

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A.No.158 of 1997

DATE OF DECISION. 7.1.1998

Shri Thanhawla (PETITIONER(S))

Mr A.K. Bhattacharyya and Mr P.C. Borpujarir, Mrs N.T. Nath, Mrs E. Kakoti and Mr Anjan Kalita. ADVOCATE FOR THE PETITIONER(S)

Union of India and others RESPONDENT(S)

Mr S. Ali, Sr. C.G.S.C., Mr A.K. Choudhury, Addl. C.G.S.C.
Mr D.P. Chaliha, Government Advocate, Mizoram,
Mr N. Dutta and Mr D.K. Das.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed see the Judgment ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the Benches ?

Judgment delivered by Hon'ble Vice-Chairman.

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.158 of 1997

Date of decision: This the 7th day of January 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Thanhawla,
Managing Director,
Mizoram Cooperative Apex Bank Limited,
Aizawl, Mizoram.

.....Applicant

By Advocates Mr A.K. Bhattacharyya, and
Mr P.C. Borpujari.

-versus-

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs, New Delhi.
2. The Union Public Service Commission, represented by
its Chairman,
Dholpur House, New Delhi.
3. The Mizoram Public Service Commission,
represented by its Chairman,
Aizawl, Mizoram.
4. The State of Mizoram, represented by the
Chief Secretary to the Government of Mizoram,
Aizawl.
5. The Special Secretary to the
Government of Mizoram,
Aizawl, Mizoram.
6. The Commissioner and Secretary to the
Government of Mizoram,
Department of Personnel & Administrative Reforms,
(Civil Service Wing),
Government of Mizoram, Aizawl.
7. Shri R. Bhattacharjee,
Additional Secretary to the
Government of Mizoram,
Aizawl, Mizoram.
8. Shri Hmingthanzuala,
Joint Secretary to the Governmen of Mizoram,
Aizawl, Mizoram.

.....Respondents

By Advocates Mr S. Ali, Sr. C.G.S.C.,
Mr A.K. Choudhury, Addl. C.G.S.C.,
Mr D.P. Chaliha, Government Advocate, Mizoram,
Mr N. Dutta and Mr D.K. Das.

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O R D E R

BARUAH.J. (V.C.)

In this application the applicant has prayed for direction to the Selection Committee and the Government of Mizoram not to consider the downgradation of the applicant's Annual Confidential Reports (ACR for short) for the period from 1.4.1990 to 25.11.1991 from 'outstanding' to 'very good', made by the then Chief Secretary, Mizoram, and also for direction to review/rectify/modify/correct the 1997 Select List prepared for promotion to the Indian Administrative Service (IAS for short) from the officers of the Mizoram Civil Service (MCS for short) on the basis of the gradation made by the Reporting Authority and confirmed by the Reviewing Authority. Facts for the purpose of disposal of the case are:

The applicant was inducted to the Assam Civil Service in the year 1968 on the basis of a competitive examination conducted by the Assam Public Service Commission. At that time the State of Mizoram was one of the districts of the State of Assam. In the year 1972 the status of Union Territory was conferred on Mizoram and the service of the applicant came under the Union Territory of Mizoram. Thereafter, the Mizoram Civil Service was constituted in the year 1977 by the Government of India by Notification No.F.U.14012/7/77-UTS dated 23.12.1977 issued by the Ministry of Home Affairs. By Annexure A/1 Notification dated 29.12.1977 the applicant was inducted and appointed to the MCS alongwith some other officers. In the said Annexure A/1 Notification the applicant's name was shown at serial No.25 in order of seniority. But the said seniority was tentatively. In Annexure A/1 Notification one Shri P.K. Bhattacharjee was placed just above the applicant and

the respondent No.7, Shri R. Bhattacharjee was placed just below the applicant in order of seniority. On 13.2.1981, Annexure A/2 Circular was issued showing the interse seniority of the twentyeight MCS officers including the applicant, Shri P.K. Bhattacharjee and respondent No.7, Shri R. Bhattacharjee. As per the said circular the seniority positions of the applicant, Shri P.K. Bhattacharjee and Shri R. Bhattacharjee remained the same. On 22.4.1982, the interse seniority of the officers of MCS was refixed by another notification. In the said notification also the parties' seniority remained the same and the seniority list was later on issued by Annexure A/3 Notification dated 16.12.1983. The said notification was issued by the 5th respondent- the Special Secretary to the Government of Mizoram. In that seniority list the applicant's position was at serial No.25 while the position of P.K. Bhattacharjee and the respondent No.7, Shri R. Bhattacharjee were at serial Nos.24 and 26 respectively. In 1988 the MCS Rules were framed and came into effect from 15.7.1988. On the date of publication of the said Service Rules in the Mizoram Gazette, and thereupon, the MCS Rules stood repealed. The rules of 1988 were amended from time to time by the Mizoram Civil Service (Amendment) Rules, 1988, the Mizoram Civil Service (Amendment) Rules, 1990 and the Mizoram Civil Service (Amendment) Rules, 1993. As per the MCS Rules 1988 (unamended) the MCS was categorised into four grades, namely, Selection Grade, Junior Administrative Grade, Senior Grade and Junior Grade. By amending Rules of 1993 another grade, namely, 'Supertime Scale' was also added as the highest grade. As per the said rule, officers completing not less than 5 years of service in the Selection Grade became eligible for consideration for promotion to the Supertime Scale. By Annexure A/5 Notification dated 22.1.1990, the Government of Mizoram prescribed the procedure

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to be observed by the State Selection Committee/Departmental Promotion Committee in matters of appointment, promotion, etc. to various categories of posts in the service. Under the procedure, the suitability of the officers for promotion was to be assessed by the State Selection Committee/Departmental Promotion Committee on the basis of service records of the officers with particular reference to ACRs and further that the assessment should be independent of the overall grading recorded in the ACRs.

2. The seniority position of the MCS officers appointed as per Annexure A/1 Notification was redetermined by Annexure A/6 Notification dated 21.5.1990. As per the said notification the applicant was placed in the 18th position just below Shri P.K. Bhattacharjee and just above the respondent No.7, Shri R. Bhattacharjee. In 1991, the applicant was posted as Additional Deputy Commissioner at Lunglei. The applicant's ACR from 1.4.1991 to 25.11.1991 was initiated by the Reporting Officer who awarded the grading of 'outstanding' and the said remark was also confirmed by the Reviewing Authority. The grading of 'outstanding' given by the Reporting and Reviewing Officers was downgraded to 'very good' without recording any reason indicating that there was no objective assessment and dispassionate approach of the Accepting Authority. The applicant was appointed to the Selection Grade of MCS alongwith three other officers including Shri P.K. Bhattacharjee and the respondent No.7, Shri R. Bhattacharjee. By Annexure A/8 Notification dated 26.4.1996 the 3rd respondent- the Mizoram Public Service Commission (MPSC for short) recommended the name of Shri P.K. Bhattacharjee and respondent No.7, Shri R. Bhattacharjee for promotion to the post of Supertime Scale showing the respondent No.7, Shri R. Bhattacharjee, in the first position. Pursuant to the recommendation of the MPSC the Government of Mizoram promoted the respondent No.7 and

Shri P.K.....

Shri P.K. Bhattacharjee of MCS by Annexure A/9 Notification dated 10.5.1996. Meanwhile, the names of Shri P.K. Bhattacharjee, R. Bhattacharjee and the applicant alongwith some other officers were sent to the Union Public Service Commission (UPSC for short) for recruitment to the IAS. In that panel the name of the applicant was placed just below Shri R. Bhattacharjee. However, from that panel only Shri P.K. Bhattacharjee was promoted to the IAS. The applicant could not be promoted to the IAS for want of vacancy and the panel had lapsed on expiry of the time prescribed in Sub-regulation (6) of Regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955. However, though the respondent No.7 was all along been shown as junior to the applicant, the applicant became aggrieved on the promotion given to respondent No.7 to the Supertime Scale superseding the applicant. On making enquiry, the applicant came to know that the supersession was on the basis of the downgrading of the entry in the ACR of the applicant from 'outstanding' to 'very good' by the Chief Secretary to the Government of Mizoram. Being aggrieved, the applicant submitted Annexure A/10 representation dated 7.6.1996 to the Chief Secretary, Government of Mizoram, making a prayer for recasting his ACR for the period in question. The authority, however, did not consider the representation on the ground that the same could not be considered by the Government as there was no provision for such reassessment of the ACR at that stage. This was intimated by Annexure A/11 letter dated 15.7.1996 by the Under Secretary to the Government of Mizoram, Personnel and Administrative Reforms Department.

On 13.11.1996, the 3rd respondent- The MPSC, recommended the name of the applicant for promotion to the Supertime Scale by Annexure A/12 dated 13.11.1996. In the month of October 1996, the applicant came to know that the Government was considering to recommend the name of

respondent No.7.....

respondent No.7- Shri R. Bhattacharjee, for promotion to the IAS. On coming to know about it the applicant submitted Annexure A/13 representation dated 29.10.1996 making a request, interalia, not to change or alter the seniority list although the officer junior to the applicant was in the meantime promoted to the Supertime Scale, inasmuch as it would be violative of the existing rules and the decisions of the court. Meanwhile, the applicant was promoted to the Supertime Scale of MCS by Annexure A/14 Notification dated 17.1.1997. By Annexure A/15 letter dated 19.2.1997 issued by the Under Secretary to the Government of Mizoram in the Department of Personnel and Administrative Reforms, Civil Service Wing to the Deputy Secretary, Government of India, Ministry of Home Affairs, intimated that the Government of Mizoram proposed the name of the applicant for appointment to the IAS in the Mizoram Segment of AGMU Cadre mentioning therewith the fact that the applicant was the next officer in the select list of 1996.

3. On 8.4.1997 the applicant submitted a representation to the Chief Secretary complaining about the unfair and unjust downgrading from 'outstanding' to 'very good' of the entry in the ACR of the applicant for the periods from 1.4.1990 to 31.3.1991 and 1.4.1991 to 25.11.1991. By Annexure A/17 letter dated 25.4.1997 issued by the applicant to the Chief Secretary to the Government of Mizoram, the applicant requested the Chief Secretary to take immediate steps and to intimate the applicant about the action taken on the applicant's representation dated 25.4.1997 within fifteen days. However, the applicant, thereafter, came to learn that a fresh recommendation had been made to the UPSC for promotion of MCS officers to the IAS. The applicant also came

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to learn that in making the recommendation, the Selection Committee, constituted under Regulation 3 of the IAS (Appointment by Promotion) Regulation, 1955, placed the name of the respondent No.7- Shri R. Bhattacharjee, at the first position and the applicant was placed at the third position. According to the applicant he had every reason to believe that this had been done on account of the downgraded entry in his ACR, which was made illegally and contrary to the rules. On 10.6.1997, the applicant submitted yet another representation to the Secretary, Ministry of Home Affairs, Government of India, stating the details about the downgrading of his ACRs. According to the applicant this was done with malice. The then Reporting Authority, Shri R.L. Thanzawna, issued Annexure A/19 certificate dated 7.7.1997 stating the reasons why he graded the applicant as 'outstanding'. However, without giving any reason the applicant's grading was downgraded to 'very good'. According to the applicant this was done with a malafide intention to deprive the applicant and to boost up the promotional scope of Shri B. Sanghnuna to the IAS. According to the applicant it was incumbent upon the Accepting Authority to record reasons for such downgrading on the personal file of the officer concerned. It was also legally required to inform the change in his ACR in the form of advice. The Accepting Authority while downgrading the applicant on two occasions from 'outstanding' to 'very good' did not record any reason, for so doing, in the personal file of the applicant. According to the applicant he was not even informed about the downgradation by the Accepting Authority on either of the occasions. According to the applicant the two downgradation from 'outstanding' to 'very good' had adversely and prejudicially affected his promotional scope and avenues.

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This aspect is clearly evident from the fact that the two downgradations were taken into account at the time of promoting the applicant to the Supertime Scale of MCS and also at the time of selecting the incumbents for promotion to the IAS by the Statutory Selection Committee in 1996 and 1997. The applicant further states that if the two 'outstanding' gradations were not downgraded to 'very good' gradations, the applicant would have been promoted to the Supertime Scale of MCS much earlier than respondent No.7.

4. We heard the learned counsel for the parties. Mr A.K. Bhattacharyya, learned Sr. counsel appearing on behalf of the applicant submitted that the 8th respondent- Shri Hmingthanzuala was junior to the applicant and also Mr R. Bhattacharjee. By Notification dated 29.12.1977 the seniority between the applicant and Shri R. Bhattacharjee was fixed. The name of the applicant was found at serial No.25 and that of Shri R. Bhattacharjee at serial No.26. Thereafter, even by circular dated 13.2.1981, seniority of the MCS officers was fixed on the basis of the judgment of the Hon'ble Gauhati High Court dated 5.9.1980 passed in Civil Rule Nos.395, 396 and 487 of 1979. In the revised seniority list of 1981 the applicant's name was found at serial No.25 and that of Mr R. Bhattacharjee at serial No.26. By yet another Notification dated 16.12.1983, the interse seniority of the MCS officers was decided, wherein the name of the applicant was shown at serial No.25 and that of Mr R. Bhattacharjee at serial NO.26. Again by Notification dated 21.5.1990 the interse seniority of the MCS officers was fixed under Rule 26 of the MCS Rules, 1977 read with Rule 20A of the MCS (Amendment) Rules, 1988. The name of the applicant was shown at serial No.18 whereas, the name of Mr R. Bhattacharjee was shown at serial No.19. By yet another order dated 9.4.1992, four MCS officers were promoted.....

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promoted to the Selection Grade of MCS. The name of the applicant was shown at serial No.2 and that of Mr R. Bhattacharjee at serial No.3. By an amendment made in 1993 to the MCS Rules, 1988 (unamended), a new higher grade of Supertime Scale was created. By order dated 10.5.1996, the 7th respondent- Shri R. Bhattacharjee and Shri P.K. Bhattacharjee were promoted to the aforesaid Supertime Scale. By yet another Notification dated 17.1.1997 the applicant was promoted to the Supertime Scale. The learned counsel for the applicant further submitted that though Shri P.K. Bhattacharjee was senior to the 7th respondent, while promoting these two officers to the Supertime Scale, the name of the 7th respondent was shown above the name of Shri P.K. Bhattacharjee. However, the interse seniority of the Supertime Scale grade of the MCS officers had not yet been fixed by the Government. The seniority fixed by Annexure A/6 Notification dated 21.5.1990 fixing seniority of MCS officers had been maintained till date. The contention of the learned counsel for the applicant is that the position of the applicant was brought down only because the two entries of 'outstanding' in his ACR were downgraded by the accepting authority. If this had not been done the applicant would have been senior to the other officers and there would have been no scope for superseding him.

5. Mr A.K. Choudhury, learned Addl. C.G.S.C., appearing on behalf of the Union of India, on the other hand, supported the impugned action. According to him there was nothing wrong in it.

6. On the rival contention of the parties, it is now to be seen whether the impugned order can sustain in law. According to the learned counsel for the applicant the down
gradation.....

gradation of the applicant from 'outstanding' to 'very good' by the Accepting Authority was contrary to the rules. The records have been produced before us. We have gone through the same. In the ACR of the applicant for the period from 1.3.1990 to 31.3.1991 the Reporting Officer assessed him as 'outstanding', which was down graded to 'very good' by the Reviewing Officer. However, no reason was assigned and the Accepting Authority accepted the same without considering why the gradation given by the Reporting Officer was brought down to 'very good'. No reason had been assigned. Similarly, for the period from 1.4.1991 to 25.11.1991 the Reporting Officer as well as the Reviewing Officer graded him as 'outstanding', but the Accepting Authority brought it down to 'very good'. The learned counsel for the applicant has challenged this down gradation. According to him without recording any reasons, the Reviewing Authority or the Accepting Authority had no jurisdiction to down grade and even if it is done it ought to be brought to the notice of the applicant so that he can make representation by showing reasons. In this connection the learned counsel for the applicant had relied on certain decisions of the Apex Court. These are:

1. U.P. Jal Nigam and others -vs- Prabhat Chandra Jain and others, reported in (1996) 2 SCC 363.
2. State Bank of India -vs- Kashinath Kher, reported in AIR (1996) SC 1328.
3. State of U.P. -vs- Yamuna Shankar Misra, reported in (1997) 4 SCC 7.

In U.P. Jal Nigam and others (Supra), the employee was downgraded at a certain point of time to which the Service Tribunal gave a correction. The petitioners' (the Nigam) plea before the High Court was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee.....

employee and attract a representation. However, this argument was turned down by the High Court on the ground that confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court gave an illustration that if an employee had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and affect him at one or other stage of his career. The Apex Court observed thus:

".....The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an enquiry."

It was urged before the Apex Court by the Nigam that when the nature of the entry did not reflect any adverseness that was not required to be communicated. The Apex Court observed thus:

".....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 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 adverseness 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

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by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

In State Bank of India -vs- Kashinath Kher (Supra), the Apex Court observed thus:

"It would appear that the confidential reports and character rolls are being prepared by the officers of the same rank in the same MMGS-II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. Ms Nisha is right and the High Court is well justified in holding that such a procedure is violative of the principles of natural justice. Such procedure and practice is obviously pernicious and pregnant with prejudices and manipulative violating the principles of natural justice and highly unfair. The object of writing confidential report is two fold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in Delhi Transport Corporation's case (AIR 1991 SC 101) pointed out pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectively, impartially and fair assessment without any prejudices whatsoever with highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by superior officer of high rank, who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form basis of consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

Again in State of U.P. -vs- Yamuna Shankar Misra (Supra), the Apex Court emphasised the importance of Confidential Reports. In para 4 of the said judgment, the Apex Court observed thus:

".....It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer would be put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible for the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communciation thereof at the earliest would pave way for amends by erring subordinate officers or to improve the efficiency in service. At the same time, the subordinate employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service....."

7. From the above decisions it is very clear that the officers entrusted to write the ACR are required to make proper assessment. The Accepting or Reviewing Authority have, no doubt, the right to change the grading if the Reporting Officer and/or the Reviewing Authority give higher grading. The Accepting Authority may lower the gradation for just and proper cause, but in such cases it is always necessary to give reasons of the downgradation. If the reasons are plausible and acceptable such down gradation may be regarded as just and reasonable. An ACR

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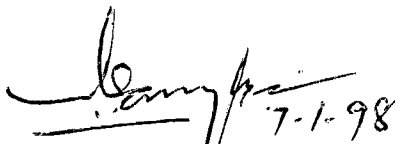
for an employee is sacrosanct in his service career. If for certain reasons the Accepting Authority finds that the gradation given by the Reporting Authority or Reviewing Authority is not just and proper, he should give the reasons at the time of lowering the gradation. It is also necessary to communicate the same to the officer concerned so that in future he may improve his quality of work. Gradation, sometimes, may amount to adverse remarks, say for instance, downgrading from 'outstanding' to 'very good'. But to be fair to the employee concerned this should also be communicated to him. In the present case at least the ACR gradations for the period from 1.4.1990 to 31.3.1991 and from 1.4.1991 to 25.11.1991 were downgraded. In one case it was downgraded by the Reviewing Authority which was accepted by the Accepting Authority. In the other period the gradation given by the Reporting Authority as 'outstanding' was approved by the Reviewing Authority, but the Accepting Authority lowered the gradation without recording any reasons. This, in our opinion, in view of the decisions of the Apex Court, is not at all sustainable. Therefore, such down gradation is liable to be set aside. Accordingly we do so. As these two down gradations were taken into consideration while making the selection, in our opinion, this was not just and proper. Therefore, we direct the respondents to re-examine the reasons for which these down gradations were made for the periods by the Reviewing Authority and the Accepting Authority. The Officers entrusted to this job shall make proper assessment and if either the Reviewing or Accepting Authority finds that the gradation given by the Reporting and Reviewing Officers are not correct the authority shall have the right to lower the gradations, but in such a case proper reasons have to be given.


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8. Mr A.K. Bhattacharyya, learned counsel for the applicant also submitted that the Accepting Officer made these downgradings out of malice and just to help his own candidate. From the averments made in the application and the written statement we find no such malafide intention. Accordingly we do not agree with the submission of Mr Bhattacharyya in this regard.

9. In view of the above, we set aside the selection on the ground that the applicant's case was not properly considered in view of the down gradation which we have not accepted. We, therefore, send the same to the respondents to make a fresh assessment of the ACRs of the applicant in the light of our observations made hereinbefore and pass necessary orders.

10. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLYINE)
MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN