

**THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH**

Original Application No.33/2005  
This the 27<sup>th</sup> day of January 2006

**HON'BLE SHRI S.P. ARYA, MEMBER (A)**

**HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)**

Dr. Bhushan Lal Kaul, aged about 59 years, son of late Sri ?Tara Chand Kaul, resident of 43/2, Sector -10, Indira Nagar, Lucknow at present posted as Director (Selection Grade), Geological Survey of India, Lucknow.

...Applicant.

By Advocate: Sri A. Moin.

Versus.

1. Union of India, through the Secretary, Ministry of Geology and Mining Government of India, New Delhi.
2. The Director General, Geological Survey of India 4, Chaurangi Lane, Kolkata.
3. The Deputy Director General Geological Survey of India, Northern Region, Aliganj, Lucknow.
4. Sri M.R./ Kalsotra at present serving as Deputy Director Geological Survey of India, Western Region, Jaipur.
5. Sri M.K. Sony, Deputy Director General, Geological Survey of India, North Eastern Region, Ita Nagar.

...Respondents.

By Advocate: Shri S.K. Tewari.

**ORDER**

**BY SHRI K.B.S. RAJAN, MEMBER (J)**

1. The applicant an aspirant to the post of Deputy Director General (Pay scale. of Rs. 18,400-22,400) is aggrieved over his having been superseded in the selection held in December 2004. The ground for challenge inter-alia includes malafide alleged against Respondent

No.4, and hence the applicant has impleaded the said Respondent No.4 as well as Respondent No.5 who happens to be junior to the applicant in the feeder grade.

2. Briefly stated, the applicant joined the post of Geologist Junior in the respondents organization in 1971 and by successive promotion, he come up to the level of Director (Geologist) (Senior Grade), in the pay scale of Rs. 14300-18300/- by order dated 21.8.2001. The next promotion in the ladder of promotion is Deputy Director General carrying the pay scale of Rs. 18400-22400/-. The D.P.C. met in December 2004 for considering eligible officers in the feeder cadre to the aforesaid post, one of whom was the applicant. However, apprehending that the applicant would be denied his promotion on account of malafide intention of Respondent No.4, the applicant had moved this O.A. seeking the following reliefs;

" An order quashing the proceedings of the departmental Promotion Committed conducted by the respondents in the meeting of Departmental Promotion Committee held in December, 2004 in so far as the applicant has been superseded by the person junior to him in service, and,

An order directing the respondents hereto to immediately promote the applicant to the post of the Deputy Director General, Geological Survey of India with effect from the date when his juniors Shri M.K. Soni is so promoted ,and,

An order restraining the respondents hereto from making any promotion to the post of the Deputy Director General, Geological Survey of India till such time as the applicant is not so promoted, and,

Grant any other such further relief deemed fit and proper in the circumstances of the case including an order awarding costs of the instant application in favour of the applicant and against the respondents hereto." Para-8 at page 18-19."

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3. Notices were issued but there is no response from the Respondent No.4 or Respondent No. 5. The Official respondents however have filed their version. According to them, the applicant was considered in accordance with law and since the benchmark for promotion of DDG is 'Very Good' and the applicant could not meet the said benchmark as per order dated 22.6.2004 read with earlier order dated 8.2.2002, there is no scope for the applicant being promoted and since Respondent No.5, junior to the applicant fulfilled the requisite bench mark, he was promoted.

4. The applicant had filed Rejoinder-Affidavit to the Counter-Affidavit by the respondents and by and large reiterated the contentions and averments made in the O.A. and in addition contended that since the sole ground of rejection of his case for promotion was that he did not have bench mark, as he was not communicated the low merit or the downgrading below the benchmark, the selection is illegal and thus, the action on the part of respondents was violative of the law laid down by the Apex Court in the case of **U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others 1996 (2) SCC-363** and also the judgment reported in **2005 3 ATJ-123** of Principal Bench in the case of **Smt. Ved. M. Rao Vs. Union of India & Others.**

5. Arguments were heard and documents perused. The counsel for the applicant stated that the respondents ought to have communicated the grading when they were, according to them, below the benchmark. And that admittedly, when they have not communicated so, the DPC should not have taken into account of ACRs of these years

*[Handwritten signature]*

where, the grading was below the benchmark. He has also stated that as the applicant had made certain reports/ complaints against the Respondent No.4, the latter having a grudge against him, on his become reporting officer of the applicant, had rendered a conservative report which is the main cause of his grading having come down to good.

6. Per contra, the counsel for respondents has stated that the record would reflect as to the grading for various years of the applicant and as such, the contentions of the applicant have no weight.

7. The respondents have also made available the relevant record, which have been scanned through. The respondents have considered vacancies for the year 2002-2003, 2003-2004 and 2004-2005. As the requisite number of officers found fit for the vacancies for the years 2002-2003, 2003-2004 where available according to their seniority, the applicant' case was considered alongwith others including the juniors to the applicant within the consideration zone. In so far as the applicant is concerned, the following is the grading earned by him in the respective year, as per the performance report.

Serial No.	Year	Grading	Remarks
1.	1999-2000	Good from 1.4.1999 to 21.11.1999 (7 months plus)	
2.	1999-2000	Very Good From 22.11.1999 to 31.3.2000 (4 months plus)	
3.	2000-2001	Good From 1.4.2000 to 2.8.2000 (4 months plus)	
4.	2000-2001	Very Good From August,2000 to	

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		31.3.2001 (7 months plus)	
5.	2001-2002	Very Good From 1.4.2001 to 31.12.2001 (nine months)	
6.	2001-2002	Good From 1.1.2002 to 31.3.2002 (3 months)	
7.	2002-2003	Good From 1.4.2002 to 31.3.2003	The applicant did not furnish any self-assessment.
8.	2003-2004	Good From 1.4.2003 to 31.3.2004	The applicant did not furnish any self-assessment.

(Very good for 21 months and Good for 39 months)

8. The following points need consideration,

- (a). Whether the report by Respondent No.4 could be treated as being accentuated by malafide.
- (b). Whether reports below benchmark should have been communicated in this case as per the decision in the case of UP Jal Nigam (supra).

9. As it could be seen from the above tabulation the grading accorded to the applicant from the period 1999-2000 to 2003 -2004 where fluctuating between 'Very Good' and good and save the last 2 reports, the rest have recorded upon by orders other then Respondent No.4. Report of Respondent No.4 on the performance of the applicant does not seem to be a sudden decline in the mercury level of performance. Respondent No. 4 seems to have made the assessment dispassionately, as remarks against a few columns such as initiative, coordination ability, ability of express, supervisory ability etc. have been fairly commented upon and as regard integrity also positive report has been recorded. This goes to show that the reports have been written by the said respondents without any malafide. Again such

*[Signature]*

reports are in tandem with the reports of other officers registered in the earlier years of ACR. As such, it can be safely stated that the allegation made by the applicant against Respondent No.4 is not correct.

10. As regard the requirement or otherwise of communication of grading below benchmark, the applicant has relied upon the decision of the Apex Court in the case of U.P. Zal Nigam (Supra). The relevant portion of the said judgment is as under;

*"The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of aduerseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised 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. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Zal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."*

11. The Principal Bench adopted the same in the case of Smt. Ved M. Rao (Supra). The benchmark system has been introduced as per the order dated 10.3.1989 whereby, up to grading 'Good' one could be

promoted but with the rider that if persons having higher grading of out-standing and 'Very Good' were available, all the out-standing would be first accommodated followed by 'Very Good' and thereafter, vacancies if any would be fulfilled by those graded 'Good'. This was followed up to 8.2.2002 when the Ministry of Personnel modified the system to the extent that if the requisite number of persons have benchmark and above grading were available, there is no need to go further down in the zone of consideration and those having benchmark and above were promoted. And it was only by this order dated 8.2.2002 that 'Very Good' has been prescribed as benchmark for senior posts. As such, there is no question of communicating any ACR below the grading of benchmark for the period anterior to 8.2.2002. Even the period posterior to 8.2.2002, what is to be seen is where there has been any steep decline in the grading. The term 'down grading' could mean either with reference to the earlier years grading or that in the same year, there is a downgrading in the report by the Reporting Officer/ Reviewing Authority and the Accepting Authority. An Accepting Authority could well down grade the reports of the Reporting Officer. If the officer reported upon has been given the grading consistently as, say, 'Good' through out there is no necessity to communicate the same since there is no downgrading. In the instant case therefore, had the applicant gained grading of 'Very Good' for 4 years and consequently 1999-2000 onwards but only the last report his grading brought out down-graded perhaps department could have been held as not fulfilled the rules relating to communication of remarks below benchmark. That is not the case here. During the five years span, there were as many as 8 ACRs of which 5 were adjudged

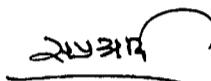
as 'good' (for 39 months) and only 3 are 'Very Good' (for 21 months).

As such, the respondents have correctly filled the vacancies by superseding the applicant, holding that as per the ACRs the applicant was found unfit for promotion.

12. We do not, therefore, find any merit in the O.A., which is accordingly dismissed, and under the facts and circumstances there will be no order as to costs.



(K.B.S. RAJAN)  
MEMBER (J)



(S.P. ARYA)  
MEMBER (A)

/AK/