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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

5

(DESTRUCTION OF RECORD RULES, 1990)

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O.A.T.A No. 228/2004

R.A.T.C.P No. 01/2007 (CP-35/05)

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ORDER SHEET

Review Application No. _____

Advocate for the Respondents:- case. A-K-Chandling

List on 10.11.2004 for admission.

bb

Dy. Register

26.10.2004

Mr.M.Chanda, learned counsel for the applicant as well as Mr.B.C.Pathak, learned Addl.C.G.S.C. for the respondent were present.

O.A. is admitted, call for the records, returnable by four weeks.

List on 25.12.2004 for orders.

Member (A)

b1b

25.11.04'

Four weeks time is granted to the respondents to file written statement.

List on 25.1.04 for order.

Member

24-11-04

S/R awarded

6.12.2004 Present: The Hon'ble Mr. Justice M.K. Batta, Vice-Chairman.
The Hon'ble Mr. K.V. Prahladan Member (A).

29/11/04

- 1) NO W/S has been filed.
- 2) S/R is awarded.

29/11/04

Mr. M. Chanda, learned counsel for the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents are present.

Mr. A. Deb Roy seeks further eight weeks time to file written statement. His request is granted. Stand over to 9.2.2005.

16-12-04

Map kindly be seen at flag A which is received from Director (SG) Map & Cartography Division, Operations Division, Geological Survey of India.

laid before the Hon'ble court for findings.

Member

Vice-Chairman

bb

9.2.2005 present: The Hon'ble Mr. M.K. Gupta, Member (J).

The Hon'ble Mr. K.V. Prahladan, Member (A).

None appears for the parties. Repl has not been filed despite service. Adjourned to 7.3.2005.

Member (A)

Member (J)

bb

7.3.05.

Hon'ble Mr. Justice G. Sivaraman, Vice-Chairman.

Hon'ble Mr. K.V. Prahladan, Member (A)

At the request of learned Standing counsel three weeks time is granted to file written statement. List on 30.3.05 for filing of written statement and further orders.

Member

Vice-Chairman

lm

30.3.2005 Present: The Hon'ble Mr. Justice G. Sivaraman, Vice-Chairman.

Mr. A. K. Chaudhuri, learned Addl. C.G.S.C. for the respondents seeks further time for filing written statement. List on 27.4.2005.

Vice-Chairman

mb

8-2-05

Notice duly served on
resp. Nos. 489
No W/S has been
filed

26-4-05

No W/S has been
filed

Notice duly

served on

resp. Nos. 489

8/2

27.04.2005 Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that written statement has already been prepared and sent for vetting. Therefore, some more time is required. Post on 27.5.2005.

[Signature]
Vice-Chairman

mb

No written statement 27.5.05.
has been filed.

On the prayer of learned counsel for the Respondents four weeks time is allowed to file written statement. Post the matter on 27.6.05.

[Signature]
Member

27.6.2005 Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that respondents have filed written statement. Counsel for the applicant submits that time may be granted for filing ~~written statement~~ rejoinder. Post on 1.8.2005 for hearing.

[Signature]
Vice-Chairman

mb

01.08.2005 At the request of Mr. A.K. Chaudhuri learned Addl. C.G.S.C. for the respondents the case is adjourned to 4.8.2005.

[Signature]
Member

[Signature]
Vice-Chairman

mb

04.08.2005 Heard Mr. J.L. Sarkar, ~~learned~~ assisted by Mr. M. Chanda, learned counsel for the applicant and Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. C.G.S.C. has placed before us relevant records brought by Mr. ~~Kewal~~ Kewal Kishan, Section Officer, Ministry of Mines, who is present in the Court. Orders reserved.

Member

28.4.05

26.5.05

No written statement filed

[Signature]

24.6.05

28.6.05

W/S submitted by the Respondents.

[Signature]

3.8.05

Rejoinder filed by the Applicant.

[Signature]

Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. has placed before the Bench two files - one is ACRs and other is DPC proceedings for perusal apart from the photocopies of the UPSC proceedings. These records are kept with the O.A.s.

04.08.2005

Heard Mr. J.L. Sarkar, assisted by Mr. M. Chanda, learned counsel for the applicant and Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. C.G.S.C. has placed before us the relevant records brought by Mr. Kewal Kishan, Section Officer, Ministry of Mines who is present in Court.

Vice-Chairman

Orders reserved.

The records (2 files - one of ACRs and the other of DPC proceedings) are returned to Mr. A.K. Chaudhuri, Addl. C.G.S.C. on 18.8.2005.

[Signature]
Member

[Signature]
Vice-Chairman

mb

By order

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[Signature]
2/9/05

18.8.2005

Judgment pronounced in open Court, kept in separate sheets.

The O.A. is allowed in terms of the order. No costs.

[Signature]
Member

[Signature]
Vice-Chairman

bb

12.9.05

Copy of the

order has been sent to the Officer for issuing the same to the applicant by post.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 228 OF 2004

DATE OF DECISION: 18-08-2005.

Sri Subodh Kumar Pattnaik

APPLICANT(S)

Mr. J.L. Sarkar, Mr. M. Chanda,
Mr. G.N. Chakrabarty and Mr. S. Nath.

ADVOCATE(S) FOR THE
APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr A.K. Chaudhuri, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

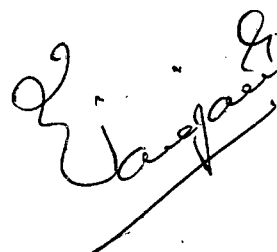
THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? No
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 other Benches? --

Judgment delivered by Hon'ble Vice-Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.228 of 2004

Date of Order: This the 18th day of August 2005

The Hon'ble Shri Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Shri K.V. Prahladan, Administrative Member.

Sri Subodh Kumar Pattnaik,
Son of Late Bansidhar Pattnaik,
Geologist (Sr.), MGP Division,
O/o - The Dy. Director General, NER,
Geological Survey of India,
Shillong (Meghalaya)

..... Applicant

By Advocates Mr. J.L. Sarkar, Mr. M. Chanda, Mr. G.N. Chakrabarty
And Mr. S. Nath.

- Versus -

1. The Union of India,
Represented by the Secretary,
Ministry of Coals and Mines,
Deptt. Of Mines, Govt. of India,
Shastri Bhawan,
New Delhi.
2. The Director General,
Eastern Region,
Geological Survey of India,
27, J.L.N. Road,
Kolkata - 700 016.
3. The Deputy Director General,
Eastern Region,
Geological Survey of India,
Kolkata.
4. The Deputy Director General,
Geological Survey of India,
North Eastern Region,
'ZOREM', Nongrim Hills,
Shillong - 793 003.
5. The Director,
Geological Survey of India,
'Operation Arunachal Pradesh',
Itanagar - 791 111.
Arunachal Pradesh.

6. The Director (SG)
Map & Cartography Division,
Operations Orissa,
Geological Survey of India,
Unit - 8, Nayapally,
Bhubaneswar, Orissa - 751 012.

7. Shri B.K. Mohanty,
Director (SG)
Map & Cartography Division,
Operations Orissa,
Geological Survey of India,
Unit - 8, Nayapally,
Bhubaneswar, Orissa - 751 012.

8. Dr. Vimal Kumar,
Director,
Geological Survey of India,
North Eastern Region,
Shillong - 3, Meghalaya.

9. Shri Amitava Sen,
Director, Marine Geology,
Eastern Region,
Bhu-Bijnan Bhavan,
Karunamayee,
Salt lake City,
Kolkata - 700 091.

10. Sri Gautam Sarkar,
Director,
Geological Survey of India,
N.E. Region,
Shillong- 3, Meghalaya.

... Respondents

By Mr. A.K. Chaudhuri, Addl. C.G.S.C.

ORDER

SIVARAJAN. J. (V.C.)

The matter relates to promotion to the post of Director, Geology in the scale of pay of Rs.12000-16500/- in the Geological Survey of India under the Government of India, Ministry of Mines, New Delhi.

2 The applicant is working as Geologist (Senior), M.G.P. Division in the Office of the 4th respondent. The applicant was

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originally appointed as Geologist (Junior) on selection by the Union Public Service Commission in the year 1976 in the Geological Survey of India. He was promoted as Geologist (Sr.) in the year 1985. He had completed the residency period of 6 years required for promotion to the post of Director (Geology) in the year 1991. The applicant was at serial No.670 in the seniority list of Geologist (Sr) prepared by the Geological Survey of India as on 1.10.1990. As per the provisional seniority list of Geologist (Sr.) as on 1.8.2000 (Annexure-II) applicant is serial No.172 while respondents 8 to 10 are serial Nos.174, 175 and 204 respectively. The applicant has filed this O.A. for directions to the official respondents to promote him to the grade of Director (Geology) with effect from the date his juniors were promoted by holding a Review DPC ignoring the uncommunicated downgraded ACR with all consequential service benefits including arrears, etc.

3. The main grievance of the applicant is that though he had put in 28 years of service out of which 19 years he had worked in the feeder cadre of Geologist (Senior) and as such a legitimate expectant for the post of Director (Geology), he had been ignored in the matter of selection by the UPSC on the basis of uncommunicated downgrading of the ACR against the relevant Rules and Regulations and the executive orders issued by the D.O.(P&T), Government of India and the decisions of Courts and Tribunals. The applicant claims that he has an unblemished service career and his name was even nominated for National Mineral Award for 2002 i.e. the highest award in Geology given by the Ministry of Mines, Government of India. His juniors in service, respondent Nos.8 to 10 and a number of other juniors were promoted to the post of Director (Geology) overlooking

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his claim. He had also alleged malafide against his reporting authority, the 7th respondent.

4. A written statement is filed on behalf of the respondents. Regarding an averment made by the applicant that though he was qualified and eligible for promotion to the post of Director (Geology) since 1990 onwards his name was not considered by the DPC, the respondents with details has shown that based on his seniority he came in the zone of consideration for selection to the post of Director (Geology) only during the years 2003-2004 and 2004-2005. It is stated that the post of Director (Geology) is a selection post and according to the instructions of the Department of Personnel and Training dated 8.2.2002 the Bench mark for the post is 'very good'. The DPC was held for 53 posts of Director (Geology) for the year 2003-2004 and 26 vacancies for the year 2004-2005 on 10.8.2004; the applicant was considered by the DPC alongwith other eligible officers as he was within the zone of consideration but he was not found fit by the DPC in view of the performance reflected in his Confidential Reports. The duty of a Geologist, it is stated, is to do the field work and submit his report about the mineral deposits in the areas where the field duty was assigned to him. The applicant was asking for office duty during his stay at NER which is not permitted as per duties of the post of Geologist. It is stated that there is no instruction issued by the Department of Personnel and Training on the basis of Supreme Court decisions that below Bench Mark grading should be communicated to the individual. It is also stated that as per the D.O. P&T instructions 'Average' may not be taken as adverse remark. Then how the 'Good' performance of the officer can be treated as adverse remarks. The applicant, it is stated, refused to take assignment of field duties which

[Signature]

has been accepted by him in the O.A. The applicant, it is stated, was not recommended by the DPC for promotion keeping in view his performance; his senior and junior were recommended according to the performance/grading reflected in their CRs.

5. The applicant had filed a rejoinder. Various averments regarding the convening of DPCs for the earlier years with reference to the number of vacancies etc. and the vagueness in the matter of details etc. are stated. About the reluctance to do field work mentioned in the written statement it is stated that more than 20% of the Geologists posted in the NER were deployed in Headquarter jobs during the Field Seasons 1997-98 and 1998-99. They were juniors also. It is stated that some of them were never deployed for Field work during long years of posting in NER. Respondent No.8 is shown as an instance. The applicant, it is stated, had requested the superiors to exclude him from the Field work in the difficult terrains in view of his ailments certified by Doctors which were illegally rejected. The applicant has also narrated his achievements reflected in giving him higher responsibilities. The applicant has relied on the decisions of the Supreme Court and of the High Court and Tribunals in the matter of downgrading of ACRs and its effects.

6. Heard Mr J.L. Sarkar assisted by Mr M. Chanda, learned counsel for the applicant, and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. An officer from New Delhi has brought the confidential records of the applicant and also the DPC proposal records maintained by the Government of India and also copies of the proceedings of the DPC held on 10th and 11th August 2004 at Jaipur. Those records were placed before the Bench. Mr J.L. Sarkar, learned counsel for the applicant, took us to paragraphs 4.16 to 4.21 of the

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application and paragraph 4.13 of the written statement of the respondents and submitted that the applicant throughout his service career had a good track record; that the applicant was graded 'very good' by the reporting and reviewing authorities in the ACRs for the years 1997-98 1998-99 and 1999-2000, but Shri K. Krishnan Unni, Senior Deputy Director General as the accepting authority had downgraded the ACR without any notice or caution to the applicant, that Shri Mohanty as the Reporting Authority of the applicant had malafide made adverse remarks against the applicant for the year 2002-03 though he had given 'very good' to the applicant for the earlier years but the Reviewing Authority/Accepting Authority had expunged the said remarks. Counsel submitted that it is out of the ill will and malice/personal grudge of the Reporting and Accepting Authorities, the ACRs have been downgraded. Counsel submitted that the downgrading of the ACRs have not been communicated to the applicant and therefore the Selection Committee should not have acted upon the said ACRs. Counsel pointed out that the 3rd respondent had nominated the applicant vide his letter dated 24.12.2002 for the prestigious 'National Mineral Award 2002', the highest award given by the Ministry of Mines, Government of India. It is pointed out that the 3rd respondent in the recommendation letter had highlighted the landmark achievements of the applicant. The counsel has also relied on the Government orders and the decisions of Courts in the matter of writing confidential records and the procedure to be followed while downgrading the ACRs. He submitted that an honest and dedicated officer who had put in unstinct service for more than 19 years in the feeder category had been denied promotion only because of the whims and fancies of the Reporting/Reviewing and Accepting

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Authorities. He also submitted that the malafide action of the Reporting/Reviewing/Accepting Authorities had vitiated the entire proceedings.

7. Mr A.K. Chaudhuri, learned Addl. C.G.S.C., submitted that the applicant, on the basis of his seniority as per the seniority list, came in the zone of consideration for promotion to the post of Director, Geology, only in the year 2003-2004 and 2004-2005; that his name was proposed by the Government and considered by the DPC which was held on 10th and 11th August 2004 but he was not found fit for selection in view of the performance reflected in his ACRs. He also submitted that the applicant was reluctant to attend field work which cannot be avoided. The Standing Counsel further submitted that the confidential and other records produced will establish the said circumstances.

8. We have minutely gone through the pleadings in the case, considered the arguments advanced by the counsel for the parties and also perused the confidential records of the applicant, the proposal sent by the Government of India to the UPSC and the proceedings of the DPC for 2002-2003 for one post, for 2003-2004 for 53 posts and for 2004-2005 for 26 posts of Director, Geology, convened on 10th and 11th August 2004 and the appointment order.

9. Before we proceed to consider the real issue involved in the case we will first dispose of the contention raised by the counsel for the applicant that no proper DPC was convened for the period from 1990-91 onwards with reference to each years vacancies and that the applicant's case was not considered for promotion to the post of Director, Geology, though he was qualified and eligible for promotion to the said post since 1990. The applicant was promoted to

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the post of Geologist (Sr) in the year 1985. He had completed 6 years service in the said post in 1991. Admittedly, he was qualified for promotion to the post of Director, Geology, since 1991. The post of Director, Geology, is a selection post and promotion is based on merit-cum-seniority. The respondents have furnished the details regarding DPC for the years 1990-91 to 2004-2005 in the written statement as per which the applicant came in the zone of consideration for promotion to the post of Director, Geology, only during the years 2003-2004 and 2004-2005. Though a rejoinder was filed, the applicant was not able to rebut the same except to state that there is some vagueness. Further the applicant's juniors in the seniority list - respondent Nos.8 to 10 were selected and promoted only in the selection for the year 2003-2004. In the above circumstances, there is no merit in the contention regarding the earlier years entitlement.

10. Now let us consider the vital issue involved in the case viz., whether the official respondents were justified in not selecting and promoting the applicant for the years 2003-2004 and 2004-2005. The respondents have clearly assigned the reasons for not selecting and promoting the applicant to the post of Director, Geology-unsatisfactory performance reflected in the confidential records. It is stated that as per the instructions of the Department of Personnel and Training dated 8.2.2002 the Bench Mark for the post is 'very good'; he was considered by the DPC alongwith other eligible officers but he was not found fit in view of the performance reflected in his confidential reports. In the additional information furnished by the respondents in the form of a note it is stated that the DPC considered five confidential records for the years 1997-98 to 2001-02 for the vacancies of the year 2003-2004 and five confidential records for the

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years 1998-99 to 2002-2003 for the vacancies for the year 2004-2005.

The gradings given for the above years are also furnished. It is also stated that as per the criteria adopted by the UPSC, if an officer having four Confidential Reports out of five Confidential Reports up to the Bench Mark then he will be recommended for promotion to the higher grade. The applicant, it is stated, did not satisfy the above and therefore he was not recommended by the DPC for promotion to the post of Director (Geology).

11. We have perused the confidential records of the applicant for the years 1996-97 and 2004-2005, which reflects as follows:

Assessment year	Remarks of Reporting Authority	Remarks of Reviewing Authority	Remarks of Assessing Authority
1996-97 From 1.4.1996 to 30.9.1996 From 1.10.1996 to 31.3.1997	Very Good Good	Good Very Good	Good- no reason stated Very Good
1997-98 From 1.4.1997 to 30.9.1997 From 1.10.1997 to 31.3.1998	Good Good	Very Good Good	Good- no reason stated Good
1998-99	Very Good	Very Good	Good (Not a willing field worker)
1999-2000 From 1.4.1999 to 1.11.1999 From 1.11.1999 to 31.3.2000	Very Good Very Good	Very Good Very Good	Good (Avoids Field works) Very Good
2000-2001	Very Good	Very Good	Blank
2001-2002	Very Good	Very Good	Very Good
2002-2003	Average (Expunged) Good	Good	Good
2003-2004	Good	Good	Good

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From the above it is seen that the applicant's grading was 'Good' for the first half of 1996-97 and 'Very Good' for the second half. Similarly, for the first half of the Assessment Year 1997-98, though the Reviewing Authority had graded 'Very Good', the Accepting Authority had downgraded the same to 'Good' without assigning any reason. For the Assessment Year 1998-99 both the Reporting and the Reviewing Authorities had graded 'Very Good' to the applicant; the Accepting Authority had downgraded him with 'Good' stating that the applicant is 'Not a willing Field Worker'. Likewise, for the first part of 1999-2000 though for a major part of 1999-2000 both the Reporting Authority and the Reviewing Authority had assigned 'Very Good'; the Accepting Authority downgraded the same by grading him 'Good', stating that the applicant 'Avoids Field Works'. However, for the second half, apart from the Reporting Authority and the Reviewing Authority, the Accepting Authority who is the very same officer had assigned 'Very Good'. For the year 2000-01 both the Reporting and Reviewing Authorities had assigned 'Very Good', but it appears there was no Accepting Authority to grade the applicant. The reason is not known. For the year 2001-02 all the authorities have assigned 'Very Good' to the applicant, but, for the years 2002-03 and 2003-04 only 'Good' grading is given to the applicant by all the authorities. Here it must be noted for the year 2002-03 the Reporting Authority had only graded 'Average'. However, this was expunged by the higher authority by assigning 'Good'.

12. The law on the writing of Confidential Reports of an officer is well settled by the decisions of the Supreme Court, High Courts and of the Tribunals.

for

13. The Supreme Court in *S. Ramachandra Raju Vs. State of Orissa*, 1994 Supp (3) SCC 424 in regard to the need to write Confidential Reports objectively, fairly and dispassionately in a constructive manner either commenting/downgrading the conduct, character, efficiency or integrity of the officer, inter alia, 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 being put to great jeopardy."

14. In *State Bank of India and others Vs. Kashinath Kher and others* (1996) 8 SCC 262 the Supreme Court after pointing out the twofold object of writing Confidential Report viz. (i) to give an opportunity to the officer to remove deficiencies and to inculcate discipline and (ii) it seeks to serve improvement of quality and excellence and efficiency of public service, observed that the procedure should be fair and reasonable, for, the report thus written would form the basis for consideration for promotion.

15. The Supreme Court again in *State of U.P. Vs. Jamuna Shankar Misra*, (1997) 2 SLR 311 SC (para 7 at page 316) observed thus:

"..... The officer entrusted with the duty to write 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 the facts or circumstances. Though sometimes, it may not be part of record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before

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forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite given giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself necessarily, the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

16. An important decision rendered by the Supreme Court on this point is U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363. Paras 2 and 3 of the said decision read thus:

"2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea 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 and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately 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 the other stage of his career.

"3. We need to explain these observations of the High Court. 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 adverseness that is not required to be communicated. As we view it the extreme illustration

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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 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 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."

17. The Principal Bench of the Tribunal in O.A.No.2894 of 2002 decided on 25.5.2004, 2005 (1) ATJ 22 had considered a case where the applicant, a Junior Accounts Officer was not promoted to the grade of Accounts Officer. The Departmental Promotion Committee considered the ACRs of the preceding 5 years ranging from 1995-96 to 2000-2001. The DPC found that the applicant did not achieve the required Benchmark to make the applicant eligible for the empanelment for promotion to the next higher rank. The claim of the applicant was rejected primarily on the ground that the Benchmark for promotion to the post of Accounts Officer was 'Good' but the applicant for the relevant period had earned only 'Average' reports. The grievance of the applicant was that downgraded 'Average' report was not communicated.

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18. The Principal Bench referred to a Full Bench decision of the Delhi High Court in J.S. Garg Vs. Union of India and others, 2002 (65) Delhi Reported Judgments 607, which in turn has relied on the decision of the Supreme Court in Jal Nigam case (supra) and held that uncommunicated downgraded reports cannot be considered against the applicant and the same have to be ignored.

19. This Bench had also occasion to consider a similar case to which one of us (Hon'ble Administrative Member) was a party in Dr Ajoy Roy Vs. Union of India and others, 2005 (1) SLJ (CAT) 243. The applicant therein, a Divisional Medical Officer in the Railway Hospital was not considered for the Junior Administrative grade and his juniors were selected and included in the list for promotion. His representation against the same was rejected by the Railway Board by stating that taking into account all the relevant factors the DPC did not find him suitable for empanelment/promotion to Junior Administrative Grade. The applicant contended that the Board had constituted a DPC which considered the candidates on the basis of seniority and ACRs of the last five years preceding the date of selection and nothing adverse was communicated to him. The respondents in their written statement contended that the posts of Administrative grades are selection posts. Confidential rolls are the basic input on the basis of which assessment is to be made by the Selection Committee. The applicant was considered but not found suitable for empanelment for JAG taking into account all the relevant factors including his overall performance. He was not found fit on the basis of the performances as reflected in his ACRs. It is also contended that entries in the ACRs, which are considered to be adverse alone, are required to be communicated and in the absence of

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any such entries or remarks the question of communicating does not arise.

20. The Tribunal after perusing the ACRs of the applicant and the decisions bearing on the point observed thus:

"On going through the records submitted by the respondents and selection proceedings we find that the applicant has acquired grading as 'Good,' whereas the benchmark for such selection as per the circular and by the Selection Committee has been laid down as 'Very Good'. Then the question that comes is whether the ACR 'Good' is adverse or not. Learned Counsel for the applicant has taken us to a decision reported in 1996 (2) SCC 363 in the case of U.P. Jal Nigam and Others v. Prabhat Chandra Jain and Others, in which the Supreme Court has observed that "Confidential report- Adverse remarks- Downgrading of the entry- When can be adverse?" The gradation falling from 'Very Good' to 'Good' that may not be ordinarily an adverse entry since both are positive grading. Even a positive confidential entry can perilously be adverse and to say that an adverse entry should be quantitatively damaging may not be true and the entry 'Good' which is per se not adverse will amount to be adverse when the bench mark is being put as 'Very Good'. Such a state of affairs should not be permitted. Therefore, such information should have been informed to the employee and communicated the same. To fortify the above, it is also to notice a decision of this Tribunal reported in (1996) 33 ATC 802 of the Central Administrative Tribunal, Allahabad Bench of a similar and identical case and held that "Remarks which have potential of adversely affecting an employee's career, held on facts are adverse- Such remarks have to be communicated to the employee- Grading an employee as 'Good' and 'Average' when bench-mark for promotion is 'Very Good', held, are adverse remarks which should have been communicated to the applicant." Admittedly, the same position prevails in this case and the confidential report of the applicant is 'Good' which was not communicated at any point of time to the applicant has adversely and prejudicially affected the selection of the applicant. We also find from the record that the Selection Committee which consisted of only Railway Officials without even a single member from the Medical Service has evaluated without any application of judicious mind and found the applicant unfit. On going through the entire record we could not find any cogent reason recorded except the gradation of ACR in the non-selection of the applicant. The legal position of such an entry in the ACR should have been communicated is not, admittedly, done in this case which is patent irregularity in the selection process, nor the Selection Committee make its mind applied. Therefore, we are of the considered view that the

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declaration that the applicant is unfit will not stand in its legs and the impugned action is to be set aside."

21. A Full Bench decision of the Ernakulam Bench of the Tribunal on 20.9.2001 in O.A.No.1304 of 2000 also dealt with the effect of non-communication of adverse remarks in the ACR of a Government servant. Referring to the decision of the Supreme Court in Gurdial Singh Fiji vs. State of Punjab and others [(1979) 2 SCC 368] it was observed that the position is that uncommunicated adverse remarks cannot be relied on by the DPC.

22. A decision of a Division Bench of the Central Administrative Tribunal, Allahabad Bench in Udai Krishna Vs. Union of India , (1996) 33 ATC 802, is illustrative of the havoc that may be caused to Reported Officer while adverse remarks are made in his confidential reports if they are not communicated to him immediately after making such remarks.

"In view of the falling moral and ethical standard and having regard to the observations made by the Hon'ble Supreme Court in the judgment referred to above the possibility of an unscrupulous officer, who does not possesses enough courage to invite open confrontation with the subordinate but, at the same time intends to settle personal score by spoiling his career prospects, by giving remarks which may not be communicable but, at the same time mar prospects of his promotion to higher grade, cannot be ruled out. The Officer becomes a victim of the bias and prejudice of such an unscrupulous Reporting Officer and will come to know of the mischief only after five years when the damage is already done. In this view of the matter, we are inclined to agree that a 'Good' or 'Average' grading in the ACR, though not per se adverse would assume the character of adverse remarks in the context of the requirement of 'Very Good' benchmark to qualify for empanelment for promotion to Junior Administrative Grade and above."

The following observations in paras 13 and 14 of the said decision applies with equal force on the facts of the present case:

"We have also noticed that the grading 'Very Good' for the period 28.6.1989 to 31.3.1990, as given by the Reporting Officer and endorsed by the Reviewing Officer

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has been downgraded to 'Good' by the Accepting Authority. It was argued that downgrading of the 'Very Good' remark to 'Good' by the Accepting Officer amounts to adverse remark and as such should have been communicated to the applicant before the same was taken into consideration for assessing his merit by the DPC. Since this remark has not been communicated to the applicant, taking of the said remark into consideration by the DPC, vitiates the assessment of merit as done by the DPC.

"We have perused the ACR dossier of the applicant and we find that the accepting authority has not given sufficient reason for downgrading the remarks from 'Very Good' to 'Good'. The reason given for downgrading the remark is "The Officer is slightly overrated". The Accepting Authority was required to give the specific reason for disagreeing with the grading given by the Reporting Officer endorsed by the Reviewing Authority. The remark does not indicate the ground on the basis of which he has downgraded the remark from 'Very Good' to 'Good'. The downgrading of the remark by the accepting authority thus, cannot be said to be based on sufficient cause. In fact, no reason while downgrading from 'Very Good' to 'Good' has been assigned. While agreeing with the view rendered by the Jabalpur Bench of the Tribunal in Mohan Gupta case' that downgrading of the remark from 'Very Good' to 'Good' without assigning any reason amounts to adverse remark, we do not consider it appropriate to order that the same should be ignored. We are of the view that the aforesaid two remarks, which according to us are adverse in nature, should have been communicated to the applicant, and representations, if any, filed for expunction of the same, should have been disposed of before the remarks were allowed to remain in the ACR of the applicant. It is a settled principle of law that uncommunicated adverse remark cannot be used for superseding the claim of an Officer for promotion to higher grade. That being so, the assessment of the merit of the applicant by DPC on the basis of the aforesaid uncommunicated adverse remarks, is vitiated."

23. It is unnecessary for us to refer to any more decisions of Courts and Tribunals, for, the Government of India, Geological Survey of India, Kolkata itself issued a Circular No.DDG(P)/GSI/Conf/04 dated 26.2.2004 (Annexure-XIX to the application) which deals with the procedure related to writing of confidential reports and communicating entries thereof. The procedure prescribed therein accords with the legal principles stated hereinabove. It refers to the need for evolving
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clear guidelines with regard to the question of communication of entries in the ACRs to the reportee in view of a large number of administrative orders and decisions of the Tribunals and Courts including the decisions of the Hon'ble Supreme Court. It is stated that there is some confusion as to what constitutes adverse remarks, whether and under what circumstances an advisory remark is to be deemed adverse and whether downgrading of a reportee's overall assessment as compared to the previous years, even where the new assessment is not adverse in itself, is to be considered as adverse and thus needs to be communicated to the reportee. It was observed that a related question which also arises is that where the overall assessment of the reportee falls below the benchmark prescribed for his promotion to the next senior grade, then should such an entry be deemed adverse or not. The circular then refers to the decision of the Supreme Court in U.P. Jal Nigam and others Vs. Prabhat Ch. Jain and others, 1996 (2) SCC 363 and observed that the said decision provides clear guidelines with regard to the above mentioned issues. The circular refers to the observations of the Supreme Court that "Even a positive confidential entry can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true" and observed thus:

"Thus, the sum and substance of the above mentioned ruling appears to be that where the overall performance rating of the reportee is of a category below that given to him in the preceding year, then, after affording him the opportunity of representing against the downgrading in accordance with the principles of natural justice, if the downgrading is written, this decision, as well as the reasons for the same must be clearly recorded in the personal file of the reportee concerned. Needless to say, this final decision should also be communicated to the reportee as otherwise the process will not fulfill the requirement of the principle of natural justice."

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The circular then states that the common position that emerges as a guideline for communication of entries in the confidential reports of the reportees is as follows:

- "a. Where the overall performance rating is lower than that awarded in the preceding year, this should be treated as adverse and communicated to the reportee.
- b. Where the overall performance rating awarded to the reportee falls below the benchmark prescribed for the purpose of his next promotion, this should be treated as an adverse remark/rating and communicated to the reportee.

Note: The communications as above should be effected within one month of the remark/rating being recorded.

In both the aforementioned situations, the adverse remark/rating so communicated should be disposed of in accordance with the principles of natural justice by affording the reportee reasonable opportunity to represent against the remark/rating and thereafter informing him of the final decision taken in this regard through a reasoned, (speaking), order where the remark/rating is retained. This decision should also be recorded in the personal file of the officer also.


All reporting officers are requested to take note of the above mentioned position and ensure that CRs are completed strictly in accordance with these stipulations. Failure to do so, particularly by way of non-communication of adverse entries or the reasoned (speaking) orders for the retention of such entries after affording the reportee adequate opportunity for representation will vitiate the report in question. Since the reportee is like to discover the adverse comment only when he is denied his next promotion, non-compliance or inadequate compliance with the above discussed provisions is bound to lead to litigation and will necessarily reflect poorly on the probity and competence of the reporting officer concerned. Where such a situation comes to light, after following the prescribed process for ensuring natural justice, it shall be the duty of the reporting authority of the concerned reporting officer to record this in the latter's CR."

24. We will in this context like to observe that it is the first and foremost duty of the Reporting/Reviewing/Accepting Authorities to understand that they have been called upon to perform an onerous

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job in public interest to make a realistic assessment of the work and conduct of the employees working under them. The said authorities, in the circumstances, must read beforehand all the relevant instructions and guidelines on the subject issued by the Government from time to time to understand the implications of the entries (especially adverse remarks) to be made by them in the reports. It is also to be noted that the object of writing the confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence which is one of the primary duties enjoined under Article 51A (j) of the Constitution. It is also necessary that before forming an opinion to make adverse entries in confidential reports the Reporting/Reviewing Authorities should share the information, which is not part of the record, with the officer concerned; this amounts to an opportunity given to the erring officer to correct the errors of judgment, conduct, behaviour, integrity or corrupt proclivity and if despite giving such an opportunity the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same has to be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him and if he feels aggrieved, it will be open to him to have it corrected by appropriate representations to the higher authorities or any appropriate judicial forum for redressal; thereby honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in service constantly rises to higher levels. (vide State of U.P. Vs. Yamuna Shankar Misra, (1997) 4 SCC 7).

25. From the circular dated 26.2.2004 issued by the 3rd respondent itself it is clear that if a downgrading of the ACR is made



with reference to the previous years ACR or with reference to the grading awarded by the Reporting/Reviewing Authorities there is a duty cast on such authorities to communicate the same to the applicant treating the said downgrading as adverse. Similarly, when a benchmark is prescribed for the purpose of the officer's next promotion and if the grading is below the benchmark then the same should be treated as adverse remark/rating and communicate it to the reported officer, that too within one month from the date of making such remarks. Despite this position, in the instant case we have seen that the applicant was awarded 'Very Good' by the Reporting Officer for 1996-97 but the Accepting Authority had downgraded the same as 'Good' without assigning any reason. Similarly, for the first half of the Assessment Year 1997-98, though the Reviewing Authority had graded 'Very Good', the Accepting Authority had downgraded the same to 'Good' without assigning any reason. For the Assessment Year 1998-99 both the Reporting and the Reviewing Authorities had graded 'Very Good' to the applicant; the Accepting Authority had downgraded him with 'Good' stating that the applicant is 'Not a willing Field Worker'. Likewise, for the first part of 1999-2000 though for a major part of 1999-2000 both the Reporting Authority and the Reviewing Authority had assigned 'Very Good'; the Accepting Authority downgraded the same by grading him 'Good', stating that the applicant 'Avoids Field Works'. However, for the second half, apart from the Reporting Authority and the Reviewing Authority, the Accepting Authority who is the very same officer had assigned 'Very Good'. For the year 2000-01 both the Reporting and Reviewing Authorities had assigned 'Very Good', but the Accepting Authority's remarks are not given. The reason is not known. For the year 2001-02

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all the authorities have assigned 'Very Good' to the applicant, but for the years 2002-03 and 2003-04 only 'Good' grading is given to the applicant by all the authorities. Here it must be noted for the year 2002-03 the Reporting Authority had only graded 'Average'. However, this was expunged by the higher authority by assigning 'Good'.

26. Thus it is clear that the authorities, namely Reporting/Reviewing/Accepting Authorities had not followed the rules regarding maintaining of ACR, particularly in the matter of communication of downgrading remarks. Here it is relevant again to advert to the circular dated 26.2.2004 issued by the 3rd respondent. The said circular refers to O.M. F.No.35034/7/97-Estt.(D) dated 8.2.2002 issued by the D.O. P&T, Government of India. The relevant portion reads thus:

"Further to the above in its O.M. F.No.35034/7/97-Estt.(D) dated 8.02.2002 D.O.P.&T. has clarified that henceforth the suitability of a candidate for promotion by "selection" shall be determined only with reference to the relevant benchmark. ('Very Good' or 'Good'), prescribed for such promotion. It has further been clarified that for promotion to the revised pay scales, (grade), of Rs.12000-16,500/= and above, the benchmark for promotion shall be 'Very Good'. For promotion to grades below the above mentioned pay scale, (grade), including promotions from below grades to group 'A' posts/grades/services, the benchmark for promotion shall be 'Good'. The DPC shall grade officials as being "Fit" or "Unfit" for the promotion in question only with reference to the relevant benchmark as elucidated above and those who are graded as "Fit" shall be included in the select panel prepared by the DPC in the order of their inter-se seniority in the feeder grade. Thus, there shall be no supersession in promotion among those who are found "Fit" for the same by the DPC in terms of the aforementioned prescribed benchmark.

D.O.P.&T. O.M.No.22011/7/98-Estt.(D) dated 6.10.2000 prescribes specifically that the suitability of employees for a given promotion shall be assessed on the basis of their service records, with particular relevance to the CRs for the 5 preceding years irrespective of the qualifying service prescribed in the service/recruitment rules.

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Thus it will be seen that when an employee is being considered for promotion by selection, he is required to be found "Fit" for such promotion on the basis of his service record and CRs for the preceding 5 years. It follows that in case the overall performance rating of such an employee is below the benchmark rating for the promotion in question, then such a rating will come in the way of the employee's promotion. Thus the condition of such an entry being "perilously adverse" without necessarily being qualitatively damaging in terms of the Supreme Court's observations discussed holds true in such a case. This, in turn leads to the inescapable conclusion that where a reporting officer enters an overall performance rating which is lower than that of the benchmark prescribed for the reportee's next promotion in his CR, then, such an entry is an adverse entry and should be communicated to the reportee. Thereafter, the prescribed procedure for dealing with such an entry in accordance with the principles of natural justice, as discussed and detailed above, should necessarily follow in such a case."

27. From the above it is clear that the DPC has to determine the suitability of a candidate for promotion by selection only with reference to the relevant benchmark prescribed for such promotion and for promotion to the revised pay scale (grade) of Rs.12000-16,500/= and above the benchmark shall be 'Very Good'. The role of DPC is only to grade officials as being fit or unfit for the promotion in question only with reference to the relevant benchmark and those who are graded as 'fit' shall be included in the select panel prepared by the DPC in the order of their inter se seniority in the feeder grade.

28. Now, reverting to the present case, the case of the applicant for promotion to the post of Director (Geology) in the scale of pay of Rs.12000-16,500/- was considered for the years 2003-04 and 2004-05. The ACRs, relevant for the assessment year 2003-04, according to the respondents are the years 1997-98 to 2001-02 and for the year 2004-05 are for the period from 1998-99 to 2002-03, both inclusive. Here it must be noted that the benchmark of 'Very Good' for promotion by selection to the post of Director (Geology) in the scale of pay of Rs.12000-16,500/- was introduced for the first time only by the

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order of the D.O.P.&T. dated 8.2.2002. In other words, the benchmark for earlier period was only 'Good' prior to 8.2.2002 or the selection method was different. In the circumstances, so far as the years 1997-98 to 2001-02 are concerned, it cannot be said that the gradings given to the applicant was below the benchmark, namely 'Good'. However, when downgradation is sought to be made either with reference to earlier assessment years or with reference to the remarks made by the subordinate authorities there was a duty cast on the said authorities to communicate the same to the concerned officers. This, admittedly, has not been done except in relation to the assessment year 2002-03, that too with regard to the grading ('Average') made by the Reporting Authority. Even for that year the official grading was 'Good' whereas for the earlier year, 2001-02, the grading was 'Very Good'. As held by the Courts and Tribunals, uncommunicated adverse remarks (in this case below the benchmark) cannot be acted upon by the DPC in the matter of selection of the applicant.

29. Going by the norms that prevailed upto 8.2.2002, the applicant had satisfied the benchmark, namely 'Good' for all the years concerned. If that was the criteria the applicant ought to have been selected by the DPC convened for the year 2003-04 itself. Here it must be noted that even going by the standards as fixed by the D.O. P.&T., namely 'Very Good' as the benchmark and the procedure adopted by the DPC that those who have satisfied the benchmark for four years out of five years the applicant must be held to have satisfied the said norms also for the reason that for all the years from 1997-98 to 2001-02 except for a fraction of the year 1997-98 the Reviewing Authority had assigned 'Very Good', but the Accepting Authority for one year had downgraded as 'Good' without assigning



any reason and for two years had downgraded as 'Good' stating that the applicant 'is not a willing field worker'. In this context it is also relevant to note that the very same Accepting Authority who had assigned 'Good' for 1998-99 and first part of 1999-2000, had assigned 'Very Good' for the remaining part of 1999-2000. That apart, so far as the field work is concerned the correspondence would show that the applicant with medical certificates had requested the superior officers to exclude him from field work, but the said authorities initially did not agree with that. In the circumstances the observation that the applicant is not a willing field worker as a reason for downgrading the applicant for the years 1998-99 and first half of 1999-2000 does not appear to be justified. Added to these, the applicant has to his credit identification of a new alkaline complex named by him as 'Bhela-Rajna alkaline complex' (BRAC) in Nuapara district of Orissa.

30. The 3rd respondent who in his letter dated 24.12.2002 (Annexure-XVIII) named the applicant for the National Mineral Award for the year 2002 has observed thus:

"During his 29 years of professional career, Shri S.K. Pattnaik, Geologist (Sr.) has devoted 20 years of field work in diverse terrain conditions including some tough areas of Bastar District (M.P.), Chandrapur and Gadchiroli districts of Maharashtra. He has worked in various fields of Geology such as ground water exploration, systematic geological mapping aided by tectonic, petrological and geochemical studies, mineral exploration (including geochemical surveys) for strategic metals like tungsten, gold and tin, besides base metals and refractory minerals. His track record attests to his dogged pursuit for gaining new knowledge and information in furthering economic as well as academic interests related to earth science. Besides reporting quite a few new mineral occurrences during his career, so far, he has registered some outstanding contributions as briefed below:

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(ii) However, the most outstanding work of Shri Pattnaik was accomplished during 1993-2002 when he identified a new alkaline complex named by him as "Bhela-Rajna

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alkaline complex' (BRAC) in Nuapara district of Orissa and studied it quite elaborately as regards its tectonics, petrology, geochemistry and petrogenesis with specific details regarding alkaline magnetism. He has classified the hitherto unclassified basement granites associated with the complex and has elaborately supplemented the field data with adequate microscopic studies to bring out interesting rock types and their unique mineral assemblages. He has made full utilization of analytical facilities of G.S.I., and could therefore, undertake extensive exercises on REE, PGE and 20 other trace elements besides the major elements data. This work has enabled enormously to understand the crustal processes active in this part of Bastar carton in Western Orissa during Peterozonic times. He has also worked out the possible genetic links between BARC and the already known Khariar nepheline syenites and tectonic link between the two complexes and the Khariar basin. He has aptly named the most vital N-S running transcrustal fractures as Khariar lineaments and the pink basement batholith as the 'Nuapara batholith'. He has nicely correlated mantle upwarping and crustal thinning processes to the evolution of the alkaline magnetism which manifests a complex history of partial melting, magma mixing and fractionation."

31. The above undisputed (undisputed we said because the respondents did not deny the averments made in para 4.21 of the application in para 13 of their reply) fact situation would show that the applicant was a willing Field Worker, for about 20 years he had devoted in field work in difficult terrains and made great achievement. This would clearly demonstrate that the request of the applicant for excluding him from field work was made for good and valid reasons. It is about such a man the Accepting Authority said that the applicant is not a willing field worker. For the selection year 2003-2004 the records (CR) required are for the years 1997-98 to 2001-02. If the downgrading to 'Good' by the Accepting Authority for the year 1998-99 and first part of 1999-2000 on the ground of 'not a willing field worker' is eschewed the applicant even satisfies the Benchmark fixed in 2002.


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22. On a consideration of all the relevant matters we are of the view that the respondents were not justified in finding the applicant unfit based on the confidential records of the applicant for the years 2003-04 and 2004-2005.

23. Though the applicant has relied on a large number of decisions of different Benches of the Central Administrative Tribunal and also decisions of the High Courts and the Supreme Court, in the light of the discussions made hereinabove, we do not think it necessary to deal with ^{any} all those decisions relied on by the applicant.

24. In the circumstances the respondents are directed to convene a Review DPC for selection to the post of Director (Geology) and consider the case of the applicant in the light of the observations made hereinabove and pass appropriate orders in the matter within a period of three months from the date of receipt of the order.

The application is allowed as above. No order as to costs.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE-CHAIRMAN

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

O.A. No. 228 /2004

Shri Subodh Kumar Pattnaik.

-Vs.-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 1974- Applicant selected by Union Public Service Commission through All India Geologist's Examination for the post of Geologist (Jr.).
- 1976- Applicant joined as Geologist (Jr.) in Geological Survey of India.
- 1985- Applicant promoted as Geologist (Sr.).
- 1990- Applicant became eligible for promotion to the next higher post of Director (Geology) on completion of 5 years residency period in the post of Geologist (Sr.) as per Recruitment Rules.
- 18.08.1997- Applicant transferred from GSI, Bhubaneswar and posted at GSI, Itanagar (Arunachal Pradesh).
- 24.09.1997- Applicant submitted representation stating the health problems of himself and his wife and prayed for his posting at Shillong instead of Itanagar in the N.E. Region in order to facilitate their medical treatments. (Annexure-IV). ✓
- Oct' 97- Applicant complied with the order and joined at Itanagar.
- 18.11.1997- Applicant submitted another representation since he was assigned Field Survey works in the ✓

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interior areas of Arunachal Pradesh for 97-98. He also submitted therewith relevant medical certificate from the attending physician who advised him to attend periodic medical check up and avoid road journeys in high altitudes and arduous field works, and prayed for assigning him Headquarter jobs instead of Field works.

(Annexure-V)

03.12.1997- Shri K. Krishnanunni, Dy. Director General rejected his prayer and asked him to avail leave and a reconstituted party was engaged for the said Field Works and the party left for field on 11.12.97. Applicant continued to attend his office and was doing Headquarter jobs that were available.

(Annexure-VI)

07.01.1998- Shri Krishnanunni directed the applicant to submit by 15.1.98 his leave application for the period from 11.12.97 to till the return of the field party else the period would be treated as his unauthorized absence.

(Annexure-VIII)

15.01.1998-, Applicant applied for earned leave only from 16.01.98 to the date of return of the Field Party and stated that he had regularly attended office works from 11.12.97 to 15.01.98. At this Shri Krishnanunni became annoyed and became vindictive on the applicant.

(Annexure-IX)

19.02.1998- Applicant underwent medical check up at the Cardiological department of the Capital Hospital, Bhubaneswar from 28.01.98 to 19.02.98 and the Sr. Cardiologist there issued certificate dated 19.02.98 again advising the applicant to avoid arduous field activities and to be in touch with cardiologist in case of any problem. But he was allowed to do usual office/Laboratory works.

(Annexure-X)

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- 03.06.1998- Applicant became unconscious in his office chamber while attending official works and underwent medical check up.
- 27.07.1998- Applicant submitted another representation stating his condition and prayed for assigning him headquarter job for 98-99.
- 07.09.1998- Applicant submitted another representation alongwith medical certificate from R.K. Mission Hospital, Itanagar and reiterated his prayer.
(Annexure-XI)
- 07.10.1998- Office order was issued assigning official works to the applicant for 98-99 at his Headquarter at Itanagar. He served at Itanagar till the end of October '99 and thereafter he was posted at GSI, Shillong.
(Annexure-XII)
- 01.08.2000- Gradation list of Geologist (Sr.) in GSI was published wherein the name of applicant appeared at Sl. No. 172.
- 24.12.2002- Applicant's name was nominated for the prestigious Govt. of India's "National Mineral Award" in recognition of his landmark achievements.
(Annexure-XVIII)
- 26.09.2003- Shri B.K. Mohanty, Director issued one confidential letter to the applicant wherein it was alleged that the applicant did not submit the field maps for 2001-02 and 2002-03 and threatened that if the applicant fails to send the maps by 30.09.03, his grading in ACR would be marked below Benchmark.
(Annexure-XVI)
- 29.09.2003- Applicant informed Shri Mohanty that he could not submit the maps due to delay in getting the required "unified legend" from Shri Mohanty's office which was received on 03.09.03 only.
- 14.10.2003- Shri Mohanty issued a Circular inviting options which was required for granting permission

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to one Sambad T.V for providing cable connection in the Geo-Survey Enclave for their Sky view.

Applicant expressed that Private channel cannot be promoted by Govt. Circular. At this Shri Mohanty got annoyed for the reasons known to him.

(Annexure-XVII)

21.10.2003- Applicant sent the compiled maps in compliance with the instructions of Shri Mohanty as contained in letter dated 26.09.03. The last lot of maps were however sent on 30.03.04.

13.08.2004- Impugned order dated 13.08.04 was issued promoting 64 Geologist (Sr.) to the grade of Director (G) but the applicant's name was excluded surprisingly whereas many persons junior to the applicant were promoted. The persons whose names appeared from Sl No. 172 to 243 in the gradation list were promoted whereas the applicant's name was excluded although his name was at Sl. No. 172 and his position was 8th amongst the persons in the zone of consideration for promotion to the post of Director (G).

(Annexure-I)

It is understood that the applicant was not promoted due to downgrading of his ACRs below Benchmark during the years 97-98, 98-99 and 99-2000 presumably by Shri Krishnanunni as Reviewing officer/accepting authority and recording of adverse remarks in the ACR for 2002-03 presumably by Shri B.K. Mohanty as reporting officer.

Downgrading/adverse remarks in the ACRs were done on grudging attitude, without communicating the same to the applicant and violating all rules and instructions of Govt. of India and the settled laws and the DPC acted upon those uncommunicated downgraded/adverse ACRs. As such the actions of the Respondents and the DPC which led to the non-promotion of the applicant were malafide, arbitrary, unfair, unjust, devoid of principles of natural

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justice and contrary to all laws and procedures established by law, as described in this O.A.

Hence this Original Application before this Hon'ble Tribunal.

P R A Y E R S

Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the grade of Director (G) with effect from the date his juniors were promoted, by holding a review DPC ignoring uncommunicated down graded ACR, with all consequential service benefits including arrear etc.
2. Costs of the application.
3. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

1. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for considering the representation of the applicant for promotion.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985).

Title of the case : O. A. No. 228 /2004

Shri Subodh Kumar Pattnaik. : Applicant
- Versus -

Union of India & Others: Respondents.

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Date: 29.09.04

Filed by
Subrata Nath.
Advocate

3-
Filed by the applicant-
through: Subrata Nath
Advocate
29.09.04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O. A. No. 228 /2004

BETWEEN

Shri Subodh Kumar Pattnaik.

Son of Late Bansidhar Pattnaik.

Geologist (Sr.), MGP Division,

O/o- The Dy. Director General, NER,

Geological Survey of India,

Shillong. (Meghalaya).

...Applicant.

-AND-

1. The Union of India,
Represented by the Secretary
Ministry of Coals and Mines,
Deptt. of Mines, Govt. of India,
Shastri Bhawan.
New Delhi.
2. The Director General,
Eastern Region,
Geological Survey of India,
27, J.L.N Road,
Kolkata- 700 016.
3. The Deputy Director General,
Eastern Region,
Geological Survey of India,
KOLKATA.
4. The Deputy Director General,
Geological Survey of India,
North Eastern Region,
'ZOREM', Nongrim Hills,

Subodh Kumar Pattnaik

Shillong- 793 003.

5. The Director,
Geological Survey of India,
Operation Arunachal Pradesh,
Itanagar- 791 111.
Arunachal Pradesh.
6. The Director (SG)
Map & Cartography Division,
Operations Orissa,
Geological Survey of India,
Unit- 8, Nayapally,
Bhubaneswar.
Orissa- 751 012.
7. Shri B.K. Mohanty,
Director (SG)
Map & Cartography Division,
Operations Orissa,
Geological Survey of India,
Unit- 8, Nayapally.
Bhubaneswar.
Orissa- 751 012.
8. Dr. Vimal Kumar
Director
Geological Survey of India
North Eastern Region,
Shillong-3, Meghalaya.
9. Shri Amitava Sen,
Director, Marine Geology,
Eastern Region,
Bhu-Bijnan Bhavan,
Karunamayee,
Salt Lake City,
Kolkata- 700 091.
10. Shri Gautam Sarkar,
Director,

Subodh Kumar Pathrahy

Geological Survey of India,
N.E. Region,
Shillong-3, Meghalaya.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made

This application is made against the impugned Memorandum No. ____/A-32013/1-Dir (G)/2003-04/19A dated 13.08.2004 (Annexure-I) issued from the office of Respondent No.2 whereby 64 officers have been promoted from the post of Geologist (Sr.) to the post of Director (Geology) including some officers junior to the applicant but the applicant's name has been excluded in an arbitrary, illegal and unfair manner.

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that this application is filed within the limitation prescribed under Section-21 of the Administrative Tribunals Act, 1985.

Subodh Kumar Pathan

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant having been selected through Geologist's Examination, 1974 which is an All India Competitive examination conducted by the UPSC, was initially appointed as Geologist (Jr.) in 1976 as a direct recruitee. The post of Geologist (Jr.) is a Junior Time Scale (JTS) post of Class-I in Group-A services of the Central Government. In 1985, the applicant was promoted to the post of Geologist (Sr.). Thereafter he was transferred and posted at Itanagar (Arunachal Pradesh) in October, 1997 as Geologist (Sr.) and eventually posted at Shillong (Meghalaya) and at present he is working as Geologist (Sr.) in the office of the Deputy Director General, N.E. Region, Geological Survey of India, Shillong.

4.3 That it is stated that in Geological Survey of India, the normal promotional channel and hierarchy for Group-A posts in Geology stream are as follows:-

(i) Geologist (Jr.)- Entry point.

(ii) Geologist (Sr.)- After minimum 5 years service as Geologist (Jr.).

(iii) Director (Geology)- After minimum 5 years service as Geologist (Sr.).

Subodh Kumar Pathranik

Thereafter from the post of Director, the officers are promoted to the post of Director (SG) and upward upto the grade of Director General.

4.4 That the applicant being promoted as Geologist (Sr.) in 1985, completed his qualifying residency period of 5 years in the post of Geologist (Sr.) in 1990 and became entitled for promotion to the grade of Director way back in 1990. But due to stagnation in promotion and non-holding of DPC, the promotions from the post of Geologist (Sr.) to the post of Director were not processed for a long time and the applicant therefore has been waiting for a long time for his promotion to the grade of Director alongwith his batchmates with all legitimate expectation for promotions.

4.5 That eventually one Departmental Promotion Committee (DPC) meeting was held and following the recommendations of the DPC, as many as 64 officers in the grade of Geologist (Sr.) have been promoted to the grade of Director (Geology) vide the impugned memorandum No.____/A-32013/1-Dir (G)/2003-04/19 A dated 13.08.2004. The applicant was shocked and surprised in the said order of promotion, the reason of which is known to the authorities.

(Copy of the memorandum dated 13.08.04 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-I)

Surbodh Kumar Pathan

4.6 That it is stated that the selection for promotion from the post of Geologist (Sr.) to the grade of Director is made on the basis of merit cum seniority. It is relevant to mention here that as per the latest gradation list of Geologist (Sr.) in the Geological Survey of India as on 01.08.2000 which was published vide No. 574-5/A 21011/Geologist (Sr.)/2000/19A 05/9/2000 dated 01.08.2000, the name of the applicant appeared at Sl. No. 172 and his position was 8th amongst the candidates in the zone of consideration for promotion to the post of Director aforesaid. Surprisingly, in spite of having all eligibilities and being pretty senior in the gradation list, the applicant has not been promoted which he has been legitimately expecting for long 19 years since he was promoted as Geologist (Sr.) in 1985. It is relevant to mention here that the persons many of whom are even junior to the applicant in the gradation list have been promoted under the impugned memorandum. In the gradation list dated 01.08.2000, the name of the applicant appeared at Sl. No. 172 whereas the names of private respondents No. 8, 9 and 10 appeared at Sl. No. 174, 175 and 204 respectively but they have been promoted superseding the applicant.

(Copy of the gradation list dated 01.08.2000 is enclosed hereto for perusal of Hon'ble Tribunal as Annexure-II).

Suresh Kumar Padmanab

4.7 That it could be understood from reliable sources that the DPC did not recommended the name of the applicant in the select list since his ACR gradings were below the prescribed Benchmark and adverse remarks were recorded in the ACRs, including downgrading of ACRs. It is understood that the applicant had "Very good" gradings in all the years but his gradings were downgraded for the years 1997-98, '98-99 and 1999-2000 so as to bring him below the Benchmark. It is relevant to mention here that the Benchmark prescribed for promotion in Group 'A' post is "Very good" gradings.

4.8 That the applicant begs to submit that the downgrading of his ACRs pertains to the period when he was working at Itanagar in Arunachal Pradesh. The applicant was transferred from the office of the Geological Survey of India, Operation Orissa, Bhubaneswar and posted at Itanagar, Arunachal Pradesh vide office order No. 2557 B/101/HRD/GEOL/NER/97/20 dated 18.08.97 and was thereafter relieved from Bhubaneswar w.e.f. 30.09.1997 vide office order No. 1847/A-22013/1/Estt/OC/81 dated 30.09.1997. The applicant joined at Itanagar w.e.f. October, 1997.

(Copy of release order dated 30.09.97 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-III).

4.9 That following the receipt of transfer order dated 18.08.97, the applicant submitted a representation on 24.09.97 stating that he had been suffering from High

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Blood Pressure and as such it would be harmful for him to perform vigorous field works at high altitude in places of Arunachal Pradesh. He also stated that his wife underwent a heart surgery at CMC, Vellore in December, 1988 and was under constant medical supervision. The applicant further informed his readiness to join in N.E. Region in compliance with the order dated 18.08.97 but only made a humble prayer to change his HQ from Itanagar to Shillong in the N.E. Region so as to facilitate the treatment of his wife and of his own without mental anxieties and worries. However, the applicant complied with the order dated 18.08.97 and joined at Itanagar in October '97 with the hope that his genuine causes would be considered compassionately.

(Copy of the representation dated 24.09.97 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- IV).

4.10 That following his joining at Itanagar, the applicant was assigned the job of Field Survey Programme (FSP) and was directed to move to the fields for conducting the field works of FSP 1997-98. The applicant's health condition was such that he was unable to undertake such rigorous field works and as such he submitted another representation on 18.11.97 enclosing therewith the medical certificate dated 16.11.97 from the Sr. Cardiologist, Central Hospital Bhubaneswar who advised him to attend periodic medical check up and avoid road journeys in high altitudes and arduous field activities

Sunil Kumar Pattnaik

under extreme weather conditions and should also avoid mental excitement and tension. Thereafter he made several representations and prayers praying for assigning him some Headquarter jobs in consideration of his age and health condition. But the Dy. Director General Shri K. Krishnaunni vide his letter dated 03.12.1997 intimated the applicant that his prayer could not be acceded to and directed that if the applicant cannot take up the assignment as per the FSP, he should avail leave from the date of departure of the field party to the date of its final return.

(Copy of representation dated 18.11.97 alongwith medical certificate and letter dated 03.12.97 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- V and VI respectively).

- 4.11 That thereafter a reconstituted field party consisting of two junior persons Shri P.A.R Babu, Geologist (Sr.) and Shri Sailendra Singh, STA (Geology) was assigned to undertake the field works of FSP 97-98 and the said party left the HQ for field on 11.12.97. The applicant however continued to attend his office regularly and had been praying for assignment of some HQ jobs to him. But he was kept idle and no HQ jobs were assigned to him.

It is relevant to mention here that Shri Sailendra Singh STA (Geology) who was sent for field duty from 11.12.97 had been otherwise attending HQ jobs which could be entrusted to the applicant during that period without any difficulties but the same was not done and

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instead he was directed to take leave. Further it is evident from the Field programme 1997-98 that persons much juniors to the applicant were assigned with service items like (1) Petrological service, (2) Map compilation works etc. but the applicant was not considered for those works even inspite of his genuine problems.

(Copy of Field Survey programme, 97-98 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- VII).

4.12 That the applicant begs to state that the FSP, '97-98 was scheduled to be undertaken in the previous year i.e. '96-'97 which was not taken up in '96-'97 and was spilled over to '97-'98 and the whole burden was thrust upon him inspite of his bad health condition.

4.13 That inspite of repeated requests and prayers the case of the applicant was not considered and inspite of ample scope, the applicant was denied any HQ jobs. Eventually, the Dy. Director General, NER, Shillong Shri K. Krishnaunni (Respondent No.4) vide his letter dated 07.01.98 directed the applicant to submit by 15.01.98 his leave application for the period from 11.12.97 (i.e. the date on which the reconstituted party left for field works) and further threatened that failing submission of leave application, the period would be treated as his unauthorized absence. The applicant complied with the order and submitted leave application on 15.01.98 praying for Earned leave from

Surbodh Kumar Pattnaik

16.01.98 to the date of return of the reconstituted field party from the field although he did not have any personal ground for availing leave. It is pertinent to mention here that the applicant did not apply for leave from 11.12.97 as instructed since he had regularly attended the office from 11.12.97 to 15.01.98 and performed constructive works as reflected in his monthly diary for December '97 and as such he applied for leave from 16.01.98 only.

(Copy of letter dated 07.01.98 and application dated 15.01.98 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- VIII & IX respectively).

- 4.14 That due to his continued sufferings from his cardiological ailments and due to some orthopedic complaints which was caused due to an accident suffered by him in a field trip, he was under constant medical check up. Accordingly, the Sr. Cardiologist, Capital Hospital, Bhubaneswar after examining the applicant during the period from 28.01.98 to 19.02.98 at the Cardiological department of the Capital Hospital, Bhubaneswar issued certificate dated 19.02.98 advising the applicant to avoid arduous field activities in remote areas and to consult Cardiologist in case of any acute problem. The Sr. Cardiologist however certified that the applicant was fit to carry out usual office/Laboratory works. On 03.06.98, while attending duties in his office chamber, the applicant became unconscious all on a sudden and underwent medical check

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up. Thereafter the applicant submitted another representation dated 27.07.98 enclosing therewith the Cardiologists certificate dated 19.02.98 aforesaid and again prayed for assigning him HQ job for the field season 98-99. Subsequently he submitted another representation on 07.09.98 enclosing therewith one medical certificate of R.K. Mission Hospital, Itanagar stating his health condition and reiterated his prayer for HQ job during 98-99.

(Copy of representation dated 27.07.98 alongwith medical certificate dated 19.02.98 and representation dated 07.09.98 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- X and XI respectively).

- 4.15 That thereafter the applicant was assigned HQ jobs in place of field duty vide office order No.____/29/00/APC/08 dated 07.10.98 for 1998-99. He was also allowed to attend official works after March'98 in consideration of his series of representations submitted earlier.

(Copy of office order dated 07.10.98 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XII).

- ✓ 4.16 That the applicant most respectfully begs to state that he had served at Itanagar from October '97 to the end of October '99 prior to his transfer to Shillong. During that period Shri K. Krishnaunni, Dy. Director General, NER (Respondent No.4) was the reviewing officer in respect of the ACRs of the applicant.

Sri B. K. Kumar P. B. B. B.

Eventually Shri K. Krishnaunni became Sr. Deputy Director General, NER from March '98 and thereafter he became the Sr. Dy. Director General, Calcutta and finally became the Director General at Calcutta. As Sr. DDG, NER, Shri Krishnaunni became the accepting authority for the ACRs of the applicant. It is apprehended that in the capacity of the accepting authority, Shri K. Krishnaunni downgraded the ACRs of the applicant for the year 1997-98, 98-99 and 99-2000 and brought him below the Benchmark. Understandably, he did so due to his personal grudge on the applicant which he might have nurtured due to the events stated in the preceeding paragraphs.

- 4.17 That the applicant begs to state that as understood, he was awaited the gradings "Very good" in 1996-97, 97-98, 98-99, 99-2000 and 2001-02, but his ACR was downgraded during the years 97-98, 98-99 and 99-2000 bringing him below the Benchmark which led to his non-promotion to the grade of Director in 2004 whereas his juniors were promoted.
- 4.18 That the applicant begs to submit that at no point of time he was informed of any lapses/shortcomings on his part nor any notice, note of caution or warning was issued to him asking him to make up his lapses ever. Even the downgrading of ACRs which amount to adverse remark for the purpose of promotion were not communicated to him ever which is warranted under law. The only communication which the applicant received was

Subodh Kumar Pattanayak

pertaining to his ACR for the year 2002-03 wherein some adverse remarks were recorded.

- 4.19 That with regard to the ACR for 2002-03, the applicant was informed vide confidential letter No. 142/8(2)/DG dated 17.02.2004 that some adverse remarks were recorded under different parameters in his ACR for 2002-03 and quoting the remarks in that letter the applicant was directed to submit his submission on those remarks, if any. The applicant submitted his representation on 19.02.2004 rebutting the remarks. After going through his representation dated 19.02.04, the Respondent No. 2 was kind enough to appreciate the facts and eventually those adverse remarks were expunged by the Respondent No.2 which was intimated to the applicant vide confidential letter No. 178/8(2)/DG dated 01.06.2004.

(Copy of letter dated 17.02.04, representation dated 19.02.04 and letter dated 01.06.04 are enclosed hereto for perusal of Hon'ble Tribunal as Annexures- XIII, XIV and XV respectively).

- 4.20 That the applicant begs to submit that the adverse remarks in the ACR for 2002-03 was also made on some extraneous considerations. During that period Shri B.K. Mohanty, Director (SG), Map and Cartography Division was the Reporting officer for the ACR of the applicant. Shri Mohanty on one occasion, vide his confidential letter No. 1809/ER/ORS/M&C/2003 dated 26.09.03 alleged that the applicant did not submit the final maps for

Surbodh Kumar Pattnaik

the field seasons 2001-02 and 2002-03 and in that letter he threatened the applicant that if the applicant would not send all the Geological maps by 30th September' 2003, his performance would be treated as below Benchmark level i.e. below "Very good". It is relevant to mention here that the denying in compiling the maps as alleged by Shri Mohanty was due to non-availability of the "Unified Legend" from the office of Shri Mohanty in time which the applicant received on 03.09.2003 only. As such the delay was not attributable to the applicant which the applicant informed to Shri Mohanty vide his confidential letter dated 29.09.2003. However, the applicant complied with the instructions and sent all the complied maps vide his letter dated 21.10.2003 and letter dated 30.03.2004. The applicant however smelt that adverse remarks might be recorded by Shri Mohanty in his (applicant's) ACR for 2002-03, as threatened in his letter dated 26.09.03. Thereafter Shri Mohanty vide his Circular No. 1947/GSI/OPD/CT/MISC. dated 14.10.03 invited options which was required for granting permission to one Sambad T.V for providing cable connection in the Geo-Survey Enclave for their sky-view. The applicant expressed that private channel cannot be promoted by Govt. circular. At this Shri Mohanty got annoyed with the applicant for the reasons best known to him and presumably he nurtured a personal grudge on the applicant.

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(Copy of letter dated 26.09.03 and Circular dated 14.10.03 are annexed hereto for perusal of Hon'ble Tribunal as Annexures- XVI and XVII respectively).

4.21 That it is apprehended that while writing ACR of the applicant for the year 2002-03, Shri Mohanty as a Reporting Officer, acted malafide on grudging attitude for the reasons stated above and recorded adverse remarks in the ACR with a pre-set mind which however, was expunged eventually by the Director General. It is relevant to mention here that the same reporting officer Shri Mohanty had written the ACRs of the applicant during the years 99-2000, 2000-01 and 2001-02 also wherein the applicant is understood to have been graded as "Very good" which was downgraded thereafter in an illegal manner as described in preceeding paragraphs. Further, it is worth mentioning that during the same year i.e. 2002-03 the Respondent No.3 nominated the name of the applicant vide his letter dated 24.12.2002 for the prestigious "National Mineral Award- 2002", the highest award in the line given by the Ministry of Mines, Govt. of India. In his recommendations, the Respondent No.3 highlighted the landmark achievements of the applicant but it is a paradox that the Reporting officer Shri Mohanty acting on extraneous considerations and malafide intentions recorded adverse remarks in the ACR of the applicant for the said year.

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(Copy of letter dated 24.12.2002 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XVIII).

4.22 That the applicant most humbly begs to submit that the downgrading of ACRs below Benchmark which eventually led to the exclusion of the applicant from the select list for promotion, was not communicated to the applicant ever and the entire exercise was done at the back of the applicant in a clandestine manner. The DPC also acted upon the uncommunicated downgraded ACRs and as such the actions of the Respondents as well as the DPC were arbitrary, illegal, unfair and contrary to law.

4.23 That it is settled position of law that;

- (i) Grading below Benchmark has to be treated as adverse and must be communicated within one month.
- (ii) Any downgrading from Benchmark has to be communicated.
- (iii) Uncommunicated adverse/downgraded ACRs have to be ignored and cannot be acted upon.

The Hon'ble Supreme Court in the case of U.P. Jal Nigam and Others -Vs- Prabhat Chandra Jain and Others (1996(33) ATC-217) made the following observations-

- (a) Where a reportee's performance has been judged to be at one particular level in a given year and this is subsequently downgraded in a succeeding year without the reportee's knowledge and without being communicated to him, it would certainly be adverse

Subodh Kumar Pathak

and effect him at one or the other stage of his career.

- (b) Where the downgraded entry of the succeeding year in the above mentioned case is not considered adverse in itself, (e.g. if the rating is downgraded from "very good" to "good"), the reporting authority in such a situation is required to record reasons for such downgrading in the personnel file of the officer concerned and inform him of the change in the form of an advice.
- (c) Even a positive confidential entry can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true.

Pursuant to the judgment in Jal Nigam case, the respondent department evolved some guidelines for communication of entries made in the CR and communicated those guidelines vide its Circular No. DDG (p)/GSI/Cinf/04 dated 26.02.2004 which are as follows:-

- (i) Where the overall performance rating is lower than that awarded in the preceding year, this should be treated as adverse and communicated to the Reportee.
- (ii) Where the overall performance rating awarded to the reportee falls below the benchmark prescribed for the purpose of his next promotion, this should be treated as an adverse remark/rating and communicated to the reportee.

Surbodh Kumar Mishra

(iii) The communications as above should be affected within one month of the remark/rating being recorded.

While evolving the above guidelines, the Respondent department also took note of the instructions of the DOPT, Govt. of India, notified from time to time, which have been mentioned in the aforesaid Circular dated 26.02.2004.

Surprisingly, the respondents while denying promotion to the applicant in the instant case, not only ignored the ratio of the Hon'ble Supreme Court's decision in the Jal Nigam case but even acted contrary to their own circular dated 26.02.2004 which is malafide, unfair, arbitrary and bad in law.

(Copy of the Circular dated 26.02.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- XIX).

4.24 That the Hon'ble Gauhati High Court (Division Bench, Imphal), while passing its judgment dated 30.05.2003 in WA. No 147 of 2000 in WP (c) No. 548 of 2000 (Heman Bihari Singh Vs State of Manipur and Others) also discussed the Apex Court's judgment in Jal Nigam case alongwith some other judgments relating to entries in ACRs and held that "downgrading of remarks in the ACR when unfair and unjust, it vitiates the selection process".

(Copy of the Judgment dated 30.05.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XX).

Surbodh Kumar Pattanayak

4.25 That the above principles of law have persistently been held in a catena of judgments and the law is therefore settled in the matter.

In Binoy Gupta (Dr.)-Vs- U.O.I and others (ATJ-2002 (3), the Hon'ble Bombay High Court held that non-communication of downgrading in ACR vitiates the DPC proceedings and directed the respondents to convene a review DPC for reconsideration of applicant's case by ignoring the ACRs of the reviewing officer for the year 1995-96, 96-97 and 98-99 and promote him if found suitable.

This matter was also dealt in at length in Subbithi Dhanapathi Rao -Vs- the Director, Intelligence Bureau, New Delhi and another by the Hyderabad Bench of this Tribunal in O.A. No. 297/2003 decided on 24.12.2003 whereby it was held that "An uncommunicated adverse remark/comment in the ACR of an employee cannot be acted upon to deny him promotional opportunities" (copy of judgment annexed).

The principles of law laid down in the abovementioned cases have settled the law in the instant issue beyond any doubt and there are many other pronouncements which held the similar view in case of downgraded/adverse ACRs. But the respondents flouted the laws laid down on the subject with impugntiy and denied promotion to the applicant to the post of Director (Geology).

(Copy of judgment dated 27.08.02 and judgment dated 24.12.2003 are annexed hereto for perusal of

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Hon'ble Tribunal as Annexures-XXI and XXII respectively).

- 4.26 That the Govt. of India has granted some incentives for Central Govt. employees for serving in remote areas in which it has been provided interalia that on satisfactory performance of duties for the prescribed tenure in the North East shall be given due weightage and recognition in the case of eligible officers in the matter of promotion, training abroad etc. which has been published in Swamy's Compilation of FRSR (page-540). It has further been provided that specific entry shall be made in the CR of the employees who rendered a full tenure of service in the North Eastern Region to that effect.

It is relevant to mention here that the respondents have exhibited their wanton disregard to this policy also professed by the Govt. in the instant case, by not granting such special weightage and recognition in the matter of promotion to the applicant.

(Copy of relevant pages of Swamy's Compilation is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XXIII).

- 4.27 That due to exclusion of the applicants name from the select list by the DPC held in 2004 in an illegal and arbitrary manner and eventual denial of his promotion to the grade of Director (Geology) by the impugned order of promotion dated 13.08.2004, the applicant has been superseded by many of his juniors whose names appeared at Sl. No. 173 to 243 in the Gradation list dated 01.08.2000(Annexure-II) as against the name of

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the applicant at Sl.No. 172, which is discriminatory and against Article No. 14 and 16 of the Constitution of India.

- 4.28 That the applicant most respectfully beg to state that due to his non-promotion to the post of Director, the applicant has been suffering great financial loss and will continue to suffer such losses for his life time in terms of his service prospects. As such finding no other alternative, the applicant is approaching this Hon'ble Tribunal praying for justice and it is a fit case for the Hon'ble Tribunal to interfere with, directing the respondents to promote the applicant to the grade of Director w.e.f the date, his juniors were promoted, with all consequential benefits including arrears etc.
- 4.29 That soon after the receipt of the impugned promotion order dated 13.08.2004, the applicant submitted representation against non-conclusion of his name in the list of promotion and prayed for consideration of his promotion to the post of Director (G), but to no result. However under service law there is no provision for any appeal against the impugned order of promotion dated 13.08.2004.
- 4.30 That this application is made bonafide and for the cause of justice.
5. Grounds for relief(s) with legal provisions.

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- 5.1 For that, due to the above reasons stated in details, the action of the respondents is in prima facie illegal, malafide, arbitrary, unfair and without jurisdiction.
- 5.2 For that, the respondents acted in violation of the provisions of existing service rules and the guidelines/instructions of the DOPT, Govt. of India and even their own circular.
- 5.3 For that, the respondents downgraded the ACR gradings below the bench mark of the applicant without recording any reason therefore and did not communicate the downgrading which is amount to adverse remarks to the applicant as warranted under law.
- 5.4 For that, the DPC acted upon the uncommunicated down graded ACRs of the applicant and denied promotion to him which is contrary to the settled position of law.
- 5.5 For that, the applicant is entitled to get special weightage and incentives in matters of promotion for serving in N.E.region as per the professed policy of the Govt. which was ignored in case of the applicant.
- 5.6 For that, the respondents/DPC acting malafide and in an illegal, arbitrary and unfair manner promoted to juniors to the applicant superseding the applicant which is violative of principles of natural justice, Articles 14,16 and 21 of the Constitution of India and procedures established by law and hence not sustainable in law.

Suresh Kumar Pathan

5.7 For that, the applicant demanded justice but he has been denied.

5.8 For that, the applicant has served for a long period of about 28 years out of which about 19 years in the feeder cadre of Geologist (Sr.) and as such he is a legitimate expectant for the post of Director.

5.9 For that, the applicant has unblemished service career and his name was even nominated for National Mineral Award for 2002 i.e. the highest award in Geology given by the Ministry of Mines, Govt. of India.

6. Details of remedies exhausted.

That the applicant states that since a final order has been passed promoting the juniors of the applicant in supersession of the claim of the applicant, there is no specific provision under the service rule for any statutory appeal. However he has submitted a representation to the authority but to no result and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to

Subodh Kumar Pathraiy

why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the grade of Director (G) with effect from the date his juniors were promoted, by holding a review DPC ignoring uncommunicated down graded ACR, with all consequential service benefits including arrear etc.

8.2 Costs of the application.

8.3 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for considering the representation of the applicant for promotion.

10.
This application is filed through Advocates.

11. Particulars of the I.P.O.

i)	I. P. O. No.	:	209114127
ii)	Date of Issue	:	16.9.04.
iii)	Issued from	:	GPO. Guwahati
iv)	Payable at	:	GPO. Guwahati

12. List of enclosures.
As given in the index.

Subodh Kumar Talwar

VERIFICATION

I, Shri Subodh Kumar Patnaik, S/o Late Bansidhar Pattnaik, aged about 56 years, working as Geologist (Sr), MGP Division, office of the Director General, NER, Geological Survey of India, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26th day of September, 2004.

Subodh Kumar Pattnaik



GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
15A & B, KYD STREET
KOLKATA - 700 010.

TAX/SPEED POST

No. /A-32013/1-Dir(G)/2003-04/19A

Dated: 13th Aug. 2004

// M E M O R A N D U M //

On the basis of recommendations of the Departmental Promotion Committee, the President is pleased to approve appointment of the following Geologist(Sr.) on promotion to the post Director(Geology) in the scale of pay of Rs. 12,000-375-16,500/- in Geological Survey of India on regular basis with effect from date of their taking over charge and until further orders :-

SL.NO.	Name of officer	Present place of posting	Posting on promotion
1.	2.	3.	4.
01.	DR. YASH PAL SHARDA	GSI, N. DELHI	GSI, NEW DELHI
02.	SHRI SAROJ KUMAR BARIJA	CW, KOLKATA	CW, KOLKATA
03.	SHRI D.N. BANDOPADHYAY	CW, KOLKATA	CR, NAGPUR
04.	SHRI AJAZ AKHTAR	SR, HYDERABAD	CR, NAGPUR
05.	SHRI SATYENDRA KR. AWASTHI	NR, LUCKNOW	NR, LUCKNOW
06.	DR. UTPAL CHAKRABORTY	CR, NAGPUR	CR, NAGPUR
07.	SMT KALPANA SEN GUPTA	ER, KOLKATA	CR, NAGPUR
08.	DR. VIMAL KUMAR	NER, SHILLONG	NER, SHILLONG
09.	SHRI AMITAVA SEN	MW, KOLKATA	MW, KOLKATA
10.	SHRI M.K. WANCHOO	CR, PUNE	CR, PUNE
11.	SHRI Z.G. GHEVARIYA	WR, GANDHINAGAR	WR, GANDHINAGAR
12.	SHRI PRADIPENDRA MOHAN DUTTA	CHQ, KOLKATA (PAL-1)	WR, JAIPUR
13.	DR. UDAY P. GUPTA	NR, DEHRADUN	NR, DEHRADUN
14.	SHRI ASMATULLAH KHAN	NR, LUCKNOW	WR, JAIPUR
15.	SHRI VED PRAKASH LAUL	WR, JAIPUR	WR, JAIPUR
16.	SHRI PARSWANATH CHAKRABORTY	CHQ, KOLKATA	ER, KOLKATA
17.	SHRI GURU CHARAN DAS	ER, BHUBANESWAR	ER, BHUBANESWAR
18.	DR. K. SIVAJI	SR, HYDERABAD	CR, NAGPUR
19.	SHRI KRISHNAN NAIR K.	SR, THIRUVANANTHAPURAM	SR, HYDERABAD
20.	SHRI SUNIL KUMAR DAS	CHQ, KOLKATA (ID)	ID, CHQ, KOLKATA
21.	DR. SUDIPTA NEOGI	CHQ, KOLKATA (MID)	AMSE, BANGALORE
22.	SHRI ASITAVA DUTTA	CW, KOLKATA	CW, KOLKATA
23.	SHRI JIBITESH BHATTACHARYA	MW, KOLKATA	MW, KOLKATA
24.	SHRI PRAKASH KUMAR CHOWRASIA	WR, GANDHINAGAR	CR, BHOPAL
25.	SHRI PRADIP DE	CHQ, KOLKATA (Pub.)	ER, KOLKATA
26.	SHRI D.R. KAMESWAR	SR, HYDERABAD	SR, HYDERABAD
27.	SHRI N. SREEPADA RAO	MW, MANGALORE	MW, MANGALORE
28.	SHRI I. KALIMUDDIN KHAN	SR, CHENNAI	SR, THIRUVANANTHAPURAM
29.	SHRI DHRUBA JYOTI DASGUPTA	WR, JAIPUR	CR, BHOPAL
30.	SHRI B. K. BISARIA	NR, LUCKNOW	NR, LUCKNOW
31.	DR. TARAKESHWAR PRASAD UPADHYAY	NR, LUCKNOW	NR, CHANDIGARH

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for
Advocate

Contd.....p/2

✓ 32.	SHRI GAJENDRA KR. PANCHOLI	WR, JAIPUR	NER, ITANAGAR
33.	SHRI PRAKASH CHANDRA	NR, LUCKNOW	WR, JAIPUR
✓ 34.	SHRI GAUTAM SARKAR	NER, SHILLONG	NER, SHILLONG
35.	SHRI P.V. SETHA RAO	MW, VISAKHAPATNAM	SR, HYDERABAD
✓ 36.	SHRI SURESH CHAND MEHROTRA	NR, LUCKNOW	NER, SHILLONG
37.	SHRI P. KUMARAGURU	CW, KOLKATA	CW, KOLKATA
✓ 38.	SHRI YOGESH CHANDRA JOSHI	NR, LUCKNOW	NER, SHILLONG
39.	SHRI SUTANU SARKAR	ER, KOLKATA	CR, NAGPUR
40.	SHRI UDAY NATH SATPATHI	ER, BHUBANESWAR.	ER, BHUBANESWAR
41.	SHRI ANIL MEHROTRA	NR, LUCKNOW	NR, LUCKNOW
42.	SHRI HARSH GUPTA	NR, LUCKNOW	NR, LUCKNOW
43.	SHRI DEEPAK KR. MEHROTRA	NR, LUCKNOW	NR, LUCKNOW
✓ 44.	SHRI SURESH SRIVASTAVA	WR, JAIPUR	NER, GUWAHATI
45.	SHRI K. JAGANNADHA SARMA	SR, HYDERABAD	CW, KOLKATA
✓ 46.	SHRI V.T. MUTHU	SR, CHENNAI	NER, GUWAHATI
47.	DR. PRATAP CHANDRA BASU	CHQ, KOLKATA (Monitoring)	MW, KOLKATA
48.	SHRI SHARADINDU MUKHERJEE	NR, LUCKNOW	NR, LUCKNOW
49.	SHRI RABINDRA NATH GHOSH	CHQ, KOLKATA (Monitoring)	ER, KOLKATA
50.	SHRI KAMALESH K. AGARWAL	WR, JAIPUR	WR, JAIPUR
✓ 51.	SHRI PRAKASH K. SWAIN	NER, ITANAGAR	NER, ITANAGAR.
52.	SHRI RAJENDRA DUBEY	CR, NAGPUR	ER, PATNA
53.	SHRI SUBHASH KR. VERMA	ER, PATNA	CR, NAGPUR
54.	SHRI V. RANGAMANNAR	SR, CHENNAI	SR, CHENNAI
✓ 55.	DR. VIJAY P. MISHRA	NER, SHILLONG	NER, SHILLONG
56.	DR. (SMT.) BANANI BARDHAN	CW, KOLKATA	SR, BANGALORE
57.	SMT. LAKSHMI GHOSH	CHQ, KOLKATA (ID)	CW, KOLKATA
58.	DR. ANIL KUMAR MATHUR	NR, LUCKNOW	NR, LUCKNOW
59.	SHRI SISIR CHANDRA RATH	ER, BHUBANESWAR	CW, KOLKATA
60.	SHRI BAQUIR ZAHIEER	MW, MANGALORE	AMSE, BANGALORE
61.	SHRI DINKAR SRIVASTAVA	NR, LUCKNOW	WR, JAIPUR
62.	SHRI KHIROD PARIDA	ER, BHUBANESWAR	CR, RAIPUR
63.	SHRI KUMUD SHARMA	NR, LUCKNOW	WR, JAIPUR
✓ 64.	SHRI B.K. HORE	CHQ, KOLKATA (Pub)	NER, SHILLONG

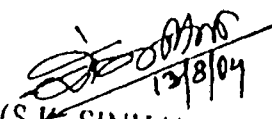
The appointment of above mentioned officers from Sl. NO. 1 to 64 to the post of Director(Geology) in Geological Survey of India will be subject to the following conditions :-

1. Their pay in the scale of Rs.12,000-375-16,500/- will be fixed according to rules. However, they may exercise option in terms of FR-22(1)(a)(i) within 1 month from the date of taking over charge on promotion.
2. Their appointment will take effect from the date of their assumption of charge to the post of Director(Geology) in Geological Survey of India after communication of this order.
3. Their continuance in the grade will be considered in accordance to the instructions issued by the Government of India from time to time.
4. Their seniority in the promotional grade will be in the order indicated above.

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If they are willing to accept the offer of promotion on the above terms and conditions, they may take charge of the post of Director(Geology) at their respective place of posting on promotion mentioned against each as above within one month from the date of issue of this memorandum failing which the above offer may be treated as cancelled without further intimation. Two copies of the charge reports, one each for making over of the charge of the Geologist(Sr.) and for taking over charge as Director(Geology) may be forwarded to this office through proper channel for issuance of notification.

To
All Officers concerned (by name) from
Sl. No. 1 - 64 mentioned above.


(S.K. SINHA)
Sr. Administrative Officer
for Director General
Geological Survey of India

No. _____/A-32013/1-Dir(G)/2003-04/19A

Dated : 13th Aug.'2004

Copy forwarded for information and necessary action to :-


1. The Secretary to the Government of India, Ministry of Coal & Mines, Department of Mines, Shastri Bhawan, New Delhi-110001 (Attn. Shri Vinod Kumar, Director, DOM) with reference to Ministry's Letter No. 1/7/2004-M.II dated 13.8.2004
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi (Attn. Shri P.R. Dhiman, Under Secretary) with reference to their Letter No. 7/63(8)/2004-A.P.3 dated 12.8.2004
3. The Dy. Director General, GSI, E.R./ Coal Wing/Marine Wing/N.R./W.R./C.R./T.I./A.M.S.E./ S.R./N.E.R., Kolkata/Lucknow/Jaipur/Nagpur/Hyderabad/Bangalore/Shillong.
4. The Dy. Director General (Personnel)/(Finance)/(CGD)/(Geophy. Instn.)/(ME)/(Drilling)/(Map & Publication)/(PPM)/MP/IT, G.S.I., C.H.Q., Kolkata.
5. The Chief Vigilance officer, G.S.I., C.H.Q., Kolkata.
6. The Dy. Director General/Director-in-Charge,
Opn. : WB-S-AN, G.S.I., E.R., Karunamoyee Building, Salt Lake, Kolkata/Opn. : Orissa Unit No.VIII. Nuapalli, Bhubaneswar-751012/Opn. Bihar, Kankerbagh, Patna-800020/Opn. East Coast-I, G.S.I., Marine Wing, Karunamoyee, Salt Lake, Kolkata/Opn. East Coast-II, 90, Kirlampudi Layout, Vishakapatnam-530023, Andhra Pradesh/Opn. West Coast-I, P.V.K. Bandarkar's Complex, Mangalore-575003/ Opn. West Coast-II, Kukul Building, Edapalli, Cochin-682024/Opn. Arunachal Pradesh "GANGA", Itanagar-791111/Assam Project, N.E.R. Guwahati/Tripura Project, N.E.R., Agartala./Opn. PH&HP, NHSP, N.I.T., Faridabad-121001/Opn. PH&HP, N.R., Chandigarh/Opn. U.P. & Uttaranchal, Lucknow/Opn. J&K, 2-3C/C, Gandhinagar, Jammu-180004/Opn. Gujarat, G.S.I. Complex, Sector-10A, Gandhinagar/Opn. M.P., E/5, ARERA COLONY, Bhopal-462016/Opn. Maharashtra, G.S.I. Complex, Alandi Road, Pune-411006/Opn. T.N.K & Pondicherry, CGO Complex: A-2-B Wing, Rajati Bhavan, Besant Nagar, Madras-600090/Opn.: Karnataka & Goa, G.S.I. Complex, Kumaraswamy Layout, Bangalore-560082/Opn. Kerala, T.C.-24/338, Model, School Road, East

Contd....p/4

Thampanur, Thiruvananthapuram - 695 014/AMSE Wing, GSI, EZ, Opn. Road No.2, Ashok Nagar, Ranchi-834 002/AMSE Wing, SZ, GSI Complex, Bandalaguda, Hyderabad-68/AMSE Wing, CR, C-Block, II Floor, Seminary Hills, Nagpur-440006/AMSE Wing, WZ, Jhalana Dungri Complex, G-Block, Jaipur-302004/N.E.R. Zone, AMSE, Shillong.

7. The Director-in-Charge(IR&HR)/(CGL), G.S.I., C.H.Q., Kolkata.
8. The Director (Liaison Office), G.S.I., Madangir Road, New Delhi.
9. The Director (HRD)/(Personnel)/(Administration)/(Finance)/ T.S. to Director General, G.S.I., C.H.Q., Kolkata.
10. The Sr. Administrative Officer,(SKS)/ (IRRK) / (PRG) CH.Q., G.S.I., C.H.Q., Kolkata.
11. Sr. P.S. to Director General, GSI, CHQ, Kolkata.
12. The Administrative Officer Grade I/Gr.II, A/C-I, GSI, CHQ, Kolkata.
13. Guard File, Section-19A, G.S.I., C.H.Q., Kolkata.

True copy
for
Advocate


(S.K. SINHA)
Sr. Administrative Officer
for Director General
Geological Survey of India

No. 574-5 / A21011/Geologist (Sr)/2000 /19A- 05/9/2000 Dt

Sub:- Provisional gradation list of officers in the grade Geologist (Sr), Geological Survey of India as on 1.8.2000.

Copy of Provisional gradation list of Geologist (Sr) on 1.8.2000 is sent herewith with the request to circulate the same to the concerned officers under your control for their information. Comments if any, of the concerned officers as to the correctness of the entries and the entry position, may be forwarded with necessary comments of the forwarding authority so as to reach this office within 30 days from the date of issue of this letter. If nothing is heard within the above stipulated time, it will be presumed that the particulars on the list are in order and the same will be finalised. A confirmation to the effect that the above mentioned gradation list has been circulated amongst the officers under your control may be sent to this office for record.

for Director General
Geological Survey of India

Forwarded to :

1. The Sr. Dy. Director General, Opn I/II/III, Calcutta/Lucknow/Hyderabad.
2. The Dy. Director General, Opn. II/III/IV, GSI, Calcutta.
3. The Dy. Director General, ER/Coal Wing/Min. Wing/WR/CR/NER/Training Instt./AMSE Wing, Calcutta/Jaipur/Nagpur/Shillong/Hyderabad/Bangalore.
4. The Dy. Director General/Director-in-Charge, GSI, Opn. W.B. & Sikkim/Bihar/Orissa/Calcutta/Delhi/Bhubneshwar/S.R./Opn. A.P./T.N./Karnataka/Kerala/Hyderabad/Chennai/Bangalore/Thiruvananthapuram/Opn. Chandigarh, Faridabad, Jammu & Kashmir.
5. The Director, Map & Cartography/ Pub. Div./ Geochronology & Isotope Divn./ Petrology Divn./ Divn./H.R.D., GSI, CHQ-Calcutta.
6. The Director, Board of Management, GSI, New Delhi.
7. The Director-in-Charge, Liaison Office, GSI, New Delhi.
8. The Director, Bhutan Unit, GSI, Samtse Bhutan.
9. The Director, Cadre Management Cell, GSI, New Delhi.

Ho. (1) Please make a copy for the Library.

(2) A certificate may be issued to concerned officers to go through the "provisional gradation list" and give their comments, if any.

True copy.
Advocate.

SL NO OFFICER

a) DATE OF BIRTH
b) EDUCATIONAL QUALIFICATIONa) DT. OF CONTINUOUS GOVT. SERV. WITH DESIGN.
b) DT. OF JOINING GSI AND DESIGN.a) DETAILS OF SERV. IN GSI WITH DATE AND DESIGN
b) DATE OF APPTT TO PRESENT GRADEa) DETAILS OF PERMANENT/ O PERMANENT POST HELD IN GSI (b)
IF PERM (P)/ O PERM (OP)/ TEMP. (T)a) MODE OF RECTMNT.
b) MINISTRY LETTER NO. AND DATE FOR APPOINTMENT.

168 Shri Salyendra Kumar Awasthi	a) 15/10/47 b) M.Sc. (Geology)	a) 15/07/74 Asst. Geol. b) 15/07/74 Asst. Geol.	a) STA: AG: 15/07/74 GJR 20/07/78 b) 30/03/85	a) Asst. Geol. NO 01/04/88 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
170 Dr. Utpal Chakraborty	a) 10/10/50 b) M.Sc. (Geology). Ph.D	a) 01/09/75 Geol. (Jr.) b) 01/09/75 Geol. (Jr.)	a) STA: AG: 01/09/75 GJR 30/03/85 b)	a) Geol. (Jr) NO 01/09/78 b) Q	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
171 Smt. Kaipana Sen Gupta	a) 24/09/48 b) M.Sc. (Geology)	a) 29/11/73 Asst. Geol. b) 29/11/73 Asst. Geol.	a) STA: AG: 29/11/73 GJR 19/07/78 b) 30/03/85	a) Asst. Geol. NO 01/04/88 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
172 Shri Subodh Kumar Pattnaik	a) 03/04/49 b) M.Sc. (Geology)	a) 25/02/75 Geol. (Jr.) b) 25/02/75 Geol. (Jr.)	a) STA: AG: 25/02/75 GJR 25/02/75 b) 29/03/85	a) Geol. (Jr) NO 02/02/79 b) Q	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
173 Shri P.M. Jalote	a) 15/02/42 b) M.Tech. (Geology)	a) 09/12/68 STA (Geol.) b) 09/12/68 STA (Geol.)	a) STA: AG: 21/09/72 GJR 22/09/78 b) 30/03/85	a) STA (Geol) NO 17/05/75 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
174 Shri Vimal Kumar	a) 21/11/43 b) M.Sc. (Geology)	a) 17/10/75 Geol. (Jr.) b) 17/10/75 Geol. (Jr.)	a) STA: AG: 17/10/75 GJR 20/03/85 b)	a) Geol. (Jr) NO 17/10/78 b) Q	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
175 Shri Amitava Sen	a) 21/01/47 b) M.Sc. (Geology)	a) 07/05/71 STA (Geol.) b) 07/05/71 STA (Geol.)	a) STA: AG: 22/11/73 GJR 25/07/78 b) 02/04/85	a) Asst. Geol. NO 01/04/88 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
176 Shri M.K. Vanchoo	a) 05/04/45 b) M.Sc. (Geology)	a) 11/12/68 STA (Geol.) b) 11/12/68 STA (Geol.)	a) STA: AG: 31/10/72 GJR 02/10/78 b) 01/04/85	a) STA (Geol) NO 17/05/75 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
177 Sh. Z. G. Chavanya	a) 12/09/50 b) M.Sc. (Geology)	a) 15/02/75 Geol. (Jr.) b) 15/02/75 Geol. (Jr.)	a) STA: AG: 15/02/75 GJR 30/03/85 b)	a) NO b) T	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
178 Shri Pradyumnendra Mohan Datta	a) 01/01/49 b) M.Sc. (Geology)	a) 22/12/72 STA (Geol.) b) 22/12/72 STA (Geol.)	a) STA: AG: 20/03/74 GJR 11/09/78 b) 30/03/85	a) Asst. Geol. NO 01/04/88 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
179 Dr. Uday P. Gupta	a) 01/01/50 b) M.Sc. (Geology)	a) 25/05/75 Asst. Geol. b) 25/05/75 Asst. Geol.	a) STA: AG: 25/05/75 GJR 22/07/78 b) 30/03/85	a) Asst. Geol. NO 01/04/88 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
180 Shri Asmatullah Khan	a) 13/08/50 b) M.Sc. (Geology)	a) 28/01/75 Geol. (Jr.) b) 28/01/75 Geol. (Jr.)	a) STA: AG: 28/01/75 GJR 30/03/85 b)	a) Geol. (Jr) NO 28/01/79 b) Q	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99
181 Shri G. Rama Mohan Rao	a) 23/04/41 b) M.Sc. (Geology)	a) 09/12/68 STA (Geol.) b) 09/12/68 STA (Geol.)	a) STA: AG: 15/05/72 GJR 07/09/78 b) 30/03/85	a) STA (Geol) NO 17/05/75 b) P	a) Promotee b) 1/2/99-M.II (SM) (5), dt. 10.09.99

SL NO	NAME OF OFFICER	a) DATE OF BIRTH b) EDUCATIONAL QUALIFICATION	a) DT OF CONTINUOUS GOVT SERV. WITH DESIGN. b) DT OF JOINING GSI AND DESIGN.	a) DETAILS OF SERV. IN GSI WITH DATE AND DESIGN. b) DATE OF APPTT. TO PRESENT GRADE.	a) DETAILS OF PERMANENT/ O PERMANENT POST HELD IN GSI b) IF PERM (PY) O.PERM (OPY) TEMP.(T)	SC/ ST	a) MODE OF RECTMNT. b) MINISRTY LETTER NO. AND DATE FOR APPOINTMENT.
195	Shri N.Sreepada Rao	a) 15/02/45 b) M.Sc (Geology)	a) 19/01/74 Asstl. Geol. b) 19/01/74 Asstl. Geol.	a) STA: AG: 19/01/74 GJR 11/08/75 b) 30/03/85	a) Geol (Jr) 11/08/78 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
196	Dr. T. Ajit Kumar Reddy	a) 11/02/42 b) M.Sc (Geology). Ph.D	a) 12/02/70 STA (Geol) b) 12/02/70 STA(Geol)	a) STA: 12/02/70 AG: 16/07/73 GJR 21/07/78 b) 30/03/85	a) STA (Geol) 12/02/73 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
197	Shri I.Khairuddin Khan	a) 02/04/52 b) M.Sc (Geology)	a) 18/02/76 Geol (Jr) b) 18/02/76 Geol. (Jr)	a) STA: AG: 18/02/76 GJR 20/03/85 b)	a) Geol (Jr) 18/02/79 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
198	Shri Dhruba Jyoti Dasgupta	a) 21/12/47 b) M.Sc (Geology)	a) 15/07/74 Asstl. Geol. b) 15/07/74 Asstl. Geol.	a) STA: AG: 15/07/74 GJR 20/07/78 b) 30/03/85	a) Asstl. Geol. 01/04/88 b) P	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
199	Shri Brijendra Kumar Bisaria	a) 01/02/50 b) M.Sc. (Geology)	a) 30/04/76 Geol. (Jr) b) 30/04/76 Geol. (Jr)	a) STA: AG: 30/04/76 GJR 04/04/85 b)	a) Geol (Jr) 30/04/79 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
200	Dr Tarakeshwar Prasad Upadhyay	a) 01/01/43 b) M.Sc. (Geology). Ph.D	a) 09/12/74 Asstl. Geol. b) 09/12/74 Asstl. Geol	a) STA: AG: 09/12/74 GJR 21/07/78 b) 30/03/85	a) Asstl. Geol. 01/04/88 b) P	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
201	Shri Gajendra Kumar Pancholi	a) 30/07/50 b) M.Tech (Geology)	a) 14/01/76 Geol. (Jr) b) 14/01/76 Geol. (Jr)	a) STA: AG: 14/01/76 GJR 30/03/85 b)	a) T	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
202	Dr. P. Yadagiri	a) 22/02/43 b) M.Sc (Geology). Ph.D	a) 12/02/70 STA (Geol) b) 12/02/70 STA(Geol)	a) STA: 12/02/70 AG: 18/07/73 GJR 21/07/73 b) 31/03/85	a) STA (Geol) 12/02/73 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
203	Shri Prakash Chandra	a) 01/01/47 b) M.Sc (Geology)	a) 11/04/75 Asstl. Geol. b) 11/04/75 Asstl. Geol	a) STA: AG: 11/04/75 GJR 20/07/78 b) 29/03/85	a) Asstl. Geol. 01/04/88 b) P	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
204	Shri Gautam Sarkar	a) 13/08/50 b) M.Sc (Geology)	a) 13/02/75 Asstl. Geol. b) 13/02/75 Asstl. Geol	a) STA: AG: 13/02/75 GJR 08/07/75 b) 30/03/85	a) Geol (Jr) 08/07/78 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
205	Shri P.V.Sesha Rao	a) 01/03/46 b) M.Sc (Tech)(Geology)	a) 21/12/74 Asstl. Geol. b) 21/12/74 Asstl. Geol	a) STA: AG: 21/12/74 GJR 26/07/78 b) 30/03/85	a) Asstl. Geol. 01/04/88 b) P	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
206	Shri Suresh Chand Mehrotra	a) 15/12/50 b) M.Sc (Tech)(Geology)	a) 26/02/75 Asstl. Geol. b) 26/02/75 Asstl. Geol	a) STA: AG: 26/02/75 GJR 23/07/75 b) 30/03/85	a) Geol (Jr) 23/07/78 b) Q	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99
207	Shri Sudesh Kumar	a) 14/07/43 b) M.Sc. (Geology)	a) 18/11/74 Asstl. Geol. b) 18/11/74 Asstl. Geol	a) STA: AG: 18/11/74 GJR 20/07/78 b) 30/03/85	a) Asstl. Geol. 01/04/88 b) P	NO	a) Promotee b) 1/2/99-M.II (SM) (5), dt.10.09.99

SL NO NAME OF OFFICER

a) DATE OF BIRTH
b) EDUCATIONAL QUALIFICATION

a) DT. OF CONTINUOUS GOVT. SERV. WITH DESIGN.
b) DT. OF JOINING GSI AND DESIGN.

a) DETAILS OF SERV. IN GSI WITH DATE AND DESIGN.
b) DATE OF APPTT. TO PRESENT GRADE.

a) DETAILS OF PERMANENT/ Q. PERMANENT POST HELD IN GSI b)
IF PERM (PY) Q. PERM (QP) TEMP. (T)

SC/ ST

a) MODE OF RECTMNT.
b) MINISRTY LETTER NO. AND DATE FOR APPOINTMENT.

208 Shri P. Kumaraguru

a) 11/09/50
b) M.Sc. (Geology)

a) 04/04/75
Asst. Geol.
b) 04/04/75
Asst. Geol.

a) STA: AG: 04/04/75
GJR 24/10/75
b) 30/03/85

a)
b) T

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

209 Shri Yogesh Chandra Joshi

a) 21/06/49
b) M.Sc. (Geology)

a) 30/10/75
Geol. (Jr.)
b) 30/10/75
Geol. (Jr.)

a) STA: AG: 30/10/75
GJR 30/10/75
b) 29/03/85

a) Geol. (Jr.)
30/10/78
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

210 Shri Sulanu Sarkar

a) 01/01/47
b) M.Sc. (Geology)

a) 04/01/75
Asst. Geol.
b) 04/01/75
Asst. Geol.

a) STA: AG: 04/01/75
GJR 21/07/78
b) 30/03/85

a) Asst. Geol.
01/04/88
b) P

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

211 Shri Uday Nath Salpathi

a) 14/04/47
b) M.Sc. (Geology)

a) 23/02/74
Asst. Geol.
b) 23/02/74
Asst. Geol.

a) STA: AG: 23/02/74
GJR 31/07/75
b) 31/03/85

a) Geol. (Jr.)
31/07/78
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

212 Shri B.J.C. Gupta

a) 10/04/42
b) M.Sc. (Geology)

a) 11/02/70
STA (Geol.)
b) 11/02/70
STA (Geol.)

a) STA: AG: 11/02/70
GJR 22/07/78
b) 29/03/85

a) STA (Geol.)
11/02/73
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

213 Shri Anil Mehrotra

a) 15/01/51
b) M.Sc. (Geology)

a) 01/04/75
Asst. Geol.
b) 01/04/75
Asst. Geol.

a) STA: AG: 01/04/75
GJR 20/07/78
b) 30/03/85

a) Asst. Geol.
01/04/88
b) P

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

214 Shri V. Muralidharan

a) 14/08/45
b) M.Sc. (Geology)

a) 08/03/73
Asst. Geol.
b) 08/03/73
Asst. Geol.

a) STA: AG: 08/03/73
GJR 11/07/75
b) 30/03/85

a) Asst. Geol.
01/04/88
b) P

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

215 Shri Harsh Gupta

a) 02/09/51
b) M.Sc. (Geology)

a) 17/05/75
Asst. Geol.
b) 17/05/75
Asst. Geol.

a) STA: AG: 17/05/75
GJR 22/07/78
b) 30/03/85

a) Asst. Geol.
01/04/88
b) P

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

216 Shri Deepak Kumar Mehrotra

a) 31/01/51
b) M.Sc. (Geology)

a) 14/11/75
Geol. (Jr.)
b) 14/11/75
Geol. (Jr.)

a) STA: AG: 14/11/75
GJR 14/11/75
b) 30/03/85

a) Geol. (Jr.)
14/11/78
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

217 Shri Subhash K. Verma

a) 12/07/48
b) M.Sc. (Geology)

a) 17/01/75
Asst. Geol.
b) 17/01/75
Asst. Geol.

a) STA: AG: 17/01/75
GJR 28/07/78
b) 01/04/85

a) Asst. Geol.
01/04/88
b) P

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

218 Shri Suresh Srivastava

a) 03/06/48
b) M.Sc. (Geology)

a) 17/10/75
Geol. (Jr.)
b) 17/10/75
Geol. (Jr.)

a) STA: AG: 17/10/75
GJR 17/10/75
b) 29/03/85

a) Geol. (Jr.)
17/10/78
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

219 Shri D. Kolhiyal

a) 18/03/42
b) M.Sc. (Geology)

a) 13/02/70
STA (Geol.)
b) 13/02/70
STA (Geol.)

a) STA: AG: 13/02/70
GJR 20/07/78
b) 30/03/85

a) STA (Geol.)
13/02/73
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

220 Shri K. Jagannadha Sarma

a) 15/07/46
b) M.Sc. (Geology)

a) 24/03/75
STA (Geol.)
b) 24/03/75
STA (Geol.)

a) STA: AG: 24/03/75
GJR 24/12/75
b) 01/04/85

a) Geol. (Jr.)
24/12/78
b) Q

NO

a) Promotee
b) 1/2/99 M.II (SM) (5), dt. 10.09.99

SL NO NAME OF OFFICER

a) DATE OF BIRTH
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a) DETAILS OF PERMANENT/ O PERMANENT POST HELD IN GSI b)
IF PERM (PY/ Q.PERM (QPY/ TEMP.(T)

SC/ ST

a) MODE OF RECTMNT.
b) MINISRTY LETTER NO. AND DATE FOR APPOINTMENT.

221 Shri V.T. Mulhu

a) 12/02/50
b) M.Sc.(Geology)

a) 18/04/75
Asst. Geol. AG: 18/04/75
b) 18/04/75 GJR 23/06/78
Asst. Geol. b) 10/04/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

222 Dr. Pratap Chandra Basu

a) 10/05/50
b) M.Sc.(Geology), Ph.D
a) 22/03/76
Geol. (Jr) AG: 22/03/76
b) 22/03/76 GJR 22/03/76
Geol. (Jr.) b) 30/03/85

a) Geol. (Jr) 22/03/79
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

223 Shri Sharadindu Mukherjee

a) 09/11/51
b) M.Sc. (Geology)

a) 07/12/74
Asst. Geol. AG: 07/12/74
b) 07/12/74 GJR 20/07/78
Asst. Geol. b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

224 Dr. Manne Ramamurthy

a) 01/07/44
b) M.Sc.(Tech)(Geology
a) 27/02/73
STA (Geol) AG: 01/10/74
b) 27/02/73 GJR 31/05/75
STA(Geol) b) 30/03/85

a) STA: 27/02/73
AG: 01/10/74
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

225 Shri Rabindra Nath Ghosh

a) 07/05/49
b) M.Sc.(Geology)

a) 09/05/75
Asst. Geol. AG: 09/05/75
b) 09/05/75 GJR 21/07/78
Asst. Geol. b) 03/04/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

226 Shri Kamallesh K. Agarwal

a) 11/12/46
b) M.Sc.(Geology)

a) 27/10/73
Asst. Geol. AG: 27/10/73
b) 27/10/73 GJR 23/07/75
Asst. Geol. b) 30/03/85

a) Geol. (Jr) 23/07/78
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

227 Shri Prakash K. Swain

a) 10/05/50
b) M.Sc.(Geology)

a) 20/09/75
Geol. (Jr) AG: 20/09/75
b) 20/09/75 GJR 20/09/75
Geol. (Jr.) b) 30/03/85

a) Geol. (Jr) 20/09/78
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

228 Shri U.S. Dubey

a) 05/10/41
b) M.Sc.(Geology)

a) 09/02/70
STA (Geol) AG: 11/07/73
b) 09/02/70 GJR 21/07/78
STA(Geol) b) 15/04/85

a) STA (Geol) 09/02/73
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

229 Shri V. Rangamannar

a) 27/03/45
b) M.Sc. (Geology)

a) 10/10/75
Geol. (Jr) AG: 11/10/78
b) 10/10/75 GJR 10/10/75
Geol. (Jr.) b) 30/03/85

a) Geol. (Jr) 11/10/78
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

230 Shri Prem Kumar

a) 10/06/47
b) M.Sc. (Geology)

a) 31/01/75
Asst. Geol. AG: 31/01/75
b) 31/01/75 GJR 20/07/78
Asst. Geol. b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

231 Shri Vijay P. Mishra

a) 10/10/51
b) M.Sc.(Geology)

a) 08/09/75
Geol. (Jr) AG: 08/09/78
b) 08/09/75 GJR 08/09/75
Geol. (Jr.) b) 30/03/85

a) Geol. (Jr) 08/09/78
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

232 Kum. Banani Bardhan

a) 12/05/48
b) M.Sc.(Geology)

a) 09/05/75
Asst. Geol. AG: 09/05/75
b) 09/05/75 GJR 19/07/78
Asst. Geol. b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

233 Kum. Lakshmi Ghosh

a) 03/12/46
b) M.Sc. (Geology)

a) 30/11/72
STA(Geol) AG: 10/11/74
b) 30/11/72 GJR 19/07/78
STA(Geol) b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

SL NO NAME OF OFFICER

a) DATE OF BIRTH
b) EDUCATIONAL QUALIFICATION

a) DT. OF CONTINUOUS GOVT. SERV. WITH DESIGN.
b) DT. OF JOINING GSI AND DESIGN

a) DETAILS OF SERV. IN GSI WITH DATE AND DESIGN.
b) DATE OF APPT. TO PRESENT GRADE.

a) DETAILS OF PERMANENT/ Q. PERMANENT POST HELD IN GSI b)
IF PERM (PY Q. PERM (QPY TEMP. (T)

SC/ ST a) MODE OF RECT. MT. b) MINISTRY LETTER NO. AND DATE FOR APPOINTMENT.

234 Shri S.K. Mathur

a) 05/05/44
b) M.Sc. (Geology)

a) 13/04/70
STA (Geol)
b) 13/04/70
STA (Geol)

a) STA: 13/04/70
AG: 16/07/73
GJR 20/07/78
b) 30/03/85

a) STA (Geol) 13/04/73
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

235 Dr. Anil Kumar Mathur

a) 24/10/48
b) M.Sc. (Geology), Ph.D.

a) 20/01/74
Asst. Geol.
b) 20/01/74
Asst. Geol.

a) STA: 20/01/74
AG: 20/01/74
GJR 02/12/77
b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

236 Shri Sisir Chandra Rathi

a) 25/12/53
b) M.Sc. (Geology)

a) 31/10/77
Geol. (Jr)
b) 31/10/77
Geol. (Jr.)

a) STA: 31/10/77
AG: 31/10/77
GJR 31/03/85
b) 31/03/85

a) Geol. (Jr) 31/10/80
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

237 Shri Baquir Zaheer

a) 30/06/50
b) M.Sc. (Geology)

a) 30/06/75
Asst. Geol.
b) 30/06/75
Asst. Geol.

a) STA: 30/06/75
AG: 30/06/75
GJR 20/07/78
b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

238 Shri Dinkar Srivastava

a) 28/08/51
b) M.Sc. (Geology)

a) 24/12/74
Asst. Geol.
b) 24/12/74
Asst. Geol.

a) STA: 24/12/74
AG: 24/12/74
GJR 09/12/77
b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

239 Shri A. Viswanadham

a) 01/11/50
b) M.Sc. (Geology)

a) 07/02/70
STA (Geol)
b) 07/02/70
STA (Geol)

a) STA: 07/02/70
AG: 16/07/73
GJR 21/07/78
b) 30/03/85

a) STA (Geol) 07/02/73
b) Q

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

240 Shri Khirad Parida

a) 21/09/53
b) M.Sc. (Geology)

a) 16/11/77
Geol. (Jr)
b) 16/11/77
Geol. (Jr.)

a) STA: 16/11/77
AG: 16/11/77
GJR 04/04/85
b) 04/04/85

a) T

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

241 Shri Kumud Sharma

a) 15/07/51
b) M.Sc. (Geology)

a) 11/01/75
Asst. Geol.
b) 11/01/75
Asst. Geol.

a) STA: 11/01/75
AG: 11/01/75
GJR 21/07/78
b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

242 Shri P. Venkataramana
Voluntary retirement
w.e.f., 01.01.2000

a) 03/06/51
b) M.Sc. (Geol)

a) 26/11/77
Geol. (Jr)
b) 26/11/77
Geol. (Jr.)

a) STA: 26/11/77
AG: 26/11/77
GJR 31/03/85
b) 31/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

243 Shri B.K. Hore

a) 13/06/48
b) M.Sc. (Geology)

a) 08/12/72
STA (Geol)
b) 08/12/72
STA (Geol)

a) STA: 08/12/72
AG: 11/12/74
GJR 19/07/78
b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

244 Shri Upendra Kumar Behera

a) 02/03/53
b) M.Sc. (Geology)

a) 28/11/77
Geol. (Jr)
b) 28/11/77
Geol. (Jr.)

a) STA: 28/11/77
AG: 28/11/77
GJR 03/04/85
b) 03/04/85

a) T

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

245 Shri Rakesh Chandra Mishra

a) 02/10/50
b) M.Sc. (Geology)

a) 10/03/75
Asst. Geol.
b) 10/03/75
Asst. Geol.

a) STA: 10/03/75
AG: 10/03/75
GJR 24/07/78
b) 30/03/85

a) Asst. Geol. 01/04/88
b) P

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

246 Shri Indu Prakash Bajpai

a) 01/01/51
b) M.Sc. (Tech) (Geology)

a) 24/10/77
Geol. (Jr)
b) 24/10/77
Geol. (Jr.)

a) STA: 24/10/77
AG: 24/10/77
GJR 30/03/85
b) 30/03/85

a) T

NO a) Promotee
b) 1/2/99-M.II (SM) (5), dt. 10.09.99

True copy
Advocate

GEOLOGICAL SURVEY OF INDIA,
OPERATIONS:ORISSA,
BHUBANESWAR-12.

No. 1847/A-22013/1/Estt./OC/81

Dated the 30th Sept. '97

OFFICE ORDER

In pursuance of the Director General, Geological Survey of India, Calcutta's Office Order Nos.2694B/92/HRD/GEOL/NER/97/20, Dated 21.8.97, 2710B/101/HRD/GEOL/NER/97/20, dated 21.8.97, FAX MESSAGE dated 19.8.97, 2581B/98/HRD/CHEM/20, dt.19.8.97 and 2585B/98/HRD/CHEM/20, dated 19.8.97, following officers of Geological Survey of India, Operations Orissa, Bhubaneswar are hereby relieved from the date mentioned against each with destination enabling them to report for their new assignments.

Sl. No.	Name & Designation	Transferred from	Posted to	Relieving Dt. from Op:Orissa
1.	Sri R.M.Khuntia, Geologist(Sr.)	OP:ORISSA, GSI, BBSR.	NER, Shillong	30.9.1997 (AN)
2.	Sri S.K.Pattanaik, Geologist(Sr.)	-do-	NER, Itanagar	30.9.1997 (AN)
3.	Sri P. K. Roy, Geologist(Jr.)	-do-	Opn:I, Project: Assam, Guwahati	30.9.1997 (AN)
4.	Sri A.P.Mishra, Geologist(Jr.)	-do-	-do-	30.9.1997 (AN)
5.	Sri S.C.Srivastava, Geologist(Jr.)	-do-	Project: Tripura, Mizoram, NER, Agartala	30.9.1997 (AN)
6.	Sri J. N. Das, Geologist(Sr.)	-do-	Bhutan Unit, GSI, SMCHE	30.9.1997 (AN)
7.	Sri S. N. Kar, Asst. Chemist.	-do-	ERO, GSI, CAL.	30.9.1997 (AN)
8.	Sri R.N.Bhattacharjee, Asst. Chemist.	-do-	-do-	30.9.1997 (AN)

L. Shukla
30.9.97

(L. Shukla)

Administrative Officer,
for Director-in-Charge.

- | | |
|----------------------------------|---------------------------------------|
| 1. Sri R.M.Khuntia, Geol.(Sr.) | 5. Sri S.C.Srivastava, Geol.(Jr.) |
| 2. Sri S.K.Pattanaik, Geol.(Sr.) | 6. Sri J.N.Das, Geol.(Sr.) |
| 3. Sri P.K.Roy, Geol.(Jr.) | 7. Sri S.N.Kar, Asst. Chemist |
| 4. Sri A.P.Mishra, Geol.(Jr.) | 8. Sri R.N.Bhattacharjee, Asst. Chem. |

No. _____/A-22013/1/Estt./OC/81 Dated the 30th September '97

Copy forwarded for kind information to :

- The Director General, GSI, 27, JN Nehru Road, Calcutta-16.
- The Dy. Director General, ER, GSI, MSO Building, Salt Lake City, Cal-64.
- The Controller of Accounts, Central Pay & Accounts Office, GSI, Cal-1.
- The Estt. Section, Group A&B, GSI, Op:Orissa, Bhubaneswar-12.

(L. Shukla)

Administrative Officer,
for Director-in-Charge.

*True copy
for
Advocate*

FACSIMILE TRANSMISSION

To
The Director General
Geological Survey of India, Calcutta.

(Thru Proper Channel)

Sub : Request for change of of HQ from Itanagar to Shillong.
in connection with NER Posting - Regarding.

Sir,

In compliance with your office order No. 2557B/101/HRD/GEOL/NER/97/20 dated 18.08.97, posting me in Operations Arunachal Pradesh, Itanagar, I am joining NER in time. Through this application, I only solicit your kind consideration of my earnest request to post me at Shillong instead of Itanagar due to the following medical reasons. I may mention here that I am aged about 49 years and have already completed 24 year continuous service which includes 20 seasons of field work and 15 years of out of Home State posting.

- i) I am suffering from high blood pressure and it is not medically advisable for me to perform vigorous field work in high altitudes which can ^{not} be avoided in case of Arunachal Pradesh.
- ii) My wife is ^{under} continuous medical supervision after she underwent Heart Surgery at CMC, VELLORE in December, 1988.
- iii) In case of any medical exigency of either my wife or me, it would be very difficult to get back to HQ at Itanagar from far off field camps and then to Bhubaneswar (in case of my wife's exigency) due to bad communication facilities in AP compared to much better facilities at Shillong.

In the light of the above facts, I may kindly be posted at Shillong instead of Itanagar so that I shall be able to discharge my duties in the NER without any mental tension.

Yours faithfully,

S.K. Pattnaik
(S.K. Pattnaik)
Geologist (Sr.)
G.S.I., Operations Orissa
Bhubaneswar

Copy forwarded for kind information and necessary action to :-

- 1) Dy. Director General, G.S.I., (NER), Shillong.

True Copy
for
Advocate

39

ANNEXURE V

भारत सरकार
GOVERNMENT OF INDIA

From : S. K. PATTAIK,

भूगर्भज्ञानिक

Geologist, (Sr)

भारतीय भूगर्भज्ञानिक सर्वेक्षण

Geological Survey of India

पूर्वोत्तर क्षेत्र

North Eastern Region

परिचालन अरुणाचल प्रदेश

Operation Arunachal Pradesh

इटानगर/Itanagar-791111



Letter No. SKP/AP/FD/0020, dt. 18.11.97

तारीख : 18 नवंबर 1997

Gram : GEOSURVEY ITANAGAR

दूरभाष

Telephone 22232

दिनांक/Dated 18.11.97

To,

The Deputy Director General,
Geological Survey of India, (NER),
Shillong.

(Through proper channel)

Sub : Application for exemption from field-work-regarding.

Sir,

In continuation of my letter No. SKP/AP/FD/0019, dt. 10.11.97, I am submitting, herewith, the medical certificate in original dt. 16.11.97 from the consulting Cardiologist of Capital Hospital, Bhubaneswar. His advice, therein, is self-explanatory and supports my apprehension regarding taking up the field assignment for the F.S-1997-98.

I, therefore, earnestly request you to kindly consider my plight and exempt me from field work and assign me some H. Q. job.

Encl : (i) Medical certificate
in original and one copy.

(ii) Hospital slip. No. 5934.

Yours faithfully,

S. K. Pattnaik

(S. K. Pattnaik) 18.11.97.

Geologist (Sr).

True copy
Advocate

Dr. P. K. Acharya, M.D. (Med.) D.M. (Cardiology)
Sr. Consultant Cardiologist
Capital Hospital, Bhubaneswar

Residence :
Plot No - N1 - A/10
Ekamrakanan Road
Nayapalli, Bhubaneswar - 15
Tel : 405531

Certified that Shri Subodh K. Pattnaik, aged about 49 years, working as Geologist (Sr.) in the Geological Survey of India is a known Hypertension patient since last one and half years. Initially, he was tried with ACE Inhibitors, later with Betablocker but he did not respond. He is now maintained with once-daily dose of Betablocker with Calcium Channel Blocker. He is advised for periodic medical check-ups and should avoid long and rough road-journeys in high altitudes, arduous field activities under extreme weather conditions and above all should avoid mental excitement and tension. He is to continue the treatment until further advice.

Signature
16.11.97

Signature of
Dr. P. K. Acharya

Signature
16/11/97

Signature
16/11/97

Dr. P. K. Acharya, M.D. (Med.)
D.M. (Cardiology)
Sr. Consultant Cardiologist
Capital Hospital, Bhubaneswar

ANNEXURE-VI

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA

CAMP, HYDERABAD

No. /Conf./DDG/NER/91

Date: December 3, 1997

From
The Dy. Director General
North Eastern Region
Geological Survey of India

To
The Director-in-Charge
OP: Arunachal Pradesh
Itanagar

FAX No. 0360-22435

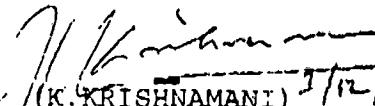
Sub: Request of Shri S.K. Pattnaik, Geologist (Sr.)

Sir,

Kindly refer to the request forwarded by you from Shri S.K. Pattnaik, Geologist (Sr.), OP: Arunachal Pradesh, for assignment of headquarters duty and exemption from the field assignment as per FSP 1997-98, because of his suffering from hypertension as reported by a cardiologist from Bhubaneswar,

Due to the exigencies of the FSP 1997-98 the request of Shri Pattnaik for assignment of headquarters work cannot be acceded to. He may be informed about this decision and also advised that if he cannot take up the assignment as per the FSP, for the period from the date of departure of the field party to its final return after completion of the field component of the item, he may avail of leave as appropriate.

Yours faithfully


(K. KRISHNAMANI) 1/12/97
Dy. Director General

True Copy
for
Advocate

CA 204
2/14/97

12
82

Sl. No.	01	DIVISION / PROJECT NAME : ARUNACHAL MINERAL INVESTIGATION PROJECT																						
Field Season Year		F S P N U M B E R																						
1	9	9	7	-	9	8	M	I	P	/	-	N	E	R	A	R	N	1	9	9	6	0	0	3
Type Code		Comm. Code		Region Code		Opn. Unit		Year of Initiation		Sl. No.														

Participating Operational Units / Regions (Coded)										Geographical Information			
M I P I A R N										State Code	District Code	Degree Sheet	Mineral /Basin/ Tectonic Belt
Divisions / Projects		Region / Opn. Unit		Divisions / Projects		Region / Opn. Unit		ARN	WSNG	82 L & P	LESSER HIMALAYA		

PERSONNEL : Pattanayak, S.K. Ramesh Babu, P.A.

TITLE : PRELIMINARY INVESTIGATION FOR GRAPHITE IN THE SINGING - NINGING - PANGO AREA, WEST SIANG DISTRICT, ARUNACHAL PRADESH (P-II STAGE)

COMMODITY CODE : I M

KEYWORDS : GRAPHITE SCHIST, AMORPHOUS GRAPHITE, SINGING FORMATION.

OBJECTIVE : To delineate the graphite bands and ascertain the nature of occurrence of graphite and its potentiality

Background Information :

Garnetiferous kyanite graphite schists of Singing Formation (Proterozoic) are exposed in the eastern part of the Sing valley around Singing (28° 53'48" : 94° 47'15"), Ninging (28° 57'18" : 94° 49'32") and Pango (28° 53'15" : 94° 45'20") area of West Siang district, in parts of Toposheets 82 L/13, 1/14, & P/2 and K/16. Amorphous graphite is found at a number of places between Lobong Korong and Nibang Korang. The width / thickness of the individual graphite bearing bands varies from a few metres to more than 50m. Around Ninging, graphite is associated with garnetiferous biotite schist of Singing Formation. The graphite occurring in the Pango - Sipi section also seems to be of amorphous variety. Some other bands containing graphite were also reported during geological mapping (1 : 50,000 scale) of Yinkiong - Tuting area in 1979-80 FS.

This item was proposed during the FS. 1996 - 97, but could not be taken up due to unavoidable circumstances.

Large scale mapping to delineate the graphite bearing bands and collection of samples for determination of quality and grade of graphite in the Singing - Ninging - Pango area comprise the work envisaged for the FS 1997-98

Nature and quantum of work and time schedule

Nature of Work	Total workload envisaged	a) Expected year of completion b) Submission of final report	Work already completed (upto June '97)	Work proposed for 1997-98
ISM (1:10,000)	25 sq km	a) 1998-99	Nil	15 sq km.
CHIN. SMPL. / BRS	50 Nos.	b) March 2000		25 Nos.
P/T	10 cu m.			5 cu m.

Received by Hand
on 27.10.97.
- Shailail
True Copy
Advocate

ANNEXURE-VIII

(Extract)

GOVERNMENT OF INDIA

No. 1151/DDG/NER/ADM/98

Dated Jan 7, 1998

From:

Deputy Director General
Geological Survey of India,
North Eastern Region.
"ZOREM", Nongrim Hills
Post Box No. 11.
Shillong- 793003.

To

Shri S.K. Patnaik
Geologist (Sr.)
Op: Arunachal Pradesh,
Geological Survey of India
Itanagar- 791 111.

(Through Director-in-Charge,
Op: Arunachal Pradesh, GSI,
Itanagar).

Sir,

Kindly refer to correspondence relating with no. SKP/Conf/FD/97-98 dated 6.1.98 asking advice on the grounds and type of leave you should apply for the period from 11.12.97 till the return of the field party, expected around the middle of February, 1998.

It is noted that in spite of clear advice you have not taken up the field assignment vide FSP item No. MIP/NER/ARN/1996/-003: You have also not submitted application for the leave for the period from 11.12.97 to middle of February, when the field component of the above assignment should have been carried out. Instead you have asked for advice on the type/duration of leave.

You had been intimated by the Director-in-charge, Op: Arunachal Pradesh that your request for headquarters assignment has not been accorded to. You were also informed vide DIC Op: AP letter dated 4.12.97 (enclosing a copy of my letter dated 3.12.97) that, if you could not take up the assignment as per the FSP, you may apply for leave as appropriate for the period from the date of departure of the field party to its final return after completion of the field component of the item. As you have failed to take up the assigned field work there is no merit in your contention that you have been kept idle at headquarter as made out in your letter dated 31.12.97.

In your subsequent letter dated 6.1.98 to the DIC, Op: Arunachal Pradesh (Copy endorsed to the undersigned) you have inter alia claimed that you could have been assigned the work that would otherwise have been done by Shri Shailendra Singh, STA (G). You are aware that because of your uncooperative attitude, Shri Sailendra Singh,

True copy
sent
Advocate

- 45 -

85
33

STA (G), who would have normally been sent for training during this period, had to be allocated the field assignment (which, as a responsible senior officer you were expected to take up) to the best of his abilities in the interest of the field season programme. You are also aware that the duties and responsibilities of an STA (G) are far lower than that of a Geologist (Sr.) and hence, your being considered for taking up any work that Shri Singh would have been given is not relevant to the issue.

The period for which you have been advised to apply for leave of the appropriate type is that of the duration of field work as being presently carried out by the reconstituted party which should have been attended to by you.

As to the ground/provision of leave, you may consult the relevant Leave Rules and whether the Medical Certificate obtained by you is adequate for grant of Medical Leave failing which it has to be treated Leave on the ground of infirmity to attend to field.

In case you do not submit by 15.1.98 application for leave, the period from 11.12.97 would have to be treated as unauthorised absence from duty as assigned.

Yours faithfully

Sd/-Illegible

(K. KRISHNANUNNI)
Sr. Dy. Director General.

No. /DDG/NER/ADM/98.

Dated Jan. 7, 1998.

Director-in-charge, Opn Arunachal Pradesh, Itanagar with the request to deliver the above letter to Shri S K. Patnaik, Geologist (Sr.) under acknowledgement and also intimate him the status of his leave eligibility.

Sd/- Illegible

(K. KRISHNANUNNI)
Sr. Dy. Director General.

Letter No.010/SKP/FD/ARN/97-98 Dt.15.1.98

From
K. Pattanaik,
Geologist (Sr),
GSI, Op : AP
Itanagar.

To
The Sr.Dy. Director General,
Geological Survey of India,
North Eastern Region
Shillong.

(Through the DIC, GSI, OP:AP, Itanagar)

Ref : - Your letter No.1151/DDG/NER/ADM/98 Dt.7.1.98.

Sir,

With reference to your above letter, I humbly submit that I have never been unco-operative, as mentioned in the letter, in my attitude towards taking up field assignments inspite of various orthopedic problems due to accidents in course of field work. I have always overlooked these problems in the greater interest of field work which I have carried out for 20 years out of my 24 years of service. In fact, I had met with a serious jeep accident during field work in 1973, rendering permanent impairment to my right shoulder-joint and during the field season 1994-95, I had a bad fall resulting in problems of the left hip-joint. Inspite of these hardships, I have never requested for HQ job except for one field season when my wife had to undergo heart-surgery. However, my present ailment that is high blood pressure vis-a-vis my age (49years) and the expert medical advice, thereon, has restrained me from taking up the present field assignment, lest, it would lead to serious cardio-vascular problems. I, therefore, repeatedly appealed for HQ job instead of field work, which unfortunately, has not been acceded to.

On the contrary, I have been asked to apply for leave for which I sought your kind advice regarding the kind of leave, grounds and period which was not clearly mentioned in all the correspondences prior to the above letter, wherein, these points have been clearly advised. Hence, I could not have applied for the said leave at an earlier date and as I have neither any personal grounds to take leave nor I could apply for medical leave at HQ, Itanagar as I have not been declared medically unfit to carry out HQ job.

Hence, in compliance with your kind instruction as per the above letter, I am submitting, today itself, an application for earned leave for the period from 16.1.98 until the return of the reconstituted field party (likely between 15th and 20th February, 98, as advised) to Itanagar. However, for the period from 11.12.97 to 15.1.98, I have regularly attended office at Itanagar and deployed myself in constructive work as reflected in my monthly diary for December, 97 submitted to the DIC, GSI, Itanagar.

Yours faithfully,

True copy
Advocate

spatnaik

(Extract)

ANNEXURE-X

Letter No. Skp/MED/001/98 dt 27 7
98

From

S.K. PATTNAIK
Geologist (Sr.)
G.S.I Op: A.P,
Itanagar.

To.

The D.I.C.,
G.S.I, Op: A.P
Itanagar.

Sub: - Request for exemption of field work during F.S 1998-99.

Sir,

I here by draw your kind attention to the medical certificate from the Capital Hospital, dt 19.2.98, enclosed herewith, and the incidence of my becoming almost unconscious on 3.6.98, in my office-room which was diagnosed by the visiting doctor as dehydration cum Vaso-vagal attack.

I, therefore request you under the delicate health condition and age (50) of mine, to exempt me from any field work as I may require the immediate attention of a competent doctor at any time and kindly assign me HQ job such as Petrological work etc. during F.S 1998-99.

Yours faithfully

Sd/- Illegible

27.07.98

(S.K. PATTNAIK)

True copy
from
Advocate

Dr. P.K. Acharya M.D (Med). D.M (Cardiology)
Consultant Cardiologist
Capital Hospital, Bhubaneswar

Residence:
Plot No: N1-A/10,
Ekamarakanan Road,
Nayapalli, Bhubaneswar -15
Tel: 405531

In continuation of the previous certificate dated 16.11.07, it is further certified that Sri S.K. Pattnaik, Geologist (Sr.), Geological Survey of India, who is suffering from ESSENTIAL HYPERTENSION was checked up at the Cardiology Department of the Capital Hospital, Bhubaneswar during the period from 28-1-98 to 19-2-98. It is found that his blood pressure is unstable and fluctuating sharply. Hence, the previous medication is changed.

In view of his unstable B.P. and age (49 Yrs.) he is advised to avoid arduous field activities in remote areas lacking in adequate medical facilities. He should get his B.P. checked up regularly and should consult a Cardiology Specialist in case of any acute problem. However, he is medically fit to carry out usual office/laboratory work. He should continue the treatment until further advice.

True copy
Law
Advocate

PKA
18/2/98

Dr. P.K. Acharya, M.D. (Med)
Specialist in Cardiology
Cardiology Specialist CH-I (Jr.)
Capital Hospital, Bhubaneswar

(Extract)

ANNEXURE- XI

Letter No. 002/SKP/MED/98 dt. 7.9.98

From

S.K. PATTNAIK,
Geologist (Sr.)
G.S.I., Op. A.P.
ITANAGAR.

To.

The Director-in-charge,
Geological Survey of India,
Operation Arunachal Pradesh,
ITANAGAR- 791 111.

Sub:- Request for non-assignment of field work.

Sir,

In continuation of my letter No. SKP/MED/001/98 dt. 27.7.98, as desired by the Dy. D.G, G.S.I, NER and conveyed by you. I am submitting herewith a medical certificate from the R.K. Mission Hospital, Itanagar, regarding the state of my health vis-à-vis the chronic hypertension from which I am suffering, wherein, they have certified that I should do only light duty, which obviously excludes field work, and should undertake regular medical check-ups.

In the light of the above medical advice and the advice contained in the certificate from the Capital Hospital, Bhubaneswar (vide letter dt 27.7.98), the vaso-vagal attack rendering me almost unconscious in the office premises on 3.6.98 (vide R.K. Mission Hospital slip) and also the orthopedic confirmities acquired during my 20 years of field work (vide my letter No. 010/SKP/FD/ARN/97-98 dt. 15.1.98 and my age (50 years), it is requested that I should not be assigned any field work of regular nature, especially in the difficult terrains of Arunachal Pradesh.

Encl:- As above.

Yours faithfully,

Sd/- Illegible.

7.9.98

(S.K. PATTNAIK).

True copy
for
Advocate

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
OPERATION ARUNACHAL PRADESH
ITANAGAR

NO. 5235/29/00/APC/98

Dated Itanagar the 7th Oct '98.

OFFICE ORDER

Shri S.K. Pattanaik, Geologist(Sr) will look after the functions of Security Officer and Vehicle section of this Office, w.e.f. 15-10-98 in place of field duty assigned to him under item No. 001/MIP/NER/1998 as per the approved F.S.P. for 1998-99. This will be in addition to the work assigned to him under service item of Petrological service support.

Further, Shri Pattanaik, will be assisted by Shri J. Ram, Store Supdt. (Tech.) (who is also discharging the duty of Care-Taker) in Security related jobs and Shri G.C. Das, S.T.A. (Surveying) in vehicle section.

This order is issued as per the instructions of the Deputy Director General, GSI, NER, Shillong contained in his office letter No. 814/COR/OP:AP/NER/98 dt. 17-9-98.

(SEVA DASS)
Director-In-Charge

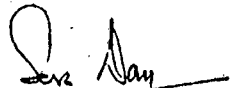
No. 5235/29/00/APC/98

Dated Itanagar the 7th Oct, '98.

Copy for information and necessary action to :-

1. The Dy. Director General, GSI, N.E.R, Shillong - 3.
2. ✓ Shri S. K. Pattanaik, Geologist(Sr), GSI, OP : A.P. Itanagar.
3. Shri P. A. Ramesh Babu, Geol.(Sr) GSI, Op : A.P. Itanagar.
4. Shri Rajendra Kumar, Geologist & vehicle section Incharge, Op : Arunachal Pradesh, Itanagar.
5. Shri G. C. Das, STA(Surveying), Op : A.P. Itanagar.
6. Shri S. Singh, STA(Geology), GSI, OP : A.B. Itanagar.
7. Shri J. Ram, Store-Supdt. GSI, OP : A.P. Itanagar.

True copy
Jm.
Ad No Calc


(SEVA DASS) 7/10/98
Director-In-Charge.



सत्यमेव जयते

CONFIDENTIAL

भारत सरकार
GOVERNMENT OF INDIA

SPEED POST

ANNEXURE - XIII

142/8(2)/DG

February 17, 2004

दिनांक/Dated.....200

सं०/No.....

प्रेषक/From

महानिदेशक

भारतीय भूवैज्ञानिक सर्वेक्षण

27, जवाहरलाल नेहरू मार्ग

कोलकाता-700 016

DIRECTOR GENERAL

GEOLOGICAL SURVEY OF INDIA

27, Jawaharlal Nehru Road

Kolkata-700 016

सेवा में/To

✓ Shri S.K. Pattnaik,

Geologist (Sr.),

Geological Survey of India,

Eastern Region,

Op. Orissa,

Bhubaneswar.

Sub: Adverse remarks in the A.C.R. for the
Year ending 31st March, 2003.

Sir,

I am directed to inform you that the following remarks have been recorded in your Confidential Report for the year ending 31st March, 2003 :

Comments on Part-II:

"Shri S.K. Pattnaik, Geologist(Sr.) is an officer having average technical ability and his quality of work is average. The undersigned does not agree to the targets, objectives and achievements as he has mentioned in his assessment report. He has not completed his assignment during the year under report."

Attitude to work:

"The Officer does not take initiative to learn and systematise his work. He does not dedicate himself to the work assigned to him. When the superior Officer tries to motivate him for his work he tried to avoid the responsibility."

Initiative:

"His capacity and resourcefulness in handling unforeseen situation on his own is average. He does not show any willingness to take additional responsibility and new areas of work."

Contd. ...2

True Copy
Jms.
Advocate

Co-ordination ability, Inter-personal relations and team work:

"His co-ordination ability is average. He does not maintain cordial relationship with his superiors, colleagues and subordinates and he does not appreciate others' point of view and does not take advices in proper spirit. Whenever advices are given he comes with the resistant attitude. His capacity to work as a member of a team is average. He cannot promote team spirit."

General Assessment :

"Shri S.K. Pattnaik, Geologist(Sr.), is an officer having average technical ability. He does not take initiative in the work, does not dedicate himself to the work assigned to him. He is not punctual and sincere in his duties and does not complete his assignment in the scheduled time."

The above remarks are brought to your notice with a view to giving you and opportunity to eliminate your shortcomings.

Your submission, if any, in this regard may please be sent through proper channel within one month of the communication of this letter.

Yours faithfully,


(S. Mazumdar)

Sr. P.S. to Director General,
Geological Survey of India.

Letter No. 19/SKP/CHQ/CONF/02-03

Dt. 19.02.2004

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To,

**The Director General
Geological Survey of India
Kolkata - 16.**

Ref.: Your confidential Letter No. 142/8(2)/DG, dt. 17.02.2004.

Sub: Adverse remarks in my ACR 2002-03 - redg.

(Through Sri B.K. Mohanty, Director, G.S.I., Op : Orissa)

Sir,

Shocked though, I must thankfully submit the following points, for the favour of your kind information and necessary action as you may deem fit.

1. Comments on Part II

The disagreement pertains to three points, namely targets, objectives and achievements. My targets were drawn and objectives stated by the Department and were not my own while my achievements nay performance, comprised the compilation of geological maps in the scale of 1 : 50,000 from the existing 1 : 63,360. In the group item manned by so many of us for years; the singular task of 4 sheets, i.e. 64-0/6, H/16, M 12 and L/4 were assigned to me and have been successfully completed.

The submission of these with the entire set of 11 for the field season has been duly formalized on 21.10.2003.

Its submission waited for final availability of "unified legend" and duly carried out thereafter. Of course, it maybe appreciated that an intellectual exercise of this kind does not enable any proper monthly outputs as arithmetic fractions of yearly totals.

2. Attitude to work

The remarks are unfortunate and unwarranted. In fact, though not fully made up mentally to submit the lot; a letter of 9-10-03 from my Director Sri B.K. Mohanty, enforced an immediate submission of the set to him on 21.10.03; with full tracings. Monthly diaries were not showing the terminology like "tracing", thinking it as routine part of the map compilation job.

3. Initiative

Handling unforeseen situations, is a qualitative judgement and if discharge of such of my responsibilities in past be any record; the IT seminar of 150 years of celebration of GSI would have been a documentary evidence. Additional responsibility and new areas of work are equally subjective and much not only could depend upon chances available but also the individual perception of its turn out. I have been ever willing and faithful, as usual.

True copy
for
Advocate

4. **Co-ordination ability, interpersonal relations and team work.**

The work output it self is a proof of my co-ordinational ability. This is very much of a collective production and I am the senior most in the team. Relationship with seniors, peers and juniors have been adequately warm and gainful. The records of several matters such as Central Govt. Regional Sports Board, Bhubaneswar membership, my attendance in Sikkim RAC(ER) as special invitee and OP Orissa representative to discuss FCS matters with DDGs bear testimony. In fact, my relationship with my reporting officer himself has been so warm and friendly except perhaps for some peeved feelings or differences of opinion, natural to any group of social animals, such as men. None of these could be attributed to be parameters of any overall adverse judgement.

5. **General Assessment**

The repetitive remarks like 'average' puts me to a loss of understanding as to the meaning of average of what and what. Hence I presume, that the phraseology is meant to connote a condemnation rather than a literal upgrading - intentions for a junior from a senior.

My mention of the above facts with all humility may substantiate the lack of truth in the cryptic and rather intolerant statements such as lack of initiative or dedication nor punctuality etc; which bear no concurrence with the task conferred on and the physical turnouts made often the thought provoking and scientific challenges of the brainstorming work-devotion, one is subjected to. The contrast provides some doubt on some human bias as an overall factor, than any one single point in specific. I do not accept any of these charges, sir !

6. **My Special Remarks**

You may be aware of the fact that the DDG, ER, recommended my name for the Natl. Min. Award for 2002 in Dec'02. It looks amusingly contentious for roughly the same period, against one who is so 'average' in this annual opinion of my immediate supervisory officer. Sri Om Prakash, my DDG upto December, 2002, may perhaps be addressed to in any effort to confirm or deny on my conduct as mentioned in the ACR 02-03.

7. **Prayer**

I request you to be kind enough and to please expunge the poor taste and the adverse entries in my ACR 2002-03 and oblige.

Thanking you.

Bhubaneswar
Dt. 19.02.04

Yours faithfully,

S.K. Pattnaik
(S.K. Pattnaik) 19.02.2004
Geologist (Sr.)
Geological Survey of India,
Operation, Orissa.

Advance copy forwarded directly to Sri P.C. Mondal, DG, GSI, Kolkata - 16.

Sd
(S.K. Pattnaik)
Geologist (Sr.)



भारत सरकार
GOVERNMENT OF INDIA

Telegram : GEOSURVEY
Phone : 2249-6941, 2249-6976 (D)
Fax : (033) 2249-6956
E-mail : gsl-chq@vsnl.com

CONFIDENTIAL

SPEED POST

ANNEXURE-XV

95

सं/No.....

प्रेषक/From 178/8(2)/DG

महा निदेशक

भारतीय भूवैज्ञानिक सर्वेक्षण

27, जवाहरलाल नेहरू रोड,

कोलकाता-700 016

THE DIRECTOR GENERAL

GEOLOGICAL SURVEY OF INDIA

27, Jawaharlal Nehru Road

Kolkata-700 016

दिनांक/Dated June 01, 2004.....200

सेवा में/To

Shri S.K. Pattnaik,
Geologist (Sr.),
Geological Survey of India,
Eastern Region,
Operation: Orissa,
Bhubaneswar: 751 012.

Sir,

Please refer to your representation bearing No.19/SKP/CHQ/CONF/02-03 dated 19th February, 2004 against the adverse remarks recorded in your Annual Confidential Report for the year ending 31st March, 2003.

I am directed to inform you that after careful consideration of all the relevant documents the competent authority is pleased to modify /expunge the adverse remarks recorded in your aforementioned Annual Confidential Report.

Yours faithfully,

(S. Mazumdar)

Sr. P.S. to Director General,
Geological Survey of India.

True copy
Advocate

CONFIDENTIAL

GOVERNMENT OF INDIA

No. 1809 /ER/ORS/M&C/2003,

Dated : 26/9/2003

From :

The Director (SG),
Map & Cartography Division,
Operations Orissa,
Geological Survey of India,
Unit - 8, Nayapally,
Bhubaneswar-751012.

To :

Shri S.K. Pattanaik,
Geologist(Sr.),
Operations Orissa,
Geological Survey of India,
Unit - 8, Nayapally,
Bhubaneswar-751012.

Sir,

Kindly refer to the Field Season Programme for the field seasons 2001-2002 and 2002-2003 of Map & Cartography Division, Operations Orissa. In this connection this is to inform you that so far you have not submitted the final maps as shown in your monthly diary for final tracing work. The Director-in-Charge, Eastern Region, has instructed the compilation of geological maps to be completed as per the schedule time. I have already requested you 4 to 5 times verbally regarding compilation of geological maps for the F.S.P. 2001-02 and 2002-2003. Therefore, I would request you to submit all the geological maps as mentioned in your monthly diary for the F.S.P. 2001-02 and 2002-2003 by 30th September, 2003 positively failing which it will be treated as your performance is below bench mark level i.e. "Very Good".

Yours faithfully,

B. K. Mohanty
(B. K. Mohanty) 26/9/03
Director(SG),
Map & Cartography Division.

No. _____ /ER/ORS/M&C/2003,

Dated : 26/9/2003.

Copy to :

1. The Director-in-Charge, Eastern Region, Geological Survey of India, Bhu-Bijnan Bhavan, DK-6, Karunamayee, Sector-II, Salt Lake City, Kolkata-700091, for kind information and necessary action.
2. The Director-in-Charge, Operations Orissa, Geological Survey of India, Unit - 8, Nayapally, ~~Unit - 8~~, Bhubaneswar for kind information and necessary action.

(B. K. Mohanty),
Director(SG),

Map & Cartography Division.

Received on
29.09.03
B. K. Mohanty
27.09.03

TRUE COPY
Advocate

-57-
GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
OPERATIONS ORISSA
BHUBANESWAR

ANNEXURE-XVII

No. 1947 / GSI/OPO/CT/Misc.

Date: 11/12/03 9A

C I R C U L A R

This is to bring to the kind notice of all concerned that, the Sambad T.V has requested G.S.I. for permission to provide cable connection in the Geo-Survey Enclave. At present the Sky View has their net work within the Geo-Survey Enclave.

It is therefore, requested to kindly submit your option for the cable connection at the earliest so that a decision can be taken on the subject. The Estate/Security however will not be responsible for any type of dispute between the supplier and the subscriber.

*True copy
sent
Advocate*

B. K. Mohanty
(B. K. Mohanty)
Director (SG) T.C. Divn.
For Director-In-Charge.

ANNEXURE-XVIIISPEED POST

To

The Director General,
Geological Survey of India,
27, J.N. Road,
KOLKATA - 700 016.

Sub: Nomination for National Mineral Award for the
Year 2002.

Sir,

This is for your kind consideration and favourable action that I, hereby, nominate Sri S.K. Pattanaik, Geologist (Sr.), G.S.I. OP: Orissa to be sponsored for for the National Mineral Award for the year, 2002 under Section-II(VI) and (IX) of NMA regulations. My recommendation in this regard has been enclosed, herewith, in a separate sheet for your kind perusal.

Yours faithfully,

(OM PRAKASH)

24/12/2002
Dy. Director General,
Geological Survey of India,
Eastern Region, KOLKATA.

Camp: BHUBANESWAR

Date: 24.12.2002

Encl: 5 copies of nomination
forms, complete in all
respect along with reprints
of published papers of
Sri Pattanaik.(5 nos.)

Copy endorsed to S.K. Pattanaik, Geologist (Sr.), GSI, Operati
Orissa, for his record.

True copy
sent.
Advocate

RECOMMENDATIONS

During his 29 years of professional career, Sri S.K. Pattnaik, Geologist (Sr.) has devoted 20 years to field work in diverse terrain conditions including some tough areas of Bastar district (M.P.), Chandrapur and Gadchiroli districts of Maharashtra. He has worked in various fields of geology such as ground water exploration, systematic geological mapping aided by tectonic, petrological and geochemical studies, mineral exploration (including geochemical surveys) for strategic metals like tungsten, gold and tin, besides base metals and refractory minerals. His track record attests to his dogged pursuit for gaining new knowledge and information in furthering economic as well as academic interests related to earth science. Besides reporting quite a few new mineral occurrences during his career, so far, he has registered some outstanding contributions as briefed below :

- (i) During the field season, 1981-82 in G.S.I., he brought out 8 lenses of scheelite mineralisation in Nagpur-Bhandara-Chandrapur districts of Maharashtra out of which the most significant being the one in Dahegaon-Pipalgaon area of Bhandara district. Although tungsten investigation (wolframite) in the adjoining areas was rewarded with NMA, 1985, unfortunately scheelite finds were kept out of its purview.

- (ii) However, the most outstanding work of Sri Pattanaik was accomplished during 1993-2002 when he identified a new alkaline complex named by him as the 'Bhela-Rajna alkaline complex' (BRAC) in Nuapara district of Orissa and studied it quite elaborately as regards its tectonics, petrology, geochemistry and petrogenesis with specific details regarding alkaline magmatism. He has classified the hitherto unclassified basement granites associated with the complex and has elaborately supplemented the field data with adequate microscopic studies to bring out interesting rock types and their unique mineral assemblages. He has made full utilization of analytical facilities of G.S.I., and could therefore, undertake extensive exercises on REE, PGE and 20 other trace elements besides the major elements. data. This work has enabled enormously to understand the crustal processes active in this part of Bastar craton in western Orissa during Proterozoic times. He has also worked out the possible genetic links between the BRAC and the already known Khariar nepheline syenites and the tectonic link between the two complexes and the Khariar basin. He has aptly named the most vital N-S running transcrustal fractures as Khariar lineaments and the pink basement batholith as the 'Nuapara batholith'. He has nicely correlated mantle upwarping and crustal thinning processes to the evolution of the alkaline magmatism which manifests a complex history of partial melting, magma mixing and fractionation.

- 60 -

3/
100

Besides bringing out a plethora of academic information on the alkaline magmatism, his study has also heralded the possibility of economic exploration of REE, RME and PGE, some of which have displayed unusually high values. His interpretation of tectonic correlation with the kimberlite field on the south-western contacts of Khariar basin in M.P. has provided clues for searching kimberlitic rocks on its eastern contact zones in Orissa, which seems to be proved now by a new find as reported by state govt. geologists.

Shri Pattnaik's work finds enough testimony in the exhaustive report for field season 1995-96 on the new alkaline complex entitled 'Geology and associated REE, PGE and RME abundances of the Bhela-Rajna alkaline complex, Nuapara district, Orissa circulated in July, 1998. The report contains 48 pages of text besides 18 figures, two tables and one geological map. In addition to this report, he has published a few papers in different journals including the premier journal of Geological Society of India and has also presented the data in various national and international seminars, drawing the attention of earth scientists. His paper on the newly identified alkaline complex was selected as a 'key paper' presented at the 10th I.G.C., Dhanbad and the same paper was also adjudged as the 'best paper' at the same convention. This adds immensely to his achievements.

In the light of the above achievements, specifically for his outstanding original contribution on the new alkaline complex identified by him which has resulted in vital updating of our knowledge about the tectono-magmatic history of parts of western Orissa, I strongly recommend his candidature to be sponsored for the NMA, 2002.

True copy
for
Advocate

24/12/2002
(Om Prakash)

Dy. Director General, G.S.I.
Eastern Region, Kolkata

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
27, J.L.N. ROAD
KOLKATA-16

ANNEXURE

No.DDG(P)/GSI/Conf./04

Dated: 26th February, '04

CIRCULAR

Subject: Procedure related to rating of confidential reports and communicating entries thereof.

In recent years, a large number of administrative orders as well as tribunal and court decisions including those of the apex court, (Supreme Court), have been passed on the subject and it has thus become necessary to evolve clear guidelines with regard to the question of communication of entries in the Annual Confidential Reports to the reportee. While it is generally appreciated that adverse remarks of any kind are to be communicated to the reportee, there is some confusion as to what constitutes an adverse remark, whether and under what circumstances an advisory remark is to be deemed adverse and whether downgrading of a reportee's overall assessment as compared to the previous year, even where the new assessment is not adverse in itself, is to be considered as adverse and thus needs to be communicated to the reportee. A related question which also arises is that where the overall assessment of the reportee falls below the benchmark prescribed for his promotion to the next senior grade, then should such an entry be deemed adverse or not.

The judgement of the Hon'ble Supreme Court in the case of U.P. Jal Nigam & others Vs. Prabhat Ch. Jain & others in 1996 provides clear guidelines with regard to the above mentioned issues. The observations of the Supreme Court inter alia bring out the following points:-

1. Where a reportee's performance has been judged to be at one particular level in a given year and this is subsequently downgraded in a succeeding year without the reportee's knowledge and without being communicated to him, "it would certainly be adverse and affect him at one or the other stage of his career".

DDG II

5/11/04

Hw M. Singh to the notice
of all Directors/Rep. Mns.
in the rep. is given (P)
4/12/04

True copy

Advocate

541
1/13/04

2. Where the downgraded entry of the succeeding year in the above mentioned case is not considered adverse in itself, (e.g. if the rating is downgraded from "Very good" to "Good"), the reporting authority in such a situation is required to "record reasons for such downgrading in the personal file of the officer concerned and inform him of the change in the form of an advice".

3. "Even a positive confidential entry can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true".

Thus, the sum and substance of the above mentioned ruling appears to be that where the overall performance rating of the reportee is of a category below that given to him in the preceding year, then, after affording him the opportunity of representing against the downgradation in accordance with the principles of natural justice, if the downgradation is retained, this decision, as well as the reasons for the same must be clearly recorded in the personal file of the reportee concerned. Needless to say, this final decision should also be communicated to the reportee as otherwise the process will not fulfil the requirement of the principles of natural justice.

Further to the above in its O.M. F.No.35034/7/97-Estt.(D) dated 8.02.2002 D.O.P.&T. has clarified that henceforth the suitability of a candidate for promotion by "selection" shall be determined only with reference to the relevant benchmark, ("Very Good" or "Good"), prescribed for such promotion. It has further been clarified that for promotion to the revised pay scales, (grade), of Rs. 12,000-16,500/= and above, the benchmark for promotion shall be "Very Good". For promotion to grades below the above mentioned pay scale, (grade), including promotions from lower grades to group "A" posts/grades/services, the benchmark for promotion shall be "Good". The DPC shall grade officials as being "Fit" or "Unfit" for the promotion in question only with reference to the relevant benchmark as elucidated above and those who are graded as "Fit" shall be included in the select panel prepared by the DPC in the order of their inter-se seniority in the feeder grade. Thus, there shall be no supersession in promotion among those who are found "Fit" for the same by the DPC in terms of the aforementioned prescribed benchmark.

D.O.P.&T. O.M. No.22011/7/98-Estt.(D) dated 6.10.2000 prescribes specifically that the suitability of employees for a given promotion shall be assessed on the basis of their service records, with particular reference to the CRs for the 5 preceding years irrespective of the qualifying service prescribed in the service/recruitment rules.

Thus it will be seen that when an employee is being considered for promotion by selection, he is required to be found "Fit" for such promotion on the basis of his service record and CRs for the preceding 5 years. It follows that in case the overall performance rating of such an employee is below the benchmark rating for the promotion in question, then such a rating will come in the way of the employee's promotion. Thus, the condition of such an entry being "perilously adverse" without necessarily being qualitatively damaging in terms of the Supreme Court's observations discussed above holds true in such a case. This, in turn leads to the inescapable conclusion that where a reporting officer enters an overall performance rating which is lower than that of the benchmark prescribed for the reportee's next promotion in his CR, then, such an entry is an adverse entry and should be communicated to the reportee. Thereafter, the prescribed procedure for dealing with such an entry in accordance with the principles of natural justice, as discussed and detailed above, should necessarily follow in such a case.

The above mentioned procedure becomes applicable mutatis mutandis even where the reportee's next promotion is not based on selection but is based on "seniority cum fitness", (i.e. non selection), basis. D.O.P.& T. O.M. No.22011/1/90-Estt.(D) dated 12.10.1990 clarifies specifically that while the rating of "Average" may not be taken as adverse remark, it cannot at the same time be regarded as complementary to the officer. "Average" performance should be regarded as routine and undistinguished. Only performance that is above average is noteworthy and should entitle an official to recognition and suitable rewards in the matter of promotion. Where promotions are to be made on "non selection" basis, DPCs are again required to make an assessment of candidates so as to find them "Fit" or "Not yet fit" for promotion on the basis of their record of service. While considering an official's fitness in this manner, the above discussed guidelines have to be kept in view. Thus, it is clear that if the overall rating of the reportee is lower than "Good" i.e. is "Average" or below, then such a rating falls within the category of being "perilously adverse" without

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necessarily being qualitatively damaging in terms of the Supreme Court's aforementioned observations. It follows, in effect that even in cases where the reportee's next promotion is on a "non-selection" basis, the benchmark for such promotion is effectively set at "Good".

In sum therefore, the common position that emerges as a guideline for the communication of entries made in the CR of reportees is as follows:—

- a. Where the overall performance rating is lower than that awarded in the preceding year, this should be treated as adverse and communicated to the reportee.
- b. Where the overall performance rating awarded to the reportee falls below the benchmark prescribed for the purpose of his next promotion, this should be treated as an adverse remark/rating and communicated to the reportee.

Note: The communications as above should be effected within one month of the remark/rating being recorded.

In both the aforementioned situations, the adverse remark/rating so communicated should be disposed of in accordance with the principles of natural justice by affording the reportee reasonable opportunity to represent against the remark/rating and thereafter informing him of the final decision taken in this regard through a reasoned, (speaking), order where the remark/rating is retained. This decision should also be recorded in the personal file of the officer also.

All reporting officers are requested to take note of the above mentioned position and ensure that CRs are completed strictly in accordance with these stipulations. Failure to do so, particularly by way of non-communication of adverse entries or the reasoned (speaking) orders for the retention of such entries after affording the reportee adequate opportunity for representation will vitiate the report in question. Since the reportee is likely to discover the adverse comment only when he is denied his next promotion, non-compliance or inadequate compliance with the above discussed provisions is bound to lead to litigation and will necessarily reflect poorly on the probity and competence of the reporting officer concerned. Where such a situation comes to light, after following the

Prescribed process for ensuring natural justice, it shall be the duty of the reporting authority of the concerned reporting officer to record this in the latter's CR.

734 SP
27/2/09

Copy for information to:

(A. Mukhopadhyaya)
Dy. Director General (F&P)

1. The Director General, CHQ, GSI, 27, J.L.N.Road, Kolkata-16.
2. All Sr.DDG/DDGs (Regions), DDG (Operations)/ DDCs (Ops./ Circle), GSI with the request to ensure that the circular is reached to all reporting officers. If necessary, more copies should be made for this.
3. Director (P)/Director (F)/Director (A), GSI, CHQ, Kolkata-16.
4. Sr.A.O.(SKS)/Sr.A.O.(SS), GSI, CHQ, Kolkata-16.
5. A.O.(19A)/(19B)/(19C)/(A/c.-I)/(A/c.II)/(15A)/(15B)/(16A)/(16B)/(17A)/(17B)/(17C)/(17D)/(Law)/(SWC)/(WS)/(Sec.9)/(Sec.5)/(Hindi Officer)/(Pension)/(Sec.21)/(Security)/(Record)/(Despatch)/(Canteen Estt.), GSI, CHQ, Kolkata.

True copy
Advocate

(A. Mukhopadhyaya)
Dy. Director General (F&P)

number of years within which many other employees, who are below him in seniority waiting for their promotion, may lose their promotion forever. It was ruled that:

"Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. These observations apply with equal force even to the employees in public as well as private institutions, other than the Government employees."

7. In *Burn Standard Co. Ltd. v. Dinabandhu Majumdar* (1995) 4 SCC 172: AIR 1995 SC 1499: 1995 (2) S.C.J. 441: 1995 (71) F.L.R. 282: 1995 L.I.C. 1825: 1995 (1) L.L.N. 96: [1995(4) SLR 25 (SC)], it was held that no employee can claim a right to correction of date of birth and the fact that an employee who has been in service for over decades with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the flag end of his service career with an application before the Court or the Tribunal, seeking correction of his date of birth in his service record, the very conduct of non-raising of an objection in the matter by the employee should be sufficient reason for not to entertain such a application on the grounds of acquiescence, undue delay and laches. It was further observed that it is common knowledge that every establishment has its own set of service conditions governed by rules and it is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such a sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. Undoubtedly, the Apex Court therein was dealing with a matter relating to a Government employee as well as senior officers. However, the fact remains that the observations would apply even to employees of the non-Governmental institutions. It is also a matter of common knowledge that at the time of entry of the employee in the service of an institution, certainly his date of birth is ascertained to know his age and the same is recorded in the records pertaining to his service. The Apex Court in *Burn Standard Co. Ltd. v. Dinabandhu Majumdar* (supra), has also observed that:

"For every post in the service of the Government or any other institution there is the minimum age of entry prescribed depending on the functional requirements of the post. In order to verify that the person concerned is not below that prescribed age, he is required to disclose his date of birth. The date of birth is verified and if found to be correct, is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the

date of birth and the employer accepts it as true and accurate before it is entered in the service record."

8. It is evident from the records that the petitioner has not made any efforts to dispute the correctness of the entry in the service records. Merely because the E.S.I. card discloses only the year of birth, it cannot be said that the service records of the petitioner were tampered by the respondents. In fact, apart from wild allegations in that regard, the petitioner has not made even an effort to disclose any justification or reason for the respondents to cause any such tampering with the records pertaining to the date of birth of the petitioner. It is pertinent to note that even in the course of hearing of the matter before this Court, the petitioner has not been able to point out anything from the materials on record which can even remotely suggest the possibility of tampering of the records by the respondents in relation to the date of birth of the petitioner.

9. The learned Advocate for the petitioner has drawn attention to the decision of the learned Single Judge of this Court in the matter of *Sarya Das (N.K.) v. State of Maharashtra and others*, 1988 (11) L.L.N. 860: 1989 (58) F.L.R. 610. The decision has no relevancy in the matter in issue as the same was on the point of interpretation of the word "attaining" in the Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982. The decision of the Allahabad High Court in the matter of *Alimud Husain v. The Managing Director, U.P. State Road Transport Corporation and others*, 1992 (1) C.L.R. 105: 1991 (63) F.L.R. 557: 1991 (11) L.L.N. 1049 was also sought to be relied upon. That was a decision on the point when the records do not disclose the date but only the year of birth. In the case in hand, the records apparently disclose the complete date of birth of the petitioner and therefore the said decision is also of no relevancy in the matter in hand.

10. For the reasons stated above, no interference is called for in the impugned order in writ jurisdiction and therefore the petition fails and is dismissed, the rule is discharged with no order as to costs.

11. Certified copy expedited.

Petition dismissed.

GAUHATI HIGH COURT (D.B.)

(IMPHAL)

Before :- D. Biswas and A.H. Saikia, JJ.

W.A. No. 147 of 2000 in W.P.(C) No. 548 of 2000

Decided on 30.5.2003

Hemant Bihari Singh

Versus

State of Manipur and Ors.

Appellant

Respondents

For the Appellant : Mr. Ashok Patsangbam and Mr. S.Nepolean, Advocates.
For the Respondents : Mr. Kh. Nema Chand Singh, Govt. Advocate.

Constitution of India, Articles 16 and 311-Adverse remarks-Downgrading of remarks in the ACR when unfair and unjust, it vitiates the selection process. (Para 14)

Cases referred :

1. Union of India v. Tulsiram Patel, 1985(2) SLR 576 (SC) [Para 7]
2. U.P. Jal Nigam v. Prabhakar Chandra Jain, 1996(1) SLR 743 (SC) [Para 9]
3. Kuldeep Chand v. State of H.P., 1997(2) SLR 798 (SC) [Para 14]
4. Union of India v. Major General U.S. Sidhu, 1996(11) GLT 80 [Para 14]

True Copy
Advocate

JUDGMENT AND ORDER

D. Biswas, J.—Heard Mr. Ashok Potsangbam, learned senior counsel for the appellant and also Mr. Kh. Nemaichand Singh, learned State counsel.

2. The appellant herein as writ petitioner filed W.P.(C) No.548 of 2000 praying for appropriate directions for review of the D.P.C. proceedings held on 20.11.1999 (Annexure-X/10) with other consequential reliefs. The appellant along with seven other officers were promoted to the post of Superintending Engineer (Electrical) on the basis of the recommendation of the D.P.C. held on 12.11.1999 under the auspices of the Manipur Public Service Commission. The appellant, despite promotion, was aggrieved as he was placed below the respondent Nos. 6, 7, 8 and 9 in order of merit.

3. The learned Single Judge dismissed the writ petition primarily on the ground that the respondent authority had made their own assessment, which cannot be termed as arbitrary and discriminatory and the Court in judicial review is not permitted to act as a Court of appeal.

4. Mr. Potsangbam, learned senior counsel argued that the D.P.C. fell in error in the process of assessment of merit by following a method not permissible under the Rules. There is no dispute that the D.P.C. followed the guidelines prescribed by the Government of Manipur in the Department of Personnel & Administrative Reforms vide Office Memorandum dated 20.11.1982 and the said guidelines do not approve of the system of downgrading of the remarks in the A.C.R.

5. Mr. Nemaichand, learned State counsel argued that the D.P.C. under the auspices of the Service Commission considered the respective cases of the officers and, thereafter, assessed their merits. According to the learned State counsel, in the process of assessment and evaluation of respective merit, the D.P.C. is authorised to evolve its own method/mechanism, and no fault can be found with it.

6. In the Office memorandum dated 20.11.1982, in para 4 the related provision for preparation of year-wise panel by the D.P.C. is prescribed. We have carefully examined in aforesaid Office Memorandum and we do not find any provision permitting the D.P.C. to re-write the A.C.Rs. for the purpose of downgrading.

7. Mr. Potsangbam, learned senior counsel relied upon the decision of the Supreme Court in *Union of India vs. Tulsiram Patel*, (1985) 3 SCC 398 : [1985(2) SLR 576 (SC)] in order to bring home his contention that "when there is express mention of certain things, then anything not mentioned is excluded". It is related to the maxim "expressum facit cessare tacitum" which has been dealt with by the Hon'ble Supreme Court in the aforesaid judgment. We may, for better appreciation of the issue urged, quote the relevant part of the judgment which reads as follows:

"The maxim 'expressum facit cessare tacitum' ('when there is express mention of certain things, then anything not mentioned is excluded') applies to the case. As pointed out by this Court in *B. Shankara Rao Badami vs. State of Mysore*, this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope of once again introducing the opportunities provided by clause (2) or any one of them into the second proviso."

Again in para 126 of the said judgment of the Supreme Court held as follows:

"126. As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311(2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it."

8. The ratio available from the judgment in *Tulsiram Patel (supra)* makes it clear that an authority exercising a power under certain provisions of law is bound to act within the provisions - express and implicit, and not in a manner not provided therein. Therefore, downgrading of the remarks in the A.C.R. not permitted by the Office Memorandum dated 20.11.1982 ought not to have been restored to by the D.P.C. while evaluating the respective merit of the eight Executive Engineers without recording reasons. It is more so because, downgrading of the remarks in the A.C.R. is adverse and communicable.

9. In *U.P. Jal Nigam & Ors. vs. Prabhat Chandra Jain & Ors.* (1996) 2 SCC 363 : [1996(1) SLR 743 (SC)]; the Supreme Court interpreted the law in the following words:

"3. We need to explain these observations of the High Court. 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 adverseness 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 in of going to 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 confidential 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 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."

10. A Division Bench of this Court in *Dr. Th.Rani Devi vs. Dr. T. Bilashini Devi & Ors.* (unreported) held as:

"11. In view of the above provision made in the office memorandum, the down grading of the petitioner from 'Outstanding' to 'Very Good' by the

DPC shows that the DPC did not follow the relevant provision of the office memorandum applicable in this case and instead, the DPC preferred to adopt its own procedure while making assessment/selection in the instant case. From the records there is no material to show the basis on which the DPC can adopt its own procedure by down grading the position of the writ petitioner from 'Outstanding' to 'Very Good'. There is also no material on record to show that the DPC can adopt its own procedure while making the selection. On the other hand, it is found that the DPC instead of following the relevant provision of the office memorandum has gone beyond its scope of selection by not following the procedure laid down by the State respondents. The DPC being a public body is bound to follow the standard and norms prescribed by the State authority and that by not following the said standard and norms, the DPC has exercised its discretion which resulted into arbitrariness. The selection made by the DPC is therefore contrary to the said relevant portion of the office memorandum which in our opinion the DPC has no power to do so."

11. The law is settled. The above decision lead to the inevitable conclusion that the DPC in the instant case fell in error in downgrading the remarks in the A.C.Rs. of the officers in the process of re-evaluating their respective merit at the time of promotion contrary to the provisions of law and, that too, without recording reasons. Hence, placement of officers in the list recommended by the D.P.C. on merit calls for re-examination.

12. We have also examined the records of the D.P.C. which show that the appellant H. Bihari Singh was graded 'Outstanding' for the years 1986-87, 1987-88, 1988-89, 1989-90 and 1990-91. The D.P.C. appears to have downgraded the 'Outstanding' remarks for five years and graded the officer as 'Very Good'. Reasons for such downgrading is also not available on record. An officer who has been graded as 'Outstanding' during all the relevant five years ought not to have downgraded as 'Very Good' in order to bring him at par with other officers.

13. Initially, on the recommendation of the Manipur Public Service Commission, the appellant along with twelve others were appointed as Assistant Engineer (Elect.) and the appellant was placed at serial No. 1 in the list of appointees. Thereafter, the appellant along with five other Engineers were appointed as Executive Engineer (Elect.) on promotion by the order dated 21st August, 1979 on ad-hoc basis. He was again placed at serial No. 1 in the list of appointees. Subsequently, on the recommendation of the D.P.C. held on 1.10.1994, they were regularly appointed and the appellant was placed at serial No. 5 in order of merit. By the order dated 28th August, 1992, the services of five Executive Engineers including the appellant were regularised with effect from 14.12.1980 and the appellant was placed at serial No. 1. The gradation list dated 12.10.1999 shows that the appellant was at serial No. 7 in the hierarchy of Executive Engineers. His grievance is that had there been no downgrading in the remarks of his ACR, his placement would have been at a higher level and certainly, not at serial No. 5. As we have already observed, the D.P.C. acted beyond its powers and the downgrading was ex-facie perverse for lack of reasons. The appellant appears to have genuine grievances to vindicate and, therefore, his claim for review of the D.P.C. proceedings cannot be rejected outright. When the decision taken by the D.P.C. is based on a procedure not permissible under the law, and the action taken consequently is ex-facie perverse, the Court cannot refuse to interfere with such a decision on the ground of limited powers in judicial review.

14. We have considered the decisions in Kuldip Chand vs. State of H.P. & Ors., AIR 1997 SC 2606 : [1997(2) SLR 798 (SC)] and Union of India & Ors. vs. Major General U.S. Sidhu, 1996(III) GLT 80. The judgments have been relied upon by Mr. Nemaichand, learned State counsel in order to appraise the Court about the limitation while exercising the powers of judicial review. For the reasons stated above, we are of the opinion that the ratio available in the aforesaid two judgments are not applicable in the instant case. It is because, the procedure adopted by the D.P.C. in the instant case has been held to be contrary to the provisions of law and beyond the power of the D.P.C. Downgrading may be permissible in cases for good reason solely for the purpose of evaluation of merit. An officer consistently graded 'Outstanding' cannot be downgraded as 'Very Good' in order to bring him at par with others, particularly when two of his seniors are mere diploma holders. Downgrading of the remarks, in the A.C. R. of the appellant is the crux of the decision making process and the same, when unfair and unjust, vitiates the selection process.

15. We, therefore, allow the appeal; set aside the judgment and order dated 2.8.2000 passed by the learned Single Judge in W.P.(C) No. 548/2000 and direct the respondent authority to take steps for review of the proceedings of the D.P.C. dated 20.11.1999 (Annexure-X/10) within a period of four months from today.

16. The records of the D.P.C. be returned to the learned State counsel.

17. No costs.

Appeal allowed.

KERALA HIGH COURT (D.B.)

Before :- Jawahar Lal Gupta, CJ. and M. Ramachandran, J.

W.A. No. 2006 of 2003

Decided on 5.12.2003

State of Kerala

Appellants

Sreedharan

Versus

Respondent

For the Appellants : Mr. C.K. Abdul Rahim (Government Pleader).

For the Respondent : Mr. Anil Thomas, Advocate.

Constitution of India, Articles 16 and 226—Higher grade—Benefit of higher grade—Withdrawal of—Benefit of military service granted to the employee—Employee deemed to have been fictionally appointed on a day prior to the date on which he was actually appointed—Benefit cannot be withdrawn at any later stage of service.

(Paras 10 and 12)

JUDGMENT (Oral)

Jawahar Lal Gupta, CJ.—Was the action of the appellant authorities in withdrawing the benefit of higher grade granted to the respondent legal and valid? The learned Single Judge having answered this question in the negative and allowed the claim of the respondent, the State of Kerala and its officers have filed the present appeal. Relevant facts may be briefly noticed.

2. The respondent had worked in the Indian Army for a period of about six years and eleven months. After discharge from the Army he was appointed as a Sergeant in the Medical Education Service of the State on July 1, 1982. He was granted the benefit of the Army Service and was deemed to have been appointed on September 16, 1975.

Dr Binoy Gupta v. The Union of India

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entire litigation has been commenced by the employees dishonestly their con-
tention that BSNL is not their employer is motivated and malafide. In our opin-
ion therefore such employees do not deserve any sympathy from this Court.
Request for postponing the implementation of this judgment is rejected. The di-
rection that it be implemented immediately is reiterated. Rule is made absolute
in terms above. Parties to act on copy of this order duly authenticated.

BOMBAY HIGH COURT

Writ Petition No. 3641 of 2002
Decided on 27-8-2002

Dr Binoy Gupta

Versus

Petitioner

The Union of India and Ors.

Respondents

For the Petitioner:

Mr. S.V. Marne, Advocate

For the Respondents:

Mr. T.C. Kaushik, Advocate

PRESENT

The Hon'ble Mr. Justice, A.P. Shah,
The Hon'ble Mrs. Justice Ranjana Desai

Promotion--Adverse Remarks--Promotion to the post of CCIT--Petitioner was not selected on the basis of downgrading in ACR--Downgrading in ACR was not communicated to him--Held it vitiates the DPC proceedings--Direction given to convene a review DPC for reconsideration of applicant's case by ignoring the ACRs of the Reviewing Officer for the year 1995-96, 1996-97 and 1998-99 and promote him if found suitable.

JUDGMENT

Rule. Respondents waive service. By consent of parties petition is taken up for final hearing.

The petitioner after being selected by the Union Public Service Commission, joined the Income Tax Department in 1968. He was thereafter promoted to various grades during his service career and at present he is working as the Commissioner of Income Tax. The petitioner claims that during his service career he has been maintaining the minimum standard expected for a Group "A" officers. There has been no chargesheet or even a vigilance enquiry against him through out the tenure of his service. He claims that apart from maintaining the minimum standard required for Group "A" Officers, he was pursuing his academic achievements during the period of his service in the Income Tax Department and as such he secured Post Graduation qualification like Master of Law, Diploma in Investment Management, Diploma in Insurance Law and Diploma in Journalism and Mass Communication. The petitioner also did Doctorate in Law from the Mumbai University.

In 1991 the petitioner was posted as Commissioner of Income Tax at Chennai and in 1993 he was transferred and posted at Mumbai. According to the petitioner although the normal tenure of posting in Mumbai is 8 years, the petitioner was suddenly transferred to Hubli in the year 1996. After making enquiry for the reasons for the sudden transfer, the petitioner was informed that the then Chief Commissioner of Income Tax Mumbai Sh. G.S. Siddhu had cast aspersions on the integrity and honesty of petitioner in the letter addressed to the respondent Chairman CBDP. Sh. Siddhu had alleged in his letter that the petitioner had visited Russia for his wife's busi-

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Advocates

ness, that the petitioner was misusing the official telephone line and the official car for his wife's business and therefore the Chief Commissioner had suggested transfer of the petitioner outside Mumbai on the aforesaid allegations. However the Chief Commissioner of Income Tax had in fact sought clarification from the petitioner on the alleged misuse of the office car and the telephone, and the petitioner had submitted his clarification dated 26.6.1996. Thereafter petitioner's transfer was ultimately cancelled. The vigilance department also conducted preliminary enquiry on the allegations leveled by the Chief Commissioner of Income Tax, Mumbai and the petitioner's wife business in Chennai, directly as well as though the Director General of Income Tax (Investigation) Chennai, no further action was taken by the respondents in the matter. In the meanwhile the petitioner applied for the post of Member, Income Tax Appellate Tribunal and his name was cleared for interview for appointing him as a Member of Income Tax Appellate Tribunal. It appears that the DPC met for promotion to the upgraded post of Chief Commissioner of Income Tax, and the petitioner's name was not empanelled for promotion to the post of Chief Commissioner of Income Tax CCIT. Being aggrieved the petitioner approached Central Administrative Tribunal, Mumbai by filing Original Application No. 386 of 2001.

Before the tribunal it was the case of the petitioner that there was no adverse remarks against him at any time. According to the petitioner he ought to have been considered for empanelment because there was nothing adverse against him. The bench mark required for promotion to the post of Senior Administrative Grade to the Super Administrative Grade is 'very good'. The petitioner contended that as a direct recruit Group A officer selected to the Indian Revenue Service (IRS) through the UPSC the petitioner has been maintaining the minimum standard expected for Group A officer all along. If there was any deficiency or deterioration in the standard of his performance, the same ought to have been brought to his notice in time. The respondents have never communicated to the petitioner any such short coming. He got his promotion to the Senior Administrative Grade without any hitch. Had the Reporting Officer or the Reviewing Officer downgraded his ACR he should have been given an hearing. The petitioner alleged that the ACR have been downgraded on account of the letter written by the CCIT. The petitioner relied upon the decision of the Supreme Court in U.P. Jal Nigam and ors. Vs. Prabhat Chandra Jain and Ors. ((1996) 33 ATC 217).

The tribunal after hearing the both sides and after perusing the relevant records and ACRs virtually accepted the entire case of the petitioner. The relevant discussion of the tribunal is found in paras 5 and 6 which are reproduced below:

"We have heard the applicant as well as the respondents. What is relevant is to see the DPC proceedings to find out whether proper procedure was followed or not. It is seen from the ACRs of the applicant that the applicant had an outstanding grading during 1994-95. Thereafter, for the next year although the reporting officer had given him the grading of 'very good' the reviewing officer changed it to 'good'. Next two years the applicant was assessed as Good only and during the last year of the five year period the applicant got the grading of Very good. It is seen that no adverse entries were communicated to the applicant. Really speaking there is nothing adverse against the applicant. The applicant has made an allegation against the reporting officer Sh. G.S. Siddu. But it is seen

that Sh. Siddu had given outstanding grading in the earlier year and even in the second year he gave the grading of Very good to the applicant. However against the integrity column he gave a secret note as per procedure laid down by the Government of India. It is further seen that the reviewing officer had made an observation that "the officer has been engaging himself in business activities in his wife's name. His output as CIT (A) has been found to be adequate. Over all performance for the year will rank as Good". Thus, the reviewing officer seems to have based his assessment on the applicant's engagement in business on behalf of his wife and not on the basis of actual performance. It is seen that the reporting and reviewing officers were the same authority who had given "outstanding" ACR for 1994-95. Thereafter two CRs are only assessed as 'good'. In the last ACR for the period from 1.4.1999 - 31.3.2000 again while rating the applicant as 'very good' against the integrity column, it has been mentioned that he has vigilance proceeding against him, though during the year he did not come across anything questionable about the integrity. Thus, there is a mention about the doubted integrity of the applicant. Normally the procedure to be followed in such cases of doubtful integrity is as follows:

- (i) If the officer's integrity is beyond doubt, it may be so stated.
- (ii) If there is any doubt or suspicion, the column should be left blank and action taken as under: -
 - (a) A separate secret note would be recorded and followed up. A copy of the note should also be sent together with the confidential report to the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the reporting officer should state either that he had not watched the officer's work for sufficient time to form a definite judgment or that he has heard nothing against the officer as the case may be.
 - (b) If, as a result of the follow up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the confidential report.
 - (c) If the doubts or suspicions are confirmed, this fact, should also be recorded and duly communicated to the officer concerned.
 - (d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct and thereafter action taken as indicated at (b) and (c) above.

It is seen that in the present case a separate secret note was recorded and sent to the next superior officer. Instead of mentioning about integrity in the AR that report should have been followed up to see whether it was possible to certify the integrity. We find that the procedure has not been followed properly and even the question of integrity does not appear to have been finalized as according to the applicant no charge sheet has been issued to him so far. The existing entry on the integrity in the ACR of 1999-2000 is in disregard of the procedure laid down and without verifying the result of surveillance. Secondly as far as the bench mark is concerned, it is 'very good' and the applicant failed to get the bench mark. Being a selection post, the better candidate gets selected.

According to the applicant there is downgrading of ACR from outstanding in 1994-95, it has been reduced to 'good' in 1995-96 and the same ought to have been communicated to him in terms of the judgement in the case of UP Jainigam. We have noticed that although assessment of 'good' perse may not be adverse in the context of the bench mark fixed for promotion to the higher post, the same needs to be communicated. Even about doubtful integrity, the applicant ought to have been intimated. It has been held in the case of Guruviah as Union of India 1991 (2) CAT SLJ 123 that any entry adverse entries even for doubtful integrity cannot be used against the employee. There is a clear downgrading of the CR of the applicant. We therefore hold that the non including of the applicant's name in the panel for promotion to the CCIT based on the remarks made on integrity in the ACR and the downgrading of the ACR of the applicant in 1995-96 without giving details of bad performance, but only on the ground of the applicant's integrity, is not correct..."

The tribunal held that the petitioner ought to have been given an opportunity and accordingly directed the respondents to communicate the remarks in the ACR of the petitioner for the period 1994-95 till 2000-01 and to allow him to represent against the same within a period of one month and if as a result, the gradings in the ACR undergoes a change to the advantage of the petitioner, then a review DPC be convened within a period of three months from the date of passing of the speaking order on the representation of the petitioner.

The learned counsel for the petitioner submitted and in our opinion rightly that no useful purpose will be served by communicating the ACRs from the year 1994-95 in the year 2002, since the petitioner may not be able to effectively represent against the same. Further more the Reporting Officer and Reviewing Officer of the years 1994-95 are not available to assess the performance of the petitioner and the representation made by the petitioner against those ACR would be considered and replied by officer who had no opportunity to assess the performance of the petitioner during that particular year. The learned counsel pointed out that the tribunal in similar cases directed the DPC to consider candidate's case by excluding from considering the uncommunicated ACRs downgrading the officer.

The tribunal has observed the following gradings in the ACRs of the petitioner:

Grading in F.Y.	Remarks of the Reporting officer	Remarks of the Reviewing officer
1994-95	Outstanding	Outstanding
1995-96	Very Good	Good
1996-97	Good	Good
1997-98	No ACR	No ACR
1998-99	Good	Good
1999-00	Very Good	Very Good

The tribunal has held that the downgrading of the ACR for 1995-96 from 'very good' to 'good' is illegal and the same has not been communicated to the petitioner. Therefore the final grading for the relevant years should be treated as 'very good'. In U.P. Jal Nigam's case the Supreme Court observed:

"We need to explain these observations of the High Court. 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 adverseness 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 confidential 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 sitting of adverseness must, in all vents, not be reflected in such variations, as otherwise they shall be communicated as such. 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. 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 Jal Nigam we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

In the light of the decision of the Supreme Court we find that non selection of the petitioner for promotion to the post of Chief Commissioner on the basis of the ACR where communication of down grading has not been made vitiate the proceedings. Therefore we direct the respondents to convene a review DPC and reconsider the case of the petitioner ignoring the ACRs of the Reviewing Officer for 1995-96 and also ACRs of 1996-97 and 1998-99 and if he is found suitable, give him promotion from the date from which other officers who were promoted on the recommendations of the DPC.

Rule is made absolute accordingly.

CENTRAL ADMINISTRATIVE TRIBUNAL

(FULL BENCH, BANGALORE)

O.A. No. 1517 & 1577 to 1646/2000

Decided on 1-5-2002

V. Suresh Kumar and Others

Applicants

Versus

The Sr. Supdt. and others

Respondents

For the Applicant:

Shri B. Sheik Mourthuja, Advocate

For the Respondent:

Shri S. Sugumaran, Addl. Central Government

Standing Counsel

PRESENT

The Hon'ble Mr. Justice Ashok Agarwal, Chairman

The Hon'ble Mr. V. Srikantan, Member(A)

The Hon'ble Mr. Nityananda Prusty, Member(J)

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ANNEX-8

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ANNEXURE-XXII

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1. The various commendation letters awarded to an employee for the good work done by him cannot be totally ignored and the same must be taken into account while judging the performance of the employee and a mention about the same should be made in the relevant ACR of the employee.

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Advocate

2. An uncommunicated adverse remark/comment in the ACR of an employee cannot be acted upon to deny him promotional opportunities.

Facts: The Applicant was first appointed as Assistant Intelligence Officer-II in the year 1972 in the Intelligence Department, Government of India. It has been stated by the applicant in the OA. that he had put long years of service without any remarks whatsoever. Besides, he also got several high commendation certificates for his distinct and meritorious service. The Applicant was promoted in the year 1981 as Assistant Central Intelligence Officer-I and further promoted as DCIO in the year 1989. He has worked in various places and politically critical areas like Assam, Bhutan, Nefa and Arunachal Pradesh. It is the contention of the Applicant in the OA, that he is fully qualified and eligible for promotion as Assistant Director (Exe. Central Intelligence Bureau) and that his name figured at serial No. 55 in the promotion panel prepared by the department in the year 2001. However, several person who were junior to the Applicant got promotion *vide* the impugned order, dated 31-7-2001. However, the case of the Applicant was overlooked and he was not considered for promotion and not promoted as such. The applicant has further submitted that he got high commendations and belongs to Scheduled Caste community but yet although his juniors have been promoted, he was not considered for promotion though no adverse remarks are there against him and no adverse remark have ever been communicated to him. The Applicant has submitted that Courts have repeatedly held that person who are entitled for promotion even on temporary basis and not giving them the same is illegal and contrary to the Rules from time to time, as also discriminatory and violative of Articles 14 and 16 of the Constitution of India. Accordingly, the Applicant has argued that the action of the Respondents in not promoting the Applicant while promoting his juniors is wholly illegal and not tenable in the eyes of law. The Applicants has further submitted that due to the discriminatory and illegal act of the Respondents, the Applicant has been put to great harassment since he has to work under his juniors and as such, he has been put to great mental agony. Hence this OA for redressal of his grievance.

Held: During the course of hearing, the Respondents produced the office records including the ACRs of the Applicant for the years 1996-97 up to 2001-02. On going through all the ACRs, we, however, do not find any adverse remark in any of the ACR of the Applicant. Out of the seven ACRs gone through by us, four ACRs of the applicant were graded as good one ACR graded as 'very good', one ACR graded as satisfactory and for the year 1999-2000 two ACRs were written for part of the year and one ACR was graded as 'good' and the other ACR was graded as 'average'. From the record, we do not find any adverse remarks recorded in the ACRs of the Applicant which were communicated to him at any point of time. Besides, the records

produced by the Respondents also contained various high commendations for the work done by the Applicant.

From a perusal of the ACRs of the Applicant, we find that except the ACRs for the year 1998-99 and the part of the year 1999-2000 which are either satisfactory or average, the Applicant has secured good/very good ACRs for other years. However, we do not find any adverse entry in the ACR of the Applicant for any of the years. Besides, various commendation letters awarded to the Applicant for the good/outstanding work done by him cannot be totally ignored. The same must be taken into account while judging the performance of the Applicant and a mention about the same should have been made in the relevant ACRs of the Applicant. Moreover, we find that it is a fact on record that the Applicant was never intimated in writing about his 'satisfactory'/'average' ACRs by the Respondent - Authorities. In terms of the finding given by the Hon'ble Supreme Court in the *U.P. Jal Nigam case* [AIR 1979 SC 162] as well as other cases, as referred to by the Applicant in his rejoinder and mentioned by us in accordance with the rules of natural justice, an uncommunicated adverse remark/comment in the ACR of an employee cannot be acted upon to deny him promotional opportunities because unless the same is communicated to the employee concerned he will not be in a position to improve his work or conduct or explain the circumstances leading to the report. Such adverse remark cannot be relied upon by the DPC so as to deprive an employee of his promotion. It is also seen from the ACRs of the Applicant that in none of the years, he has been awarded any adverse entry. 'Satisfactory' or 'average' remarks given in the ACR cannot be termed as an adverse entry and in the case of the Applicant it was thought so by the Respondent. In that case, the Respondents should have intimated those remarks to the Applicant so that he could have improved his work and conduct in future.

We are, therefore, of the view that the performance and conduct of the Applicant, as per his ACRs, together with the commendation letters issued to him by the Respondents, numbering 10, should entitle the Applicant for the promotion to the post of Assistant Director (Exe.)

The Apex Court in its decision in the case of *Badrinath v. Government of Tamilnadu and others* [2001 SCC (L&S) 13], had observed that in order to prevent injustice resulting to the parties concerned, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. The Apex Court, considering the special and peculiar circumstances of the case, had accordingly directed the Respondents to grant the Appellant the benefit of the super-time scale from the date on which the appellants Junior was granted super-time scale. The Respondents were accordingly directed to

pass an order in this behalf and to give the Appellant all consequential benefits attendant thereto.

Considering the findings given by the Apex Court in the case of *Badrinath v. Government of Tamilnadu and others* (*supra*), we are of the view that to meet the ends of justice, it would be fair and reasonable, to hold that the Applicant was entitled for promotion to the post of Assistant Director (Exe.)

Accordingly, the Respondents are directed to hold a review DPC for considering the case of the Applicant for promotion to the post of Assistant Director (Exe.) afresh, in the light of the observations made above, and award the Applicant promotion to the post of Assistant Director (Exe.), particularly when there is no adverse report against the Applicant for any year, as also no communication has been made to the Applicant with regard to satisfactory/average report given to him during the years 1999-2000 and 2000-01.

The entire exercise in this regard should be completed within a period of two months from the date of communication of this order.

[*Subbitt Dhanapathi Rao v. The Director, Intelligence Bureau, New Delhi and another*, 8/2004, Swamysnews 81, (Hyderabad), date of judgment 24-12-2003.]

O.A. No. 297 of 2003

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APPENDIX -9

INCENTIVES FOR SERVING IN REMOTE AREAS

[G.I., M.F., O.M. No. 20014/3/83-E, IV, dated the 14th December, 1983, read with O.M. No. 20014/3/83-E, IV, dated the 30th March, 1984, 27th July, 1984, G.I., M.F., U.O. No. 3943-E, IV/84, dated the 17th October, 1984, O.M. No. F. 20014/3/83-E, IV, dated the 31st January, 1985, 25th September, 1985, U.O. No. 824-E, IV/86, dated the 1st April, 1986, O.M. No. 20014/3/83-E, IV, dated the 29th October, 1986, O.M. No. 20014/3/83-E, IV/E, II (B), dated the 11th May, 1987, 28th July, 1987, 15th July, 1988 and O.M. No. F. 20014/16/86-E, IV/E, II (B), dated the 1st December, 1988 and O.M. No. 11 (2)/97-E, II (B), dated the 22nd July, 1998.]

I

Allowances and facilities admissible to various categories of civilian Central Government employees serving in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram, Andaman and Nicobar Islands and Lakshadweep Islands. These orders also apply *mutatis mutandis* to officers posted to N-E Council, when they are stationed in the N-E Region and to the civilian Central Government employees including officers of All India Services posted to Sikkim.

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period $\frac{2}{3}$ rd years. Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region, will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Reports:

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of—

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

True copy
Advocate

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deservng cases of meritorious service in the North-East.

A specific entry shall be made in the CR of all employees who rendered a full tenure of service in the North-Eastern Region to that effect.

Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance:

Central Government civilian employees who have All India transfer liability will be granted Special (Duty) Allowance at the rate of $12\frac{1}{2}\%$ of basic pay on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance already being drawn without any ceiling on its quantum. The condition that the aggregate of the Special (Duty) Allowance *plus* Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs. 1,000 per month shall also be dispensed with from 1-8-1997. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

The Central Government civilian employees who are members of Scheduled Tribes and are otherwise eligible for the grant of Special (Duty) Allowance under this para. and are exempted from payment of Income Tax under the Income Tax Act will also draw Special (Duty) Allowance.

NOTE 1.— Special duty allowance will not be admissible during periods of leave/training beyond 15 days at a time and beyond 30 days in a year. The allowance is also not admissible during suspension and joining time.

NOTE 2.— Central Government civilian employees, having 'All India Transfer Liability' on their posting to Andaman & Nicobar Islands and Lakshadweep Islands are, with effect from 24th May, 1989, granted 'Island Special Allowance' in lieu of 'Special (Duty) Allowance'. See Orders in Section V of this Appendix.

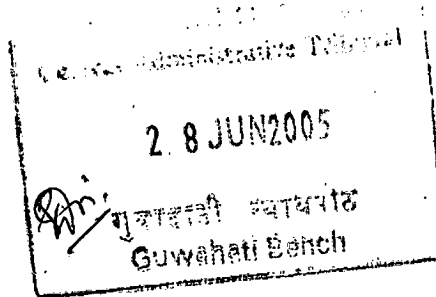
(iv) Special Compensatory Allowance:

The recommendations of the Fifth Pay Commission have been accepted by the Government and Special Compensatory Allowance at the revised rates have been made effective from 1-8-1997.

For orders regarding current rates of Special Compensatory allowance—See Part V of this Compilation - HRA and CCA

(v) Travelling Allowance on first appointment:

In relaxation of the present rules (SR 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH

Original Application No. 228/2004

Shri Subodh Kumar Pattnaik
son of Late Bansidhar Pattnaik,
Geologist (Sr.)
M.G.P. Division,
Geological Survey of India,
North Eastern Region,
Shillong

----- Applicant

Versus

Union of India & Others

----- Respondents

And

IN THE MATTER OF :

The Written Statement for and on behalf of Respondents

1. That with regards to Para 4.1 of the Application, the Respondents beg to offer no comments.
2. That with regards to Para 4.2 of the Application, the Respondents beg to state that it is a matter of record and no comment.
3. With regards to Para 4.3 of the application, the respondents beg to state that it is a matter of record. The residency period for the post of Director is 6 years regular service in the grade of Geologist (Senior).
4. With regards to Para 4.4 of the application, the Respondents beg to state that the eligibility is not the sole criteria for grant of promotion to the post of Director (Geology), there are other factors, which are required to be considered, like number of vacancies, zone of consideration, seniority position of the officer and

Union of India & Others - Respondents
Through
Group Member
Chancellor
Adl. Central Govt. Standing Order No. 5
C. A. T.
Guwahati
11/8
Khaimbar Khoswala
Head of Office
CSI, NER
Shillong

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performance of the officer reflected in the Confidential Reports. The applicant completed the residency period of 6 years for promotion to the post of Director (Geology) only in 1991. The name of Shri S.K. Patnaik (applicant) has been indicated at S. No. 670 of the Seniority List of Geologist (Senior) prepared by the Geological Survey of India as on 01.10.1990. The detail of DPC held on basis of the Seniority list as on 01.10.1990, from 1990 onward is indicated below :-

S. No.	Vacancy year	No. of vacancy	No of officer Consider in zone	Promoted upto S. No. of Seniority List as on 01.10.90
1	1990-91	20	44 From Sh. P.K. Dutta to Sh. S.K. Roy	20 Upto Shri A.N. Tiwari at S. No. 55
2.	1990-91	177	358 from Shri P.K. Dutta to Shri R.P. Verna	Review DPC 177 Upto Shri V.V. Rao, S. No. 240
3	1991-92	21	46 from Sh. R. Sakathiara to B. Chakrabarty	21 Upto Sh. A.D.P. Rao S. No. 251
4	1992-93	12	22 from R.S. Kathiara to K.C. Pal	12 upto Sh. A.K. Mishra at S. No. 257
5	1993-94	13	30 from Dr. A. Mazumdar to B.S. Andotra	13 upto Sh. P.T. Sinha Roy at S. No. 259
6	1994-95	31	67 from Dr. A. Majumdar to R.K. Chakraborty	31 upto Shri U.K. Roy at S. No. 303
7	1995-96	31	66 From S.S. Raghaban to P.K. Ghosh	31 upto Sh. Gopal Ghatak at S. No. 333
8	1996-97	54	144 From S.S. Raghaban to R.G. Ghathania	54 upto Sh. A.R. Nambiar at S. No. 398
9.	1997-98	38	80 from G. Ramalingawsamy	38 upto S.G. Udhoji at S. No. 449

10	1998-99	22	86 from N.K. R. Verma to S.K. Hans	22 upto Dr. G. Ahmed at S. No. 474
11	1999-00	08	20 from R. Dubey to P.K. Muralidharan	08 up to M. An. Rao at S. No. 483
12	2000-01	42	96 from R. Dubey to K.N. Nanda	42 upto Aloke Sen at S. No. 534
13	2000-01	02	8 from R. Dubey to R.K. Sinha	2 upto Dr. B.M. Faruque at S. No. 235
14	2001-02	36	78 from R. Dubey to Mukul Tiwari	36 upto V.R. Kumar at S. No. 586
15	2001-02	01	5 from R. Dubey to K.L. Nanda	1 Sh. K.L. Nanda at S. No. 588
16	2003-04	53	109 from R. Dubey to U.N. Satpathi	53 upto Sh. R.S. Mishra at S. No. 661
17	2003-04	01	5 from R. Dubey to O.P. Joshi	No officer was found fit by the DPC
18	2003-04	53	110 from R. Dubey to K. Kachroo	53 upto Sh. P.k. Swain at S. No. 727
19	2004-05	26	49 from R. Dubey to M. Chakradhar	26 upto G.K. Gupta at S. No. 157 of S.L. as 01.08.2000.

The allegation made by the applicant is baseless. Further, Supreme court of India has settled this issue in the case of Union of India Vs. Majri Jungamayya and others 1977 SLJ 90 SC/AIR 1977 SC 757 that no employee has a right to have a vacancy in a higher post filled as soon as the vacancy arises. Government has a right to keep the vacancy unfilled as long as it chooses.

5.

With regards to Para 4.5, 4.6 & 4.7 of the application, the Respondents beg to state that the post of Director (Geology) in Geological Survey of India is a selection posts and according to the instruction of the Department of Personnel & Training dated 8th

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February, 2002 the bench mark for the post is **'Very Good'**. As position explained in para 4.4. above, the applicant was never within the zone of consideration for promotion to the post of Director (Geology). Departmental Promotion Committee (hereinafter as DPC), was held for 53 posts of Director (Geology) for the year 2003-04 and 26 vacancies for the year 2004-05 on 10th August, 2004, he was considered by the DPC along with other eligible officers, as he was within the zone of consideration but he was not found fit by the DPC, in view of the performance reflected in his Confidential Reports.

6. With regards to para 4.8, 4.9 and 4.10 of the application, the Respondents beg to offer no comments.
7. With regards to para 4.11 of the application, the Respondents beg to offer no comments. The duty of a Geologist is to do the fieldwork and submit his report about the mineral deposits in the areas where the field duty was assigned to him. The applicant was asking for Office duty during his stay at NER, which is not permissible as per duties of the post of Geologist.
8. That with regards to para 4.12, 4.13 and 4.14 of the application, the respondents beg to offer no comments.
9. That with regards to para 4.15 of the application, the respondents beg to state that it is matter of record. No comments to offer.
10. That with regards to para 4.16, 4.17 and 4.18 of the application, the respondents beg to state that the allegations made by the applicant are baseless and misleading the Learned Tribunal. Hon'ble Tribunal may call for the confidential report for perusal before reaching to the conclusion.
11. That with regards to para 4.19 of the application, the respondents beg to state that it is matter of record. No comments to offer.

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12. That with regards to para 4.20 of the application, the respondents beg to state that it is matter of record. No comments to offer. It seems from the version of the applicant, as if all the officers of Geological Survey of India (hereinafter as GSI) are against him. Firstly he made allegation against Senior Deputy Director General and later against Shri B.K. Mohanty. It clearly shows that the applicant is not a good worker. The performance indicated by the reporting, reviewing and accepting authority in the applicant's CR Dossiers is just and fair.
13. That with regards to para 4.21 of the application, the respondents beg to state that the allegations made by the applicant regarding downgrading are baseless and misleading the Learned Tribunal. Learned Tribunal may call for the confidential record for reaching a conclusion.
14. That with regards to para 4.22 of the application, the respondents beg to state that the role of the DPC is to assess the performance of the officer reflected in the Confidential Record in the light of the DOP & T guidelines, and give its recommendations. The allegation made by the applicant is misleading the Hon'ble Tribunal.
15. That with regards to para 4.23 & 4.24 of the application, the respondents beg to state that the DPC is considering the case of promotion in accordance with the instruction of the Department of Personnel & Training. There is no such instruction issued by the Department of Personnel & Training on the basis of the Hon'ble Supreme Court directions that below bench mark grading should be communicated to the individual. Moreover, it is stipulated in para 6.1.4 of the consolidated instruction of DPC issued by the Department of Personnel & Training, vide O.M. dated 10th April, 1989 and amended from time to time, that Government also desired to clear the misconception about "Average" performance. The 'Average' may not be taken as adverse remarks. While 'Average' may not be taken as adverse remark, how the 'Good' performance of the Officer can be treated as adverse remarks.

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16. That with regards to para 4.26 of the application, the respondents beg to state that it is true that the Government has given certain incentive for working in North Eastern Region (hereinafter as NER). But Government has not given incentive for promotion to those officers who do not obey the order of their superiors and make allegation against them. The applicant during his posting in NER refused to take assignment of field duties, which has been accepted by him in the O.A. Obviously, the Government incentive cannot authentically flow to the officers posted in NER for non-performance. Refusal of field duty clearly shows that the applicant is not a willing worker.
 17. That with regards to para 4.27 of the application, the respondents beg to state that the DPC has to consider the performance/grading reflected in the Confidential Report for the last five years. The applicant was not recommended by the DPC for promotion keeping in view his performance. His Senior and Junior were recommended according to the performance/grading reflected in their CRs.
 18. That with regards to para 4.28 of the application, the respondents beg to state that only DPC is the best judge to decide the suitability for considering the officer fit for promotion. The performance of the applicant is not upto the mark; hence DPC did not found him fit for promotion. It is wrong to say that the judgement of the DPC is bad in the eye of law.
 19. That with regards to para 4.29 to 4.30 of the application, the respondents beg to state that promotion is not a fundamental right of an employee, as accepted by the Hon'ble Apex Court. This is more so in case of officers who disobey the order of their superiors. The competent authority is DPC, who adjudges the suitability of an employee for promotion to the higher grade. The judgement of DPC is in order. The application of the applicant is without merit and so untenable and is liable to be dismissed without merit and with cost.
 20. That this written statement is made bonafide and for the ends of justice.

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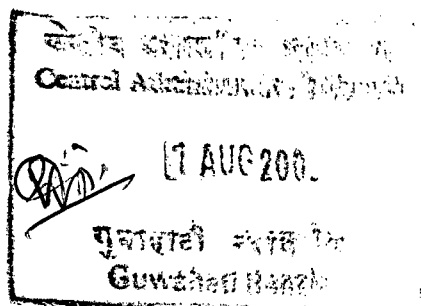
VERIFICATION

I, Shri Khlainbor Kharmalki, Administrative Officer Gr. I & Head of Office, Geological Survey of India, North Eastern Region, Shillong, Son of (L) L.S. Sawkmie, aged about 50 years, resident of Malki, Shillong- 793001, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in the Para 1 to Para 20 of this Written Statement are true to my knowledge and belief.

And I sign this verification on this 24th day of June, 2005 at Guwahati.

Khlainbor Kharmalki

DEPONENT
Head of Office
GSI, NER
Shillong.



Filed by the applicant-
through:
Subrota Nath.
Advocate
3 03.08.05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of: -

O.A. No ²³⁸~~247~~ of 2004.

Sri Subodh Kumar Patnaik.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicant
against the written statement submitted
by the respondents.

The above named applicant most humbly and respectfully begs to state as under:-

1. That with regard to statements made in paragraph 4, the applicant begs to state that he has never mentioned in the O.A. that eligibility is the only criteria for promotion. The point raised is that due to failure in holding regular DPC's (required to be held annually), the applicant's candidature

could not be considered before 13 years after completion of residency period as Geologist (Senior). This is a statement of fact and not an allegation as interpreted by the respondents.

The table incorporated in the paragraph, purported to contain details of D.P.C.'s from 1990 onwards does not reflect the same as the dates of the D.P.C.'s have not been shown. This creates confusion as to whether one or more D.P.C.'s were held for the vacancy against one year or a single DPC was held for the vacancies against more than one year. In the said table there has also been mixing up of two types of Sl. No's taken from two gradation lists, one dated 01.10.1990 and the other dated 01.08.2000.

Further, no vacancy has been shown against the year 2002-03 (i.e. ending march, 2003), whereas, a total of 107 vacancies have been shown against the year 2003-04. These data are wrong and misleading and appear to be a deliberate attempt to suppress the fact that the applicant's candidature for promotion falls against the vacancy year 2002-03.

Hence, the applicant begs to pray to the Hon'ble Court to ask for the minutes of the D.P.C held in August, 2004, to take cognizance of the facts.

2. That with regard to the statement made in paragraph 5, the applicant begs to state that, as the said DPC did not find him fit for promotion, it is obvious that some of the bench-marks in the considered ACR's are adverse which were never communicated to the applicant, except for the year 2002-03 which was kindly expunged by the respondent No. 2, as mentioned in the O.A. Such non-communication of adverse CR's violates the directive of the Hon'ble Apex Court in the U.P. Jal Nigam case, as mentioned in the O.A. Further, in accordance with another Supreme Court Judgment (2001 SCC (L&S) 13), The Hon'ble CAT, Hyderabad held (see Annexure-XXII, in the O.A) that un-communicated adverse

remarks/comments cannot be acted upon by the DPC to deny promotion to a candidate.

Hence, the act of the above DPC in denying promotion to the applicant is illegal, to say the least. The applicant also relied upon the Judgment of the full bench of the Hon'ble Delhi High Court reported in 2002 (65) DRJ 607 (FB).

A copy of the judgment dated August 16, 2002 passed by the Hon'ble High Court of Delhi (FB) is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- A.

3. That with regard to the statement made in paragraph 6, the respondents have offered no comments and have, obviously, preferred to remain silent to the genuine request of the applicant, on medical grounds, to exempt him from field work (see para 4.8, 4.9 and 4.10 of the O.A). This only confirms that the respondents also feel that the request was genuine, but was rejected by Shri K. Krishnanunni, Dy. Director General. And further, respondents have preferred silence over Shri Krishnanunni's asking him to proceed on leave for not being able to take up the field work, because the Dy. D. G's action was against the official rules and procedures. And perhaps, this is the only example of its kind in post-independence period in G.S.I.
4. That with regard to the statement made in paragraph 7, again the respondents have offered no comments regarding para 4.11 of the O.A. because they prefer to remain silent over the fact that the applicant could have been easily assigned HQ./Lab. Jobs instead of forcing him for field work inspite of his health conditions and age. Further, the respondents have stated that the duty of a Geologist is to do field work and the applicant's request for Head Qtr. Duty in the NER is not permissible. This statement grossly contradicts that fact the more than 20% and 22% of the total no. of Geologist posted in NER were deployed in HQ. Jobs,

respectively during field seasons 1997-98 and 1998-99 vide GSI Annual programme (see Annexure-1). Thus it can be construed that the respondents made such a statement only to mislead the Hon'ble Court.

The applicant begs to state that most of the Geologist deployed for H.Q. jobs were junior to him both in age and gradation. Such a practice of deploying a no. of geologists in H.Q. jobs is continued in NER for years.

Even, some Geologists have hardly been deployed for field jobs during their long years of posting in NER, the glaring example being the case of

Shri Vimal Kumar (Respondent No. 8), now promoted as Director. The

applicant also begs to state, contrary to the version of the respondents

that, the duty of a Geologist is not only to carry out the field work but also

to work in various laboratories and Techno-administrative jobs at the

H.Q., as detailed in the table-administrative jobs at the H.Q., as detailed in

the table above Annexure-1). And the objective of the field work is not

only to search for mineral resources, as stated by the respondents, but also

to bring out field data regarding various other branches of Geology such

as Paleontology, Engineering Geology, Environmental Geology etc.,

mention a few.

5. That with regard to the statements made in paragraph 8 and 9, the applicant begs to state that the respondents have offered no comments as they have not only accepted the facts stated in para 4.12, 4.13, 4.14 and 4.15 of the O.A., but also covertly feel that the applicants request for H.Q. Job instead of field duty was genuine and it should have been considered favourably for the field season, 1997-98, as was done for the following year.

6. That with regard to the statements made in paragraph 10, in response to the paras 4.16, 4.17 and 4.18 of the O.A., the applicant begs to state that he had only apprehended those eventualities because of the events as stated,

therein, and the threatening letter of Shri Krishnanunni who was his reviewing authority and later as D.G., G.S.I. acted as his countersigning/accepting authority. In this regard, the Hon'ble Court may call for the applicant's confidential reports for the relevant years for kind perusal.

7. That with regard to the statement made in paragraph 11, the applicant begs to offer no comments. As it is a matter of record.
8. That with regard to the statement made in paragraph 12, the respondents have offered no comments on the reporting officer Shri B.K. Mohanty who has acted in a grudging and pre-set mid resorting to unfair evaluation of the applicants performance with a malafide intention. As stated in the O.A., Shri Mohanty had violated office decorum by misusing his official position to further the interest of a private T.V cable company. The applicant only appraised this fact to Shri Mohanty and did not lodge any allegations against him to his superior authority.

And as regards Shri Krishnanunni, the applicant has already stated that his apprehension is out of the formers threatening tone in the unprecedented order asking the applicant to proceed on leave, thus violating official norms and procedures.

The applicant's grievance is only against the unjust, unfair and malafide acts of two of his superior officers, as mentioned above, who had a role to play in the applicant's career/promotion. It is an unfounded imagination on the part of the respondents to state that the applicant's statements in the O.A. reflect as if all the officers of C.S.I are against him. On the contrary, the applicant begs to state that he has gained the confidence and trust of his superiors as a good worker, which is highlighted in the following lines.

- (i) Considering his excellent work record, his name was recommended by the Dy. Director General, G.S.I.,

Eastern Region and his reviewing officer for the National Mineral Award, 2002 (see annexure-XVIII of the O.A). This has been conveniently lost sight of by the respondents, for reasons only known to them.

- (ii) He was, on several occasions, asked by the Director in charge, Op: Arunachal Pradesh to supervise the technical and administrative functions of the operation in his absence (see Annexure-2). He was also asked by the Dy. Director General, Op: A.P. to perform the duty of the Head of office at Itanagar. (see Annexure-3), besides his Hq. assignments such as supervising the petrology, Vehicle and Security Divisions.
- (iii) The applicant was nominated by the Dy. Director General, Op: Arunachal Pradesh as a member of the important 'Inter-Disciplinary Disaster Management Committee' for the state of Arunachal Pradesh (see Annexure-4).
- (iv) He was nominated by the Dy. Director General, Op: Orissa, Bhubaneswar as a member of D.P.C. for Group 'C' and 'D' staff of the survey of India; Ministry of Environment and Forests, govt. of India, Eastern Region, Bhubaneswar; and the Central Ground water Board, Bhubaneswar (see Annexure-5).
- (v) The applicant's name was recommended for foreign training by the Sr. Dy. Director general, G.S.I., central Region, Nagpur. (see Annexure-6).

- (vi) He was also nominated by the Dy. Director General, Op: Orissa as a member of the important Regional Sports Board, Orissa, considering his leadership quality in sports and extra-curricular activities. (see Annexure-7).

Obviously, the respondents have overlooked all the above points before branding the applicant as 'not a good worker', in an unfair manner with a malafide intention. And their clandestine and illegal way of not communicating and adverse remarks/ entries in his ACR's confirms this and also indicates that those remarks, if any, are biased. All this violates the settled law.

9. Regarding, para 13, the applicant begs to state that the respondents version that the allegations in para 4.21 of the O.A. against Shri B.K. Mohanty are baseless, is unfounded and biased. As stated in para 9., above, the respondents have remained silent over the grudging, threatening and malafide acts of Shri Mohanty as a reporting officer and suddenly, here, they have stated that the allegations are baseless. Obviously, it confirms that they have nothing to substantive in the defence of Shri Mohanty's act and thus, have tried to mislead the Hon'ble Tribunal, to cover up their own acts of omission and commission.

It is relevant to mention, here that the competence of Shri Mohanty as a Director, Map compilation and processing Division has also been questioned by the Nodal Officer for map compilation, C.S.I., Eastern Region vide his letter No. 232/17 a/M&C/ER/2003 dated 07.04.2004 (Annexuer-8). In this remarks, on certain maps compiled and scrutinized under Shri Mohanty's supervision, the Nodal officer has pointed out 'fundamental and gross errors'. It is relevant to mention here that during this period, only, the applicant was working under Shri Mohanty in the map compilation and processing divisions of operation Orissa,

Bhubaneswar. During this period Shri Mohanty had made some adverse entries in the ACR of the applicant, which was later on expunged by the respondent No.2. Thus, Shri mahanty's competence in technical evaluation of his sub-ordinate officers is doubtful, to say the latest.

10. That with regard to the statement made in paragraph 14, the applicant begs to state that he has already referred to the Hon'ble Apex Court judgment (see para 3 above) which clearly directs that to meet the ends of natural justice, any adverse remarks in the ACR's should be communicated to the reportee within one month's time of entering the remarks so that the reportee gets a fair chance to represent. Any action violating this directive is illegal and the respondents have exactly done so. And following the judgments, the Hon'ble CAT, Hyderabad has held that DPC cannot act on 'uncommunicated adverse entries/remarks' in the ACR's to deny promotion to the reportee. The applicant begs to state that the respondent's version that the DPC has followed DOP&T guidelines is not correct, as the DOP&T cannot issue guidelines contradictory to the settled law. Hence, their version that 'the applicant's allegation against the DPC having acted in an illegal way is misleading' is unfounded and biased.
11. That with regard to the statement made in paragraph 15, the applicant begs to state that the remarks of the respondents regarding his statements in the para 4.23 and 4.24 in the O.A. is misleading. The applicant has never stated that DOPT has issued an instruction on the basis of the Hon'ble Apex Court directive that below bench mark grading should be communicated to the reportee. By such misleading statement, the respondents have tried to avoid their own circular (issued by the Respondent No. 2- see para 4.23 of the O.A) which is a guideline issued

In the light of the Hon'ble Apex Court judgment on U.P. Jal Nigam case for all the reporting officers to follow strictly. In this circular, (see page- 4 of the circular- Annexure XIX of the O.A.) as already stated in para 4.23 of the O.A, the guideline {(b) - page 4} states that "where the overall performance rating awarded to the reportee falls below the bench mark prescribed for the purpose of his next promotion, this should be treated as an adverse remarks/rating and communicated to the reportee".

The circular further states that any Reporting officer who fails to follow this guideline, particularly by way of non-communication of adverse entries or the reasoned (speaking) orders for the retention of such entries after affording the reportee adequate opportunity for representation will vitiate the report in question. Since the reportee is likely to discover the adverse comments only when he is denied his next promotion, non-compliance and inadequate compliance with the above discussed provisions is bound to lead to litigation and will necessarily reflect poorly on the probity and competence of the reporting officer concerned. Where such a situation comes to light, after following the prescribed process for ensuring natural justice, it shall be the duty of the reporting authority of the reporting officer to record this in the latter's CR.

This situation has exactly happened in the case of the applicant as the respondents have admitted in their statement that the adverse remarks/entries in some CR's have not been communicated to him and thus, it is clearly a violation of the Hon'ble Apex Court's directive for natural justice regarding which the Respondent No. 2 has issued instructions in his own circular.

12. That with regard to statement made in paragraph 16, referring to the para 4.26 of the O.A, the applicant begs to state that the allegation of the Respondents that the applicant has disobeyed the order of his superior is baseless and misleading. The reason for not being able to take up the field work and the related events on the subject have already been stated in the

O.A. (see para 4.10 to 4.14). The applicant also begs to state that the ultimate letter by the Sr. Dy. Director General asking him to proceed on leave was complied with by him (see Annexure IX of the O.A.) and therefore, it does not amount to disobeying his order. And apparently, having accepted the compliance, the applicant was assigned HQ. Job from February, 1998 until his tenure in NER was complete. The applicant sincerely discharged his duties assigned to him at the HQ and hence, the Respondents accusation of non-performance is baseless and misleading as, in no point of time, the applicant was informed of any displeasure of his superiors. The remark that the applicant is not a willing worker is misleading as he had, by then, completed 20 years of rigorous field work in some of the toughest terrains of India (see Annexure XVIII and Annexure IX of the O.A.). It is only under medical exigency that the applicant could not take up the field work in NER which does not alone disprove his willingness to carry out field work.

13. As regards para No. 17, the applicant begs to state that the statements of the respondents is a repetition of their earlier version. Hence, the applicant does not wish to give any further comments and how the DPC has acted illegally has already been submitted in para No. 9 above.
14. As regards para No. 18, referring to para 4.28 of the O.A., the applicant begs to state that when the D.P.C. has ^{failed} ~~filed~~ to act in accordance with the Hon'ble Apex Court's judgment (see para 9, above), this is bad in law or illegal.
15. As regards para No. 19, the applicant begs to state that he has never stated that promotion to the next higher post is his fundamental right. This type of misleading statement on the part of the respondents indicates their frustration because of their own acts of omission and commission. It is also not understood what the respondents mean by their statement, 'it is more so in the case of officers who disobey the order of their superiors'.

The applicant begs to state that there is nothing like 'more applicable' or 'less applicable' as far as the Hon'ble Apex Court's judgment is concerned. It has only to be followed by all, in toto. It is true that DPC is the competent authority for deciding who is fit and who is unfit for promotion, provided the DPC acts according to law or else, as has happened in the case of the applicant, the DPC is liable to explain their conduct before the Hon'ble Court. However, the reporting officer, the reviewing officer and the countersigning authority cannot shed their responsibility so far as the career of a reportee is concerned, as required under law, by just holding the DPC responsible for everything.

16. That it is further stated that it is a settled position of law even when a government employee is found below the benchmark by the DPC for the purpose of promotion then it should be presumed that the employee concerned is graded below the benchmark and such action is not permissible in law without providing any opportunity to the concerned government employee. In the instant case it appears that the applicant is not found suitable by the DPC in the selection held during the year 2004, therefore, it is an admitted position that the applicant has been awarded grading below the benchmark which is not sustainable in the eye of law and on that score alone the original application is deserve to be allowed with the direction to the respondents Union of India and Others to hold a review DPC to reconsider the case of the applicant ignoring the grading awarded below benchmark.

17. That it is further categorically submitted that vacancies upto the March' 2003 and vacancies occurred for April' 2004 to March' 2005 were clubbed together and considered by the DPC held during the year 2004 without preparing separate year wise panel but such action is not permissible under the Rule or under the law of the land. It is pertinent to mention here that the respondents are duty bound to prepare select list/panel year wise without clubbing together the vacancies. But due to such arbitrary action

of the respondents the zone of consideration has been extended in violation of the Rules which is not sustainable in the eye of law. The respondents also did not disclose the year wise vacancies which were occurred during the next recruitment year 2002, 2003 and 2004, therefore, DPC proceeding including ACR is necessary for proper adjudication of case of the applicant. It is a definite case of the applicant that year wise panel has not been prepared as required under the Rule and in the process the applicant has not been found fit due to extended zone of consideration in violation of the Rule, say for example if 10 vacancies occurred during the year 2003 and another 10 vacancies occurred in the subsequent year 2004 and if all those vacancies are clubbed together and if the DPC considered all the eligible candidates even those who attained eligibility subsequently after March' 2003 in that event there is every possibility of exclusion of a deserving candidate who may be otherwise found eligible if the zone of consideration would not have been extended. The applicant is not found fit also due to the fact that all the vacancies were clubbed together instead of preparing year wise panel.

The applicant begs to submit with all humbleness that whether the application has merit or is likely to be dismissed is to be decided by the Hon'ble Tribunal and not by the respondents, themselves.

In the facts and circumstances stated above the application is deserves to be allowed with cost.

VERIFICATION

I, Shri Subodh Kumar Patnaik, S/o Late Bansidhar Pattnaik, aged about 56 years, working as Geologist (Sr), MGP Division, office of the Director General, NER, Geological Survey of India, do hereby verify that the statements made in Paragraph 1 to 15 are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the July day of ~~September~~, 2005.

Subodh Kumar Pattnaik

U.P. Jal Nigam and Ors. the DPC could ignore categorisation, committed a serious error in usurping its jurisdiction. Once such categorisations 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.

For the reasons aforementioned, this writ petition is allowed and the impugned judgment is set aside and the matter is remitted back to the DPC to consider the question of the promotion of the petitioner afresh.

Cases referred

Karnail Singh v. The State of Punjab

JT 1994(6) SC 583

Secretary of State for Education and Science v. Metropolitan Borough of Tameside

1976 (3) All E.R. 665

Sri M. V. Rajasekhar v. The State of Karnataka

JT 1996 (7) SC 708

State of W.B. v. Nuruddin Mallick

(1998) 8 SCC 143

U.P. Jal Nigam v. Prabhat Chandra Jain

(1996) 2 SCC 353

Mr. V. Shekhar and Mr. S. Machavan, Advocates for the Petitioner.

Mr. T.V. George and Mr. Rahul Sharma for Mr. U. Hazarika, Advocates for the Respondents.

S.B. Sinha, C.J.

Applicability of a decision of the Apex Court in U.P. Jal Nigam and Ors. v. Prabhat Chandra Jain and Ors., (1996) 2 SCC 353, in the facts and circumstances of this case, is the question involved in this writ petition.

2 The basic fact of the matter is as follows:

1. The petitioner was appointed as Architect Assistant in the office of the Central Public Works Department. He was again appointed as Deputy Architect in the said department. He was promoted to the post of Architect. The petitioner would contend that he was eligible and qualified in all respects to be promoted to the post of Senior Architect. However, he was superseded by the respondents 3 to 6 although he was senior to them. The petitioner would further contend that his position is at S. No. 13 in the seniority list whereas the respondents 3 to 6 were at S. Nos. 14, 16 and 19.

4 Being aggrieved by and dissatisfied with the said action on the part of the respondents in promoting the said respondents in supersession of his claim, he filed an Original Application before the Central Administrative Tribunal, New Delhi, questioning the said order dated 2nd February, 1998 which was marked as Original Application No. 2389/99 in June, 1999. Two other persons, namely, Mr. Bakkar and Mr. A.S. Sanyal were also granted promotions. By reason of the impugned judgment dated 14th September, 2000 the petitioner's Original Application was dismissed by the learned Tribunal. A review application was filed by the petitioner which was also dismissed by an order dated 25th October, 2000.

2002 (65) DRJ 607 (FB)

HIGH COURT OF DELHI

C.W.P. No. 350 of 2001

J.S. Garg.....Petitioner

Versus

Union of India & Ors.....Respondents

S.B. Sinha, C.J.

S.K. Mahajan, J.

A.K. Sikri, J.

Decided on : August 16, 2002

Service Law

Promotion—Denial on ground of fall in standard—Post of Senior Architect—Court or Tribunal cannot usurp the jurisdiction of the Statutory Authority—Jurisdiction of the writ Court to exercise its power of judicial review—Concerned authority, in its decision making process, taken into consideration irrelevant facts not germane for the purpose of deciding the issue or has refused to take into consideration the relevant facts—While holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Others the DPC could ignore categorisation, committed a serious error in usurping its jurisdiction—Once such categorisations 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—Impugned judgment is set aside and the matter is remitted back to the DPC to consider afresh.

Held : The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto itself a right question so as to enable it arrive at a correct finding of fact with a view to give a correct answer. The question which was posed 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 Ors. (supra), as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fall in standard'. It is by title that the Court of 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 facts. The learned Tribunal, in our opinion while holding that having regard to the decision of the Apex Court in

*After
this
Advocate*

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The short question which has been raised in this writ petition is that in view of the fact that a bench mark of three 'very good' within a period of five years was fixed for the purpose of promotion having regard to the purported fall in standard, it was obligatory on the part of the respondents to communicate the same to the petitioner pursuant to or in furtherance of Rule 9 of the CPWD Service Manual, 1992. (hereinafter referred to as the 'CPWD Manual'). In any event, the learned Counsel would contend that such an obligation was imperative in terms of the decision of the Apex Court in *U.P. Jal Nigam and Ors. (supra)*. Mr. George, learned Counsel appearing on behalf of the respondents, however, would submit that having regard to the service records of the petitioner, even if the remark was communicated to him, the same would not have led to a different result.

6. It is not in dispute that the remarks obtained by the petitioner giving the five year period are as follows:

FIVE YEAR GRADING ASSESSED FROM 1992 TO 1997 WITHOUT UNCOMMUNICATED REMARKS:

YEAR	REPORTING	REVIEWING	ACCEPTING	REMARKS
1992-93	Good	Good	Good	
1993-94	Good	Good	Good	
1994-95	Very Good	Very Good	Very Good	
1995-96	Good	Good	Good	Downgraded by Reporting Officer
1996-97	Very Good	Very Good	Very Good	
1997-98	Very Good	Very Good	Very Good	downgraded by Accepting Authority.

7. It is also in dispute that the ACP of the petitioner in terms where of he was marked 'Good' had never communicated to him. From the facts as noticed hereinbefore, it would appear that although he received the remarks 'good' consecutively for the period 1992-93, 1993-94 as also 1995-96, he received 'very good' marks in the years 1994-95 and 1996-97. The Rule evidently was made for a purpose. Pursuant to and in furtherance of the said Rule not only the adverse remarks are to be communicated but also in a case where an Appropriate Authority notices a fall in standard of an officer in relation to his past performances, he has an obligation to draw his attention to the said effect so that he can be alerted for improving his performance. Such communication, a bare perusal of the Rule would clearly demonstrate, was necessary so as to prevent sufferance of service prospect by the employee concerned by way of ignorance as regards deterioration in his performance. It stands admitted that the petitioner was not communicated about such fall in standard.

8. In *U.P. Jal Nigam and Ors. (supra)*, the Apex Court has clearly held:

We need to explain these observations of the High Court. 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 adverseness that is not required to be communicated. As we view it the extreme frustration 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 confidential entry 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. At the same time 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 seriously 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 Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court.

9. Applicability of the said decision in the instant case has not been questioned. Mr. Shekhar, learned Counsel appearing for the petitioner would urge that had an appropriate communication been made to the petitioner keeping in view the fact that bench mark had been fixed, the petitioner herein could have filed a representation there against. According to the petitioner in the event such a representation was entertained instead and in place of 'good', he could have been graded as 'very good'. The learned Counsel would further urge that as by reason of such non-communication, the petitioner had been denied an opportunity to make any effective representation and, then, the impugned order whereby and whereunder the petitioner has been superseded by his juniors must be held to be bad in law.

10. The learned Counsel also contended that in the instant case, the petitioner has alleged malice against the respondent No. 7 as contained in para 48 of the Original Application which was not taken into consideration by the learned Tribunal.

11. In the instant case the learned Tribunal had adopted a procedure which is unknown in law. It is not in dispute that for the purpose of promotion no written examination is held nor any interview is taken. The Departmental Promotion Committee (DPC) for short makes its own grading solely relying on or on the basis of the ACRs of the candidates concerned. Before us, a chart has been placed to show that the other promoted candidates had fulfilled the prescribed bench mark within the following terms:

Name (S/Sh.)	Date birth	of 91-92	92-93	93-94	94-95	95-96	96-97	97-98
J.S. Garg	25.10.42	Good	Good	Good	V.G.	Good	V.G.	Good
Y.S. Sar	28.3.42	O.S.	O.S.	V.G.	V.G.	V.G.	V.G.	V.G.
dar								
N.M.Ch.	1.11.42	V.G.	Good	V.G.	V.G.	V.G.	V.G.	V.G.
Pal Katti								
G.K.	3.1.50	V.G.	V.G.	V.G.	V.G.	V.G.	V.G.	O.S.
Kaura								
R.K.	1.8.51	O.S.	O.S.	O.S.	O.S.	V.G.	O.S.	
Kakkar								
A. Sanyal	1.11.40	O.S.	V.G.	V.G.	V.G./ O.S.	V.G.	V.G./ O.S.	O.S.
S.C.	4.5.46	Good	Good	V.G.	V.G.	O.S.	O.S.	V.G.
Bhatia								

12. The learned Tribunal perused the general categorisation made in the ORs. It further went through the purported relevant reports for the DPC. It was held:

"The relevant reports for the DPC would be of 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97. Of this period he has been graded 'Very Good' twice but three times as 'Good'. The decision of the Hon'ble Apex Court in the case of *U.P. Jal Nigam*, cited by the applicant does not help him as we can only ignore the categorisation, 'Good' awarded in 1995-96, as it was come down from the grading 'Very Good' awarded in 1994-95. We cannot replace the categorisation of update it, as the applicant would like us to do. We had also seen the ARCs for one year earlier and one year later. In these years as well as overall grading has been only 'Good' and this five years period reckoned either way he has got only two 'Very Good' and he could not have been categorized as 'Very Good' by the DPC. We, therefore, find no fault in the assessment made by the DPC."

13. The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto 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 posed 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 Ors.* (supra), as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fall in standard'. It is now trite that the Court of 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 facts. 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 categorisation, committed a serious error in usurping its jurisdiction. Once such categorisations 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.

14. It is now trite that a bad record, if not communicated, the effect thereof would be that the same cannot be taken into consideration by the Appropriate Authority. (See *Karnail Singh v. The State of Punjab and Anr.*, JT 1994(6) SC 583)

15. In *Sri M.A. Rajasekhar v. The State of Karnataka and Anr.*, JT 1996 (7) SC 708, the Apex Court has held:

"It was found that his integrity was not doubted and his work also in all those respects was found to be satisfactory. Under those circumstances, the remark that he 'does not act dispassionately when faced with dilemma' must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the case where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he acted upon. Since this exercise has not been done by the respondents, it would be obvious that the above adverse remarks was not consistent with law."

16. At this stage, we may also refer to another authoritative pronouncement of the House of Lords in England. In *Secretary of State for Education and Science v. Metropolitan Borough of Tameside*, 1976 (3) All E.R. 665. Lord Denning stated the law thus:

To my mind, if a Statute gives a Minister power to take drastic action if he is satisfied that a local authority have acted or are proposing to act improperly or unreasonably, then the Minister should obey all the elementary rules of fairness before he finds that the local authority are guilty or before he takes drastic action overruling them. He should give the party affected notice of the charge of impropriety or unreasonableness and a fair opportunity of dealing with it. I am glad to see that the Secretary of State did so in this case. He had before him the written proposals of the new Council and he met their leaders. In addition, how-

ever, the Minister must direct himself properly in law. He must call his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to that which he has to consider. And the decision to which he comes must be one which is reasonable in this sense, that it is, or can be, supported with good reasons or at any rate be a decision which a reasonable person might reach."

Sc. rman, J. observed :

"...But, first, I think that the epithet 'subjective' is of no assistance in this context. The point of principle is simply that it is not a judicial but a ministerial discretion in an administrative matter which is under review. Of course, the unusual feature of the present case is that we have under review two administrative decisions each by a different authority : the Secretary of State's decision to use his s 68 power of direction and the authority's earlier decision not to implement the Section 13 proposals. The decision which in fact led the Secretary of State to act under Section 68.

Secondly, I do not accept that the scope of judicial review is limited quite to the extent suggested by Counsel for Secretary of State. I would add a further illustration to those specified by him : misunderstanding or ignorance of an established and relevant fact. Let me give two examples. The fact may be either physical, something which existed or occurred or did not, or it may be mental, an opinion. Suppose that, contrary to the Secretary of State's belief, it was the fact that there was in the area of the authority adequate school accommodation for the pupil to be educated, and the Secretary of State acted under the section believing that there was not. If it were plainly established that the Secretary of State was mistaken, I do not think that he could substantiate the lawfulness of his direction under this section. Now, more closely to the facts of this case, take a matter of expert professional opinion. Suppose that, contrary to the understanding of the Secretary of State, there does in fact exist a respectable body of professional or expert opinion to the effect that the selection procedures for school entry proposed are adequate and acceptable. If that body of opinion be proved to exist, and if that body of opinion proves to be available both to the authority and to the Secretary of State, then again I would have thought it quite impossible for the Secretary of State to invoke his powers under Section 62. By adding this situation to situations more commonly described as occasions for judicial review, I can find no objection in principle.

Lord Denning MR has briefly referred to some of the case law on the matter ; and in the short time available I have looked to see if there is authority which would be what I believe to be the law, and there is none. I think that the law, which I believe to exist, follows from the cases to which Lord Denning MR has referred, and is really to be deduced from a well-known passage in Professor de Smith's *Judicial Review of Administrative Action* (3rd Edn. (1979) p. 200), where he says :

"Secondly, a Court may hold that : (a) an inferior or the Competent Authority has misdirected itself by applying a wrong legal test to the question before it, or by misunderstanding the nature of the matter in respect of which it has to be satisfied. Such errors are sufficiently 'elas-

tic to justify either a broad or a narrow test of validity ; and they seem to have become increasingly popular. Thirdly, a Court may state its refusal to interfere if there are no grounds on which a reasonable person could have been satisfied as to the existence of the conditions precedent. This test can be combined with the first and the second."

I would add by way of parenthesis and somewhat out of place that in the present case the evidence now before the Court does show that the Secretary of State either misunderstood or was not informed as to the nature and effect of the professional educational advice available to the authority.

I have already put in my own words the situation which I think, in addition to those more commonly described, enables the Court to exercise its power of review. I would now try and put that situation into a formula and my formula would be as follows : that the Secretary of State cannot lawfully be satisfied that the authority are proposing to act unreasonably unless on the information that was or ought to have been available to him the authority, acting reasonably, could not have acted, or proposed to act, as they in fact did. In other words, while it is not for the Court to substitute its view for the Secretary of State's, it is also the law that the Secretary of State cannot substitute his view for that of the authority provided always that an authority, acting reasonably, could have made the decision that in fact it made."

17. In *State of W.B. and Ors. v. Nuruddin Mallick and Ors.*, (1996) 8 SC 143, the law is stated in the following terms :

"It is not in dispute in this case that after the management sent a letter dated 6.8.1992 for the approval of its 31 staff, viz., both teaching and non-teaching staff, both the District Inspector of Schools and the Secretary of the Board sought for certain information through letters dated 21.9.1992. Instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the appellant-authorities have not exercised their discretion. Submission for the respondents was that the Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The Courts can either direct the statutory authorities, where it is not exercising its discretion, to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Courts to substitute itself for the statutory authorities to decide the matter."

18. For the reasons aforementioned, this writ petition is allowed and the impugned judgment is set aside and the matter is remanded back to the DFC to consider the question of the promotion of the petitioner aforesaid.

19. However, in the facts and circumstances of the case, there shall not be any order as to costs.