, we are of the view that there was neither fall in standard or down-gradation in her Annual Confidential Reports. In fact, there had been consistent grading awarded to the applicant even in the impugned C.R. for the year 1998-99. It is, no doubt, true that certain adverse remarks made in the C.R. for the year 1998-99 had been communicated, but her overall rating remained the same, i.e. 'Good', which was consistent to her earlier gradation for the years 1994-95, 1996-97 and 1997-98. The observations, which were basically conveyed to the applicant, were in existence in the shape of remarks made by the Reviewing Authority in the ACR for the year 1996-97. On perusal of the said ACR in particular we find that though the Reporting Officer has graded the applicant as 'Average', but the same was not agreed to, and the Reviewing Officer rated her as 'Good'. A further observation was also made that the applicant's performance was 'Very Good' when she was handling animal biotechnology projects and probably because of change of subject, she had taken some time to pick up and she would certainly improve her performance and was capable of doing very good work with some encouragement. Even in the ACR for the year 1997-98, the same Reviewing Authority observed that the applicant "has to put in much more effort, work hard and improve overall project analyzing, monitoring. She is a sincere, good officer who can be motivated further to take on more work." It was also observed therein that the applicant "has to improve as she can do it." In other words, there have been certain fields and areas where an improvement was desired from the applicant.

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19. We may note at the cost of repetition that to secure minimum mark 40 is the first stage and only thereafter a candidate becomes eligible for interview as prescribed under the aforesaid guidelines. It is not disputed by the applicant that personal discussion/ interview is one of the method for assessment of a Scientist for in-situ promotion under F.C.S.

20. On perusal of the official records, we further find that the applicant was promoted vide order dated 31.12.2001, w.e.f. 1.1.2002 as she was graded 'Very Good' for the year 1999-2000 as well as 2000-2001. Even if the applicant is allowed 10 marks i.e. "Outstanding" for the year 1998-99 instead 6 marks awarded to her, even then the applicant would fall short of required 40 marks to become eligible for interview under the F.C.S. It would be useful to notice that the relevant excerpts of the DPC meeting dated 24.10.2000, which reads as under:-

"The minutes of Selection Committee meeting dated 24.10.2000 contained award of following marks for different years in the Confidential Reports:-

Promotion from the grade of Scientist 'D' (P.S.O.) Rs.12,000-16,500) to the grade of Scientist 'F' (Director) (Rs.16,400-20,000)

S.No.	Name of the Officers	Years						Total Marks	Percentage (%)
		1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Dr(Ms) Hamida Bano Abdi	G (6)	No report She was on foreign trg.	G (6)	G (6)	G* (6)	V.G. (8)	32/50	64%
2.									

*The Report has certain adverse remarks. These were communicated to her. Her representation against adverse remarks is pending for a decision by the Hon'ble Minister."

We are also of the considered view that the provisions of "Bench Mark", as provided under DOP&T OM dated 10.4.1989 have no application

(Handwritten initials)

in the FCS, particularly in the facts and circumstances of the present case as the marks to be obtained by the candidate concerned do not remain the same, but varies. We also hold that the concept of 'bench mark' provided under the aforesaid DOP&T OM is distinct and different than the requirement of Flexible Complementing Scheme. In the latter Scheme, there is no zone of consideration, there is no supersession unless one is not found fit for and the concept of seniority-cum-fitness or seniority-cum-merit also not applicable. These are some of the basic differences between the aforesaid two Schemes.

21. We may make it clear that we have not usurped into the functions and duties of the Selection Committee in recording this finding and have examined the records only to see as to whether the applicant would be eligible for consideration by securing marks ignoring the adverse aspects noticed in the said ACRs. In our considered view, the applicant is required to obtain 40 marks and not 36, as projected by the applicant. We are of the considered view that none of the judgements cited and relied upon by the applicant would have any application in the peculiar facts and circumstances of the present case.

22. In view of the discussion made hereinabove, we are of the view that there is no merit in the claim laid by the applicant. Accordingly, the OA is dismissed. No costs.

(Signature)
(Mukesh Kumar Gupta)
Member (J)

(Signature)
(M.P. Singh)
Vice-Chairman(A)

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