

Central Administrative Tribunal, Principal Bench

O.A. No. 2618/2004  
M.As. No.370 and 450 of 2005

New Delhi this the 26<sup>th</sup> day of May, 2005

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**  
**Hon'ble Mr. S.A. Singh, Member (A)**

1. K.K. Sharma  
11, Engineer Estate,  
21, I.P. Extension,  
Delhi-110092.
2. S.P. Baranwal  
D-3 HUDCO Place,  
Andrewganj Extension,  
New Delhi-110049. ....Applicant

By Advocate: Shri G.K. Aggarwal.

Versus

1. Union of India through  
Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi-110 011.
2. The Secretary,  
Union Public Service Commission,  
Shahjahan Road,  
New Delhi-110 011.
3. A.K. Goel (Mr.)  
Superintending Engineer (Electrical)  
CPWD, Vidyut Bhawan,  
Connaught Place,  
New Delhi-110001. ....Respondents

By Advocate: Shri Rajeev Bansal, counsel for respondent No.1.

Shri Rajinder Nischal, Counsel for respondent No.2.

None for respondent No.3.

**ORDER**

**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

The two applicants and the respondent No.3 are members of the Central Engineering (Electrical and Mechanical) Group 'A' Services and presently working as Superintending Engineers (Electrical). The applicants, who have filed this OA claiming to be seniormost Electrical Engineers as per the seniority list Annexure A-2, are eligible for promotion to the next higher post of Chief Engineer (Electrical). One regular vacancy

*M.A. Khan*

in the cadre of Chief Engineer (Electrical) is available for the year 2004-05 and 5 vacancies would occur in the year 2005-06. Their grievance is that as per the extant rules and DOP&T's instructions, the Departmental Promotion Committee should have been convened for drawing panels for promotion of the regular Superintending Engineers to the Chief Engineers (Electrical) between July and November of the preceding year but despite the department writing to the UPSC for holding the DPC, it has not been convened on the ground that the respondent No.3, Shri A.K. Goyal has obtained an order from Allahabad Bench of this Tribunal in OA No. 587/1997 titled Shri A.K., Goyal Vs. U.O.I. and another decided on 24.5.2004 for his retrospective promotion from the post of Executive Engineer to the post of Superintending Engineer with effect from 31.12.1985 when the next officer junior to him for promotion to the post of Chief Engineer (Electrical) and for a direction to the modification of the seniority list dated 25.11.1994 for ranking him below Shri Mohan Swaroop at S.No.13 and above Shri Fadia at S.No.14 of the list and other consequential benefits and that the Tribunal has further ordered that the order should be implemented before the next promotion of Chief Engineers (Electrical) takes place in which the applicants may also be considered with his modified/latest ACR and seniority. In the present OA it is alleged that respondent No.3 was considered by successive Departmental Promotion Committees which were convened for promotion to the vacancies which had arisen between 1985 to 1996 but was not found fit as his ACRs were held to be below the bench mark "very good". But the Tribunal in the aforesaid order has held that the entries below bench mark ought to have been overlooked since they should be deemed adverse, being below the bench remark and ought to have been communicated to the applicant before they were confirmed. According to the applicants this view of the Tribunal is in conflict with the decision of the Hon'ble Supreme Court and the decision of the Full Bench of this Tribunal, therefore, is not a good law.

2. In the OA the applicants have prayed that the respondents, including the UPSC, should be directed to convene the DPC for regular promotion of the Superintendent Engineer to the post of Chief Engineer (Electrical) in the Central Public Works Department for the vacancies in the years 2004-05 and 2005-06 on the basis of existing seniority list dated 25.10.2002 of regular Superintending Engineers. They sought further

*M. A. Goyal*

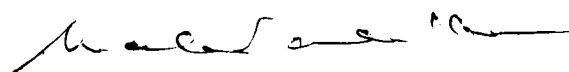
direction to the respondents to hold the meeting of the DPC before November, 2004 and quash the letter of the respondent No.2, UPSC, whereby it has refused to convene the DPC meeting unless the order of the Allahabad Bench of the Tribunal was implemented or its operation was stayed by a superior Court.

3. The respondent No.2 in its reply, briefly stated, pleaded that the DPC in this case cannot be held till the order of the Allahabad Bench of this Tribunal dated 24.5.2004 is implemented or is stayed by a higher court. It was submitted that first part of the order modifying the, inter se, seniority position of Shri A.K. Goel, respondent No.3, has not so far been implemented by the respondent No.1, Ministry of Urban Development nor has the said order been stayed by a higher court, the Commission's action in refusing to hold the DPC meeting in violation of the Tribunal's order, is legally correct.

4. The other official respondents have, however, pleaded in the OA that the respondent No.3 was promoted to the grade of Superintendent Engineer (Electrical) on regular basis with effect from 14.3.1997 whereas a number of other officers including the applicants of the present OA S/Shri K.K. Sharma and S.P. Barnwal, who were junior in the feeder grade of Executive Engineer (Electrical) to Shri A.K. Goel, were promoted as Superintending Engineer (Electrical) vide order dated 25.11.1994 w.e.f. 31.12.1985. The order dated 25.11.1994 was issued on the basis of the recommendations of the DPC held in 1994. The bench mark for promotion to the post of Superintending Engineer is "Very Good". The respondent No.3 along with other officers junior to him were considered for promotion by the DPC but on the basis of the service record he was consistently assessed as "Good" and was not included in the panel for any of the years from 1985 to 1993-94 whereas officers junior to him, i.e., Shri J.B. Fadia and the applicants were assessed as "Very Good" and were included in the panel of 1985. The Respondent No.3 was also again considered for promotion by DPC held on 28-29.1.1997 for the vacancies for the years 1994-95 and 1995-96 and on the basis of his service record, was assessed by the DPC. He was recommended for promotion only against the vacancies of the year 1995-96 when he was assessed as "Very Good" which was the bench mark for promotion to the post of Superintending Engineer (Electrical). Necessary orders for regular promotion of the respondent No.3 along with other officers were issued on 14.3.1997. These respondents also submitted that the respondent No.3 filed OA No.587/1997 before the

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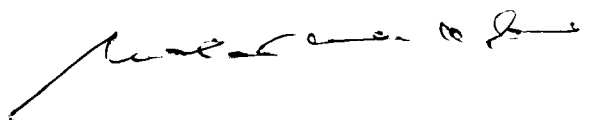
Allahabad Bench of the Tribunal alleging that his service record had been excellent and no adverse remark was ever communicated to him. He had also produced copies of letters written to Director General (Works) by his superiors who had by that time retired from service in which they had stated about the performance of the respondent No.3 as "Outstanding" or "Very Good" during the relevant period. It was stated that the respondent No.3 had contended in that OA that the selection was made by the Departmental Promotion Committee held in UPSC and could not be promoted on the basis of service record which was overall assessed as "Good" for the relevant years whereas the juniors were assessed as "Very Good" so were included in the panel for the years 1985 and onwards. The Tribunal, however, by its order directed the fixing of the seniority of the respondent No.3 as Superintending Engineer (Electrical) with reference to his junior promoted with effect from 31.12.1985 with consequential relief of pay fixation including non-functional selection grade from the date the same was granted to the junior, i.e., 31.12.1993 but without back wages and to further consider him for the post of Chief Engineer (Electrical) on the basis of the modified seniority. As per the order of the Tribunal if the seniority of the respondent No.3 was modified, he would occupy the position at S.No.7 in the seniority list dated 23/25.10.2002 and will be at S.No.1 in the zone of consideration for promotion to the post of Chief Engineer (Electrical). The view of the Allahabad Bench is inconsistent with the existing instructions of the government for holding DPC and communication of the adverse remarks recorded in the ACRs and the Full Bench of this Tribunal dated 16.4.2004 in OA 555/2001 (Dr. A.K. Dawar Vs. Union of India and Others). It is further submitted that the order of the Tribunal will have far reaching consequences, therefore, these respondents in consultation with DOP&T and Ministry of Law and Justice, Department of Legal Affairs are examining the order of Allahabad Bench of this Tribunal dated 24.5.2004 with regard to the implementation or otherwise and a final decision in the matter has not yet been taken. This position has been intimated to the UPSC on 7.10.2004. After the bar imposed by the order dated 24.5.2004 in holding the DPC is removed, these respondents and the UPSC would expedite the preparation of the panel of Superintending Engineer (Electrical) for regular promotion to the post of Chief Engineer (Electrical) for the vacancies 2004-05 as per the related instructions.



5. The respondent No.3, has contested the OA. In the reply, the respondent No.3 has challenged the maintainability of the present OA and has also justified the order of the Tribunal on the basis of the Government instructions and the judicial pronouncements. He has also justified the finding of the Tribunal that the entries in the ACR which were below the bench mark may be deemed as adverse and since they were not communicated, those entries should not have been taken into consideration by the DPC. He also justified the Tribunal taking into consideration their letters of retired reporting officers who had spoken very high about his performance, work and conduct during the relevant period.

6. We have heard the learned counsel for the parties and have perused the relevant record.

7. The first question that arises is whether the present OA is maintainable. The learned counsel for the applicants has argued that these applicants had filed an application for review of the order dated 24.5.2004 passed in OA 587/1997, which was filed by the respondent No.3, before the Allahabad Bench in RA 61/2004 which was dismissed by the Tribunal on 1.9.2004 holding that the review was not maintainable and that a substantive petition or writ petition was the remedy for challenging the order passed in the OA. It is argued that the Tribunal had allowed the OA of respondent No.3 holding that the ACRs below bench mark of "Very Good" should be treated adverse and since those ACRs have not been communicated to the to the respondent No.3 they should be excluded from consideration and assessment by the DPC. It is submitted that the view of the Tribunal is in conflict with the judgment of the Hon'ble Supreme Court. It is submitted that the review is not a routine procedure and only an OA was the remedy to question the findings recorded in the order. The reliance was placed in this regard on K. Ajit Babu Vs. Union of India, 1997 (2) SCC (L&S) 1520. The learned counsel also strongly relied upon the order of the Principal Bench of the Tribunal decided on 16.4.2004 in a bunch of OAs bearing No. 555/2001, 1950/2002, 2770/2002, 2894/2002, 38/2003, 634/2003 and 686/2003. The learned counsel fervently argued that the order of the Allahabad Bench of the Tribunal dated 24.5.2004 is per incuriam and should not be implemented and that the Tribunal should hold that the ratio of the order of the Allahabad Bench of the Tribunal is not a good law. The learned counsel has submitted that this



Bench may, if necessary, refer the question of law involved for a decision by a Larger Bench of this Tribunal.

8. The learned counsel for the official respondents has also argued that the order of Allahabad Bench of this Tribunal dated 24.5.2004 is contrary to the judicial pronouncement in particular to the pronouncement of the Full Bench of this Tribunal referred to above. It was submitted that the respondents have not been able to take a decision about challenging the said order of the Allahabad Bench and the matter is under examination in different Ministries. Nobody appeared on behalf of respondent No.3 at the time of hearing, but we have perused the reply, which this respondent has filed and contain the full case and arguments which could have been advanced on behalf of this respondent.

9. The first question arises whether the original application is maintainable or not? The Hon'ble Supreme Court in K. Ajit Babu (Supra) in para 6 of the judgment has observed as under:

"6. Consistency, certainly and uniformity in the filed of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of the earlier decision in disposing of the later application. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the benches (see John Lucas). In the present case, what we find is that the Tribunal rejected the application of the appellants thinking that the appellants are seeking setting aside of the decision of the Tribunal in Transfer Application No.263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law".

10. As per the law laid down in the judgment that if the question involved in the present OA stands concluded by the earlier decision of the Tribunal, the Tribunal may decide the OA as per the earlier order taking it as a precedent. In case the Tribunal dissents from its earlier order, it may refer to the Larger Bench/Full Bench and place the

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matter before the Chairman for constituting a Larger Bench to resolve the conflict in the decision of the two Benches.

11. The Hon'ble Supreme Court in Gopa Bandu Biswal Vs. Krishna Chandra Mohanty and Others, 1998 (4) SCC 447 in para 16 of the judgment has held as under:-

"16. In deciding these applications, the Tribunal cannot ignore its earlier judgment:

'The use of precedent is an indispensable foundation upon which to decide what is the law and its application to individual cases; it provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules'. (Halsbury, Fourth Edn., Vol., 26, para 573)

If the Tribunal decides to follow its earlier judgment the respondents in these applications can file petitions for leave to appeal if they so desire; and any other person aggrieved may also, with the leave of the court, apply for special leave to file an appeal. In the event of the Tribunal coming to a conclusion that its earlier judgment requires reconsideration, the Tribunal can refer the question to a larger Bench. In either case the persons aggrieved can apply and intervene to put forward their point of view".

12. In the light of the above cited judgments, the next question that arises is whether the questions, which are involved in the present case, were concluded by the order of the Allahabad Bench of this Tribunal dated 24.5.2004? For deciding this point, we have to go through the order of the Allahabad Bench of the Tribunal, copy of which has been filed by the applicants as Annexure A-3.

13. We need not reproduced the fact of the case filed by the respondent No.3 before Allahabad Bench of the Tribunal. The applicant was superseded and was not recommended for promotion from the post of Executive Engineer (Electrical) to the post of Superintending Engineer (Electrical) by the Departmental Promotion Committee held in 1994 for the vacancies for the year 1985 to 1994 and juniors to him in the seniority list, including these applicants, were promoted. As a result, the applicants and similar other officers ranked senior to the applicant in the seniority list of Superintending Engineers. The respondent No.3 challenged his non-promotion by the DPC on variety of grounds including that his ACR entries which were not up to the bench mark "Very Good" should have been ignored since they were adverse and were not communicated to him as per rules. He also prayed for giving him promotion to the post of Superintending Engineer (Electrical) from the date on which officers junior to him were given this promotion, with consequential benefit including selection grade. The Tribunal considered his submissions

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in the light of the case law, which has been cited extensively in the order. The Tribunal agreed with the argument advanced on behalf of the respondent No.3 that the ACR entries, which were below bench mark, should be deemed adverse and have to be communicated to him and if not communicated in time, they had to be ignored by the DPC. The finding recorded by the Tribunal is summed up in para 19 of the order as under:-

“19. Having heard the learned counsel for both the parties in detail and perused the records, we are of the view that controversy in this case is short, fact are brief and by passage of time, law on the point has crystallized. OM dated 18.6.1996 (Annexure A-3) is contradictory, in as much as, it says that the applicant was denied promotion because he was below bench-mark and there was nothing adverse to be communicated. The law is absolutely settled that any ACR below bench-mark is adverse and has to be communicated in time, has to be ignored by the DPC. This Rule of law has been flouted with impunity in this case. This by itself is enough of justify acceptance of the prayer of the applicant”

14. The Allahabad Bench of the Tribunal gave the following direction in its order dated 24.5.2004:-

“20. In the facts and circumstance and our aforesaid discussions, the OA is allowed. Since the latest assessment about the applicant, as depicted in Annexure RA-1-5 to the rejoinder affidavit for seven relevant years, contains two “outstanding” “very good” grades there is no justification in denying promotion to the applicant when it was granted to his next junior w.e.f. 31.12.1985. This is a mistake of law coupled with the mistake of fact, which is ordered to be rectified. The office order No.359 of 1994 dated November 25, 1994 may be modified to the extent that the applicant be placed below Mohan Swaroop (Sl.No.13) and above J.B. Fadia (Sl.No.14) with consequential benefits including non-functional selection grade from the date 31.12.1992 his junior was given. However, the applicant shall not be entitled for any back wages. This order should be implemented before the next promotion of Chief Engineers (Electrical) takes place in which the applicant may also be considered with his modified/latest ACRs and seniority”.

15. It is clear from the perusal of the order, para 19 in particular, that the relief was granted to the applicant as in view of the said Bench, entries below the bench mark “Very Good” were adverse and were to be communicated to the respondent No.3 and if it was not done in time, it had to be ignored by the Departmental Promotion Committee. The DPC had assessed the entries of the respondent No.3 for the relevant year “Good” which was below the bench mark.

16. Reverting to the present OA, suffice to say that the applicants who have become senior to the respondent No.3 by virtue of their promotion to the post of Superintending



Engineer (Electrical) prior to the respondent No.3, are persons aggrieved by the order as the net result of the order is that they would rank junior to the applicants in the seniority list of the Superintending Engineers (Electrical) and the respondent No.3 would be at the top of that seniority list in the consideration zone. The official respondents have not implemented the order of the Allahabad Bench dated 24.5.2004 as yet. They are still examining the question of challenging the said order or to implement it. Consequently, the UPSC is not willing, and justifiably, in convening the meeting of the DPC for consideration of the promotion of the Executive Engineer (Electrical) to the post of Superintending Engineer (Electrical) for the year 2004-05.

17. Though the seniority list has not been drawn but by virtue of the order dated 24.5.2004, the position of the respondent No.3 has been fixed between position No.13 and 14 of the final seniority list of Superintending Engineer. In view of the said order of the Tribunal redrawing of the seniority list is simply a ministerial exercise. The applicants had filed the Review Application assailing the findings of the Tribunal but it was dismissed which led to the filing of the present OA. The present OA, therefore, is in accord with the law laid down by the Hon'ble Supreme Court in K. Ajit Babu (Supra) and Gopa Bandhu Biswal (Supra) so maintainable.

18. The question that arises in the OA is whether the ACR entries of the respondent No.3 for the relevant years, which were below the bench mark, "Very Good", should have been excluded from consideration by the DPC held in 1994 since they should be deemed to be adverse entries and ought to have been communicated to the respondent no. 3 in time, but were not communicated, which finding is the foundation for the grant of promotion to the applicants on the post of Senior Superintending Engineer (Electrical) with retrospective effect from the date his junior was promoted in the year 1985 and which has further resulted into advancement of the respondent No.3 in the seniority list so as to hold a position between rank 13 and rank 14. The question of seniority of respondent No.3 is the main question that arises for decision in this case. The answer to this question will depend on the answer to the question whether the DPC held in 1994 had rightly assessed the respondent No.3 unfit for promotion by assessing his ACR entries for relevant years below the bench mark or it should have ignored the ACR entries which were below the bench mark since they were not communicated to the respondent

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No.3 within time. The question which is involved in the present OA, as such, is similar to the question which was decided by Allahabad Bench in the OA filed by the respondent No.3. 18

19. In the light of the judgment of the Hon'ble Supreme Court in K. Ajit Babu and Others (Supra) and Gopa Bandhu Biswal (Supra) three courses are open to this Tribunal, either to follow the law laid down by Allahabad Bench in its order dated 24.5.2004 being a precedent on the issue which has arisen in the present OA and is a case covered by the earlier decision or if this Bench is inclined to take a dissenting view from the view of Allahabad Bench, refer the question raised for decision by a Larger Bench/Full Bench of this Tribunal and place the matter before the Hon'ble Chairman for constitution of the Larger Bench or hold the order of the Allahabad Bench per incurium since it was passed without taking into consideration the ratio of the law laid down by the Full Bench of this Tribunal in the case of Dr. A.K. Dawar (Supra).

20. The question, which has arisen in the present case, is undoubtedly fully covered by the law laid down by the Allahabad Bench of this Tribunal in its order dated 24.5.2004. This decision of the Tribunal is contrary to the law laid down by the Full Bench of this Tribunal in the case of Dr. A.K. Dawar Vs. U.O.I. in OA 555/2001 and others decided on 16.4.2004, referred to above (Supra).

21. The question referred to the Full Bench in the above referred case was as under:-

“Whether the grading of “Good” in the Annual Confidential Report given to a Government employee when the grading prescribed in the Bench mark is “Very Good” for the next higher promotion post, should be treated necessarily as “adverse” and so required to be communicated to him in accordance with the law and rules”.

22. The Full Bench, after considering the judgment of the Hon'ble Supreme Court in U.P. Jal Nigam Vs. P.C. Jain and Others, 1996 (33) ATC 217 and a number of other judgments including the judgment of the Hon'ble Punjab and Haryana High court in the case of U.O.I. and Others Vs. M.S. Preeti and others in Civil Writ Petition No.13024-CAT of 2002 decided on 22.11.2002 and the judgment of the Hon'ble High Court in U.O.I. Vs. R.K. Anand in Civil Writ Petition No.1386/2002, answered the reference as under:-

“If there is not downgrading of the concerned person in the Annual Confidential Report in that event, the grading of “Good” given to the

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Government employee irrespective of the benchmark for the next promotion being "Very Good" need not be communicated or to be treated as adverse" 19

23. As per the above order of the Full Bench, communication of the ACR entries, which are graded as "Good", i.e., below the bench mark "Very Good", were to be communicated to the affected employee only when it was a case of downgrading. In the present case neither it was a case of the respondent No.3 nor was the finding of the Allahabad Bench of this Tribunal that the respondent No.3 had been downgraded in the ACR when he was assessed and graded as "Good", i.e., below the bench mark "Very Good" in his ACRs pertaining to the relevant years. The Allahabad Bench of this Tribunal contrarily held that the entries below the bench mark would be considered adverse and it had to be communicated to the officers within the time otherwise they had to be ignored by the Departmental Promotion Committee. The view of the Tribunal is thus not in accord with the law laid down by the Full Bench of this Tribunal and the judgment of the Hon'ble Supreme Court in the case of U.P. Jal Nigam and Others (Supra) where the Hon'ble Supreme Court has held as under:-

" 13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to post upto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posted before the learned Tribunal was not that whether the petitioner had been correctly rated by the DPC? The question as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in U.P. Jal Nigam and Others (Supra), as also Rule 9 of the CPWD Manuals the concerned respondents had acted illegally in not communicating his fall in standard. It is now trite that the Court or the Tribunal cannot usurp the jurisdiction of the Statutory Authority but it is also a settled principle of law that the jurisdiction of this Court to exercise its power of judicial review would arise in the event it is found that the concerned authority has in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or has refused to take into consideration the relevant acts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. The DPC could ignore categorization, committed a serious error in usurping its jurisdiction. Once such categorizations are ignored, the matter would have been remitted to the DPC for the purpose of consideration of the petitioner's case again ignoring the remarks Good and on the basis of the other available remarks. This position stands settled by various judgments of the Supreme Court".

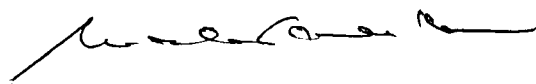
24. It was neither pleaded nor was argued on behalf of the respondent No.3 in OA No.587/1997 (before Allahabad Bench) that it was a case of downgrading of the ACRs for the relevant years so should be treated adverse and since the adverse entries were not

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communicated within time they should have been excluded from consideration by the DPC. The clear case of respondent No.3 there was that the ACR entries which were assessed below bench mark were necessarily adverse so could not have been taken into consideration unless communicated to the government servant within time. The Allahabad Bench in the order dated 24.5.2004 held 'any ACR below bench mark is adverse and has to be communicated, and if not communicated in time, has to be ignored by DPC'. The relief was granted to the respondent No.3 on this finding. While recording this finding, the learned members of the Bench had not taken into consideration the ratio of law laid down by a Full Bench of this Tribunal in the case of Dr.A.K. Dawar (Supra) which was decided on 16.4.2004. It seems this order was not brought to the notice of the Bench. The order of the Bench in OA No.587/1997 is per incuriam and this Bench following the law laid down by the Full Bench may dissent and take a different view. The Full Bench has already decided the question involved so further reference of the question for decision of Full Bench is not required.

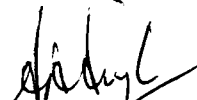
25. Though the learned counsel for the applicants as well as the official respondents other than UPSC had also argued that the Allahabad Bench of this Tribunal had also erroneously considered some extraneous material for recording its finding for granting relief to respondent No.3. It is argued that respondent No.3 had annexed to his rejoinder to the reply of the official respondents in his OA certain letters written by reporting officers who had since retired and who had observed that the work of the applicant was "Outstanding" and "Very Good" and this had influenced the Bench in granting the relief. We are afraid that no such contention could be considered in the present OA since we are not hearing an appeal against the said order. It was for the respondents to have challenged the order of the Tribunal in that regard before the appropriate forum. The present OA is not the remedy for assailing that finding of the Allahabad Bench. It is beyond our jurisdiction to entertain this plea.

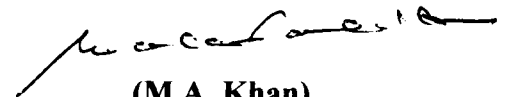
26. We are bound by the decision of the Full Bench of this Tribunal in the case of A.K. Dawar (Supra) (Annexure A-5 to the OA). In our view, only in a case of downgrading of a person concerned in the ACR, i.e., grading of "Good" given to the respondent No.3, irrespective of the bench mark "Very Good", need not be treated to be adverse and communicated to respondent No.3. Consequently it has been rightly taken



into consideration by the Departmental Promotion Committee in not recommending the respondent No.3 for promotion to the post of Superintending Engineer (Electrical) against the vacancies, which occurred from 1985 to 2004. The decision rendered by Allahabad Bench of the Tribunal dated 24.5.2004 being per incurium cannot be followed. The respondent No.3 was considered for promotion by the DPC against vacancies for the year 1995-96 and was promoted to the post of Superintending Engineer in 1997. He cannot be promoted from a retrospective date of 1985 so he cannot be given position between the rank of 13 and 14 of the unamended final seniority list of Superintending Engineers. As a result the order dated 24/25.5.2004 passed in OA No.587/1997 is not a bar to the respondents proceeding to consider promotion of Superintending Engineers to the post of Chief Engineer on the basis of the existing unamended final seniority list of Superintending Engineers.

27. Accordingly, the OA is allowed and the respondents are directed to proceed to consider the applicants and other similarly situated persons, as per extant rules and if they are within zone of consideration on the basis of the seniority list of Superintending Engineers without taking into account the order of Allahabad Bench of this Tribunal dated 24/25.5.2004 in OA No.587/1997 whereby the respondent No.3 was placed below Shri Mohan Swaroop Srl. No.13 and above Mr. J.B. Fadia Srl. No.14 in the seniority list for promotion to the post of Chief Engineer. The order shall be implemented within 4 months. No costs.

  
**(S.A. Singh)**  
**Member (A)**

  
**(M.A. Khan)**  
**Vice Chairman (J)**

Rakesh