

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

9

(DESTRUCTION OF RECORD RULES, 1990)

Rep-56/07 in rep-10/06

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SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

✓ Org.App/ Misc.Petn/Cont.Petn/ Rev.Appl.

37/04

Name of the Applicant(s) Smt. G. S. Mittal

Name of the Respondent(s) C.G.S.C.

Advocate for the Applicant Mr. M Chanda, learned
Mr. S. Narin, S. C. M.

Counsel for the Railway/ C.G.S.C. C.G.S.C.

OFFICE NOTE | DATE | ORDER OF THE TRIBUNAL

Information in form
is fully given. ✓
Date.....19.2.04
No.....F.38386
Dated.....19.2.04
Signature
Dy. Registrar
1a.

1 20.2.2004 Heard Mr. M. Chanda, learned
counsel for the applicant and also Mr.
B.C. Pathak, learned Addl. C.G.S.C.
for the respondents.

The application is admitted,
call for the records. Issue notice to
the parties. Returnable by four weeks.
List on 24.3.2004 for orders.

I.C. Debbarma
Member (A)

Extra charge Rs = 30/-
only received for
respondent no- 6 to 11.

15/3/04
Notice & order dt. 20/2/04
sent to D/Section for
issuing to respondent no
6 to 11.

15/3/04
Notice issued vide ND.
473-483 dated 19.3.04

1 mb
24.3.2004 Mr. A.K. Chaudhuri, learned Addl.C.
G.S.C. appearing on behalf of Mr. A. Deb
Roy, learned Sr.C.G.S.C. prays for four
weeks time to file written statement.
Prayer allowed. List the case on
27.4.2004 before the Division Bench for
written statement.

I.C. Debbarma
Member (A)

27.4.2004

On the plea of counsel for respondents, the case is adjourned. List on 18.5.2004 for orders.

No. W/3 has been filed.

26.4.04

K.V. Prahlan
Member (A)

mb

18.5.2004

Since the learned counsel for the respondents is on leave, list the case for hearing on 17.6.2004.

18.5.04

Member (A)

mb

18.5.2004

On the prayer of learned counsel for the respondents four weeks time is given to the respondents to file written statement. List on 16.6.2004 for orders.

written statement has not filed

Done

K.V. Prahlan
Member

mb

16.6.04 present : The Hon'ble Mrs Bharati Ray, Judicial Member

The Hon'ble Sri K.V. Prahlan Administrative Member.

The learned counsel for the respondents Mr B.C. Pathak seeks four weeks time to file counter reply. It is seen from the order sheets that time was granted on several occasions but till date the respondents have not filed any counter reply. Mr Pathak, learned Addl.C.G.S.C submits that he has intimated the respondents duly by three letters but he could not receive any instruction to file counter reply.

16.6.04 Learned counsel for the applicant further submits that the applicant is at the verge of retirement and he has got only 1 year 7 months of service for retirement.

Reid

Bach
17/6/04

Considering the above facts and circumstances we allow four weeks time to file counter reply subject to payment of a cost of Rs.200/- to be deposited to the prime Minister Relief Fund. Rejoinder, if any, shall be filed by the next date.

List before the next Division Bench.

Registry is directed to issue a copy of this order to Mr. B. C. Pathak, learned Addl. C.G.S.C.

KV Prahledan
Member (A)

Member (J)

pg

22.7.2004 Present: The Hon'ble Shri K.V.Sachidanand, Member (J).

The Hon'ble Shri K.V.Prahledan
Member (A).

When the matter came up for hearing Mr. B.C.Pathak, learned Addl.C.G.S.C., submitted that he has already filed reply statement. Mr.M.Chanda, learned counsel for the applicant, has received the same today. However, this reply statement is provisionally taken on record subject to the condition that our earlier order of depositing the payment of cost of Rs.200/- to the prime Minister Relief Fund is complied with be the next date.

Post before the next Division Bench. A copy of this order shall be furnished to Mr.B.C.Pathak, learned Addl.C.G.S.C.

KV Prahledan
Member (A)

Member (J)

bb

10.8.04
Rejoinder filed by
the applicant.

BB

4-
04 37/04

29.11.2004 Adjourned to 19.1.2005 for hearing.

Case is ready for hearing.

K.V.Prahledan
Member

bb

19.1.2005 Mr.M.Chanda, learned counsel for the applicant, states that the record of DPC Minutes would be required for consideration of the matter. The term of C.G.S.C. has expired and no new appointment have been made. The matter is accordingly adjourned to six weeks and the records be placed before the Tribunal by the respondents ~~before~~ on the next date.

Adjourned to 9.3.2005 for hearing.

K.V.Prahledan
Member

R.
Vice-Chairman

bb

9.3.2005 Present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

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

At the request made on behalf of the Standing counsel for the respondent the case is adjourned by one week. Postponed on 14.3.2005. On that day learned Standing counsel for the respondents shall produce the records as ordered on 19.1.2005.

K.V.Prahledan
Member

R.Sivarajan
Vice-Chairman

bb

14.3.05. Present: Hon'ble Mr.Justice G.Sivarajan
Vice-Chairman.

Hon'ble Mr.K.V.Prahledan,
Mr.A.K.Choudhury, learned counsel for the Respondents submits that Original records is to be obtained from

6

Notes of the Registry Date

14.3.05.

Order of the Tribunal

Present: Hon'ble Mr. G. Sivaranjan, Vice-Chairman.

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

Mr. A. K. Choudhury, learned counsel for the Respondents submits that original records is to be obtained from Delhi and they require two weeks time for said purpose. Post the matter on 29.3.05.

K. D. Parkashan
Member2/1
Vice-Chairman

lm

29.3.05.

Post the matter for hearing on 27.4.05.

27.4.05.

2/1
Vice-Chairman

lm

11.4.05.

The learned counsel for the applicant submits that for satisfactory disposal of the application the ACRs of the applicant considered by the DPC and the DPC records with respect to 2003-04 are required. Mr. A. K. Choudhury, Addl. C.G.S. C submits that the respondents require an order in that regard to enable them to place before this Tribunal. In the circumstances we direct the Respondents to produce the ACRs of the applicant considered by the DPC and shall be produced the DPC records for selection to the post of Chief Engineer. Since the matter is posted on 27.4.05 for hearing. The Respondents will expedite for production of the records.

K. D. Parkashan
Member2/1
Vice-Chairman

lm

Case is ready for hearing.

2/1

0.0.37/2004

0.0.66/2004

Notes of the Registry | Date | Order of the Tribunal

27.04.2005

No Division Bench. List on 17.5.2005
for hearing.

E. Venkayya
Vice-Chairman

mb

17.5.2005

At the request of the learned
counsel for the parties the case is
adjourned to 31.5.05. The matter may be
listed at the top.

K. Chanda
Member

E. Venkayya
Vice-Chairman

nkm

31.5.05.

At the request of learned counsel
for the applicant case is adjourned
to 1st June, 2005.

K. Chanda
Member

E. Venkayya
Vice-Chairman

lm

1.6.2005

We have heard Mr J.L. Sarkar
assisted by Mr M. Chanda for the
applicant and Mr A.K. Chaudhuri,
learned Addl. C.G.S.C. for the
respondents.

The grievance of the applicant
is that though he had secured 'very
good', 'outstanding' and 'excellent'
in the ACRs for many years he was
superseded in the matter of promotion
to the post of Chief Engineer. The
applicant has specifically stated in
para 4.13 of the application that Shri
G.C. Khattar and Lalit Mohan
respondent Nos.4 and 5 who have been
promoted under the impugned ord

1.6.2005

dated 20.11.2003 did not have better ACRs than the applicant. There is no proper answer to the said averment in the written statement. Unless we see the DPC records with reference to the two persons mentioned in para 4.13 of the application as well as the records relating to all the eight persons promoted to the post of Chief Engineer as per the impugned order there cannot be a satisfactory adjudication of this application.

In the circumstances we direct respondent No.2- The Director General (Works), Central Public Works Department, 118-A Nirman Bhawan, New Delhi, to get the DPC records including the ACR details of the eight persons promoted as Chief Engineer (Civil) as per order dated 20.11.2003 (Annexure-II) and to place the same before this Tribunal on or before 4.7.2005.

The Office will forward a copy of this order to respondent No.2 directly for compliance.

Copy of this order will be given to the learned counsel for the applicant and to the learned counsel for the respondents for followup action. Post the matter on 4.7.05.

PK Bhattacharya
Member

Q. J. Vaidya
Vice-Chairman

nkm

4.7.2005 Mr.A.K.Chaudhuri, learned Addl.C.G. S.C. for the respondents submits that the records directed to be produced before the ~~the~~ Tribunal are presently with the Hyderabad Bench of the Tribunal in connection with the some other cases and therefore the same could not be produced.

order dt. 1/6/05
sent to D/section
for issuing to
resp. No-2, by
regd. A/D post.

2/6/05. D/N^o= 867
Dated:- 2/6/05.

Contd.

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8
Contd.

4.7.2005

Heard Mr. S. Natha, learned coun-

sel for the applicant and Mr. Chanda also. In the circumstances, respondents will ascertain from the Hyderabad Bench as to whether the records are any longer required and if the same is not required, respondents will get back the records and place the same before the Tribunal. Post on 16.8.2005.

2 Jayaram

Vice-Chairman

3/7.05

bb

16.8.05.

Section Officer (J)

Issue copy of order dated 4.7.05 to the learned counsel for the parties.

By Order

*Sub
private
etc*

By Order

1m

4.10.2005

Heard Mr. M. Chanda learned counsel for the applicant prays for adjournment. Post the matter before the next available Division Bench.

K. Krishnamoorthy
Member

2 Jayaram
Vice-Chairman

7.10.05.

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No order as to costs.

2 Jayaram
Member

2 Jayaram
Vice-Chairman

1m

27.10.05

Copy of the judgment has been sent to the Office for issuing the same to the applicant by post and a copy to the ADD. C.G.S.C. for filing.

*2 Jayaram
11/10/05*

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

ORIGINAL APPLICATION NO. 37 OF 2004.

DATE OF DECISION: 7.10.2005.

Shri Gauri Shankar Mittal

APPLICANT(S)

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

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 M.K. MISRA, 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? *see*
4. Whether the judgment is to be circulated to the other Benches? *no*

Judgment delivered by Hon'ble Vice-Chairman.

G. Sivaranjan

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.37 of 2004

Date of decision: This the 7th day of October 2005

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

The Hon'ble Shri M.K. Misra, Administrative Member

Shri Gauri Shankar Mittal,
Superintending Engineer,
Central Public Works Department,
Silchar Central Circle,
Mela Road, Malugram,
Silchar - 788002, Assam.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mr G.N. Chakraborty, Mr S. Nath and
Mr S. Choudhury.

- versus -

1. The Union of India, represented by the Secretary, Ministry of Urban Development And Poverty Alleviation, Nirman Bhawan, New Delhi-110011.
2. The Director General, Works, Central Public Works Department, 118-A Nirman Bhawan, New Delhi - 110011.
3. Shri N. Ravi, Chief Engineer (Valuation), Central Public Works Department, Chennai.
4. Shri G.C. Khatter, Chief Engineer (Civil), CPWD, Andaman, Portblair-744101.
5. Shri Lalit Mohan, Chief Engineer, IT Department, Kendriya Sadan, 4th Floor, A Wing, 17th Main, 2nd Block, Koramangala, Bangalore - 560 034.

6. Sri M.K. Goel,
Chief Engineer, CPWD (Retd.),
A-28, Surya Nagar,
Gaziabad,
U.P. - 201 011.

7. Shri Suresh Kumar,
General Manager (Civil),
Delhi Transco Ltd.,
220 K.V Sub-statio, Lodhi Road,
New Delhi - 110 002.

8. Shri P.C. Arora,
Chief Engineer (NEZ),
CPWD, Dhanketi,
Shillong - 3,
Meghalaya.

9. Shri K. Balakrishnan,
Chief Engineer (SZI),
CPWD, Iind Floor, G- Wing,
Rajaji Bhawan,
Basant Nagar,
Chennai - 600 090.

10. Shri Virendra Sharma
Chief Engineer (AA),
IT Department,
54/2 Rafi Ahmed Kidwai Road,
Kolkata - 700 016.

11. Shri A.L. Garg,
Chief Engineer, BFZ,
CPWD, East Block No. I, Level - IV,
R.K. Puram, New Delhi. Respondents

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

.....

ORDER

SIVARAJAN. J. (V.C.)

The applicant is a Superintending Engineer in the Central Public Works Department (CPWD for short) now working at Silchar. He was promoted to the said post on regular basis on 25.9.1989. As per the recruitment rules for promotion to the post of Chief Engineer (Civil), the applicant has to complete 8 years of regular service in the

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Grade which he had completed in the year 1994. A Departmental Promotion Committee (DPC for short) meeting for selection of eligible officers for promotion to the post of Chief Engineer (Civil) in the CPWD for filling up the vacancies of the year 2003-2004 was convened on 27.6.2003. Though the applicant was in the zone of consideration and was considered the DPC found him unfit for promotion to the post of Chief Engineer (Civil) CPWD. The DPC had selected 9 officers. The Government of India on the basis of the select list prepared by the DPC had appointed 8 officers including respondent Nos.3 to 11 as Chief Engineer (Civil) who are juniors to the applicant as per the seniority list (Annexure-III) evidenced by Office Order dated 20.11.2003 (Annexure-II). The applicant, being aggrieved, has filed the O.A. seeking for the following reliefs:

- i. The impugned Office Order No.30/29/2002/EC.I/E.W.I dated 20.11.2003 issued by the respondents be quashed and set aside to the extent juniors are promoted.
- ii. The respondents be directed to promote the applicant to the grade of Chief Engineer with effect from the date of promotion of his juniors with all consequential benefits including arrears etc.

2. The respondent Nos.1 and 2 (official respondents) have filed their written statement. The applicant has filed rejoinder also. We have heard Mr J.L. Sarkar assisted by the Mr M. Chanda, learned counsel for the applicant and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondent Nos.1 and 2. There is no appearance for the party respondents.

9pm

3. Mr Sarkar has raised the three main contentions -

- i. The DPC for the purpose of filling up the vacancies of Chief Engineer (Civil), CPWD for the year 2003-2004 had erroneously followed the norm for promotion issued by the DOPT with effect from 1.4.2003. This submission is made on the basis of the Government Orders/Office Memorandum, which provides that the select list for promotion to the vacancies of Chief Engineer (Civil) for the year 2003-2004 has to be prepared and finalised by 30.11.2002 in which case the norms as existed as on 31.3.2003 should have been applied by the DPC for selection. The DPC meeting was convened only on 27.6.2003 and the DPC has followed the norms for selection issued with effect from 1.4.2003.
- ii. The respondents have downgraded the ACRs of the applicant for the relevant years. The downgrading, being below the Benchmark fixed by the DOPT, should have been communicated to the applicant before it is being used against the applicant. This has not been done and consequently the downgraded ACR has to be ignored by the DPC in view of the settled legal position. The counsel submitted that the applicant has got very good track record all through and the applicant had never been informed of any shortfall or any adverse reports in the ACRs, and
- iii. The incentives offered to officers working in the North Eastern Region (Remote Areas) include promotion in cadre posts. The DPC did not consider the effect of the

Spt

said incentive offered by the Government of India. He referred us to Swamy's Compilation of FRSR (page 540).

4. Mr A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents, met the said contentions by making the following submissions:

- i. The process for forwarding the proposal to the Union Public Service Commission (UPSC for short) for preparation of the panel of officers for promotion to the post of Chief Engineer (Civil) for the year 2003-2004 was initiated by the respondents in November 2002 but the proposal could be forwarded to the UPSC only in March 2003 since there was some confusion regarding the number of officers to be selected for promotion as Chief Engineer (Civil) for the year 2003-2004. The DPC has followed the revised guidelines issued by the DOPT in O.M.No.35039/7/97-Estt.D dated 8.2.2002 (Annexure-R) as per which the Benchmark fixed for promotion to the posts in revised pay scale (Grade) of Rs.12000-16500 and above which includes the post of Chief Engineer (Civil) in CPWD where the mode of promotion is by 'Selection' is 'Very Good' and the DPC shall grade officers as 'fit' or 'unfit' for promotion only with reference to the benchmark of 'Very Good'. He also submitted that as per the norms issued by the DOPT in the O.M. dated 10.4.1989 the DPC had the full power to devise its own method and procedure for objective assessment of the suitability of candidates to consider them for regular promotion from the Grade of Superintending Engineer (Civil) to the Grade of Chief

Jpt

Engineer (Civil) on the basis of their Annual Confidential Records. He submitted that officers were selected as per the existing rules and instructions of the Government regarding holding of DPC for promotion. He accordingly submitted that the delay in holding the DPC has not in any manner affected the promotional avenues of the applicant.

ii. Under the existing instructions of the Government on maintenance of ACRs, only adverse entries in the ACRs are required to be communicated. Any grading below the benchmark prescribed for promotion to the next higher grade in the ACR of the applicant is not an adverse entry and therefore, as per the existing instructions of the Government there is no legal requirement that the said grading should have also been communicated to the applicant before considering his case for promotion in the next higher grade. He further submitted that the grading of the applicant in the ACR is given by his superior officers on the basis of the performance during a particular year, whereas the assessment of the DPC is based on the overall performance of the officer as reflected in his ACRs for the period considered by the DPC and is for the purpose of deciding his suitability for promotion.

iii. Contention No.3 was met by submitting that the case of the applicant for promotion to the grade of Chief Engineer (Civil) has been considered by the duly constituted DPC held in the UPSC on the basis of the existing instructions on the subject.

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5. We will now take the contention of Mr J.L. Sarkar, that the DPC was not justified in following the revised norms issued by the DOP&T with effect from 1.4.2003. This submission, as already noted, is made by the counsel on the basis that under the Government of India instructions and the model calendar the select list for promotion to the post of Chief Engineer (Civil) should have been finalised on or before 30.11.2002. According to the counsel if the DPC had met for preparing the select list before 30.11.2002 or at any rate before 31.3.2003, the rules as it existed prior to 1.4.2003 should have been applied. The case of the counsel, it would appear, is that revised norms issued by the DOP&T with effect from 1.4.2003 has been applied in this case. Apart from the fact that the applicant has not placed the alleged revised norms which came into effect from 1.4.2003, the respondents have positively asserted that the revised guidelines issued by the DOP&T in the O.M. dated 8.2.2002 had been applied for the preparation of the select list for promotion to the post of Chief Engineer (Civil) for the period 2003-04. As could be seen from the rejoinder filed by the applicant, his case is also that the O.M. dated 8.2.2002 containing the guidelines issued by the DOP&T should have been applied (vide paras 2 and 4 of the rejoinder filed by the applicant). In this view of the matter, it is to be noted, no prejudice has been caused to the applicant by convening the DPC meeting on 27.6.2003 as against 30.11.2002, which is the date for completion of the selection as per the existing instructions. Since the respondents have clearly stated that it is the existing norms, that is, the norms issued by the DOP&T in the O.M. dated 8.2.2002 followed by the DPC in the matter of selection of officers for promotion to the post of Chief Engineer (Civil) for the year 2003-04 there is no substance in the

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contention of the counsel for the applicant that the DPC had followed the revised norms issued by the DOP&T with effect from 1.4.2003. Hence this point is found against the applicant.

6. Now we will take the second contention raised by the counsel for the applicant. Before dealing with the said contention it will be appropriate and useful to particularly incorporate the statement showing the ACR of the applicant for the years from 1992-93 to 2002-03 prepared and furnished by the counsel for the parties.

It reads thus:

Year	Reporting Authority	Reviewing Officer	Accepting Authority	Remarks
01.04.1992 to 31.03.1993	Very Good	Very Good	NIL (Incomplete)	
01.04.1993 to 31.03.1994	Very Good	Very Good (Very sincere, Hard working and Polite)	NIL	
01.04.1994 to 30.06.2004	Very Good	Very Good	NIL	
01.07.1994 to 31.03.1995	Very Good	Very Good		
01.04.1995 to 04.08.1995 14.08.1995 to 31.03.1995	Very Good Very Good	Very Good Very Good (Highly efficient and hard working officer)	Very Good (I agreed)	
01.04.1996 to 25.07.1996 26.07.1996 to 31.03.1997	Very Good Very Good	Very Good NIL (Retired)	Very Good Report not reviewed and countersigned as reviewing officer retired on 30.06.1997	
01.04.1997 to 31.03.1998	Very Good	Very Good A sincere Officer	Very Good	

18
19

01.04.1998 to 31.03.1999	A good officer but not Very Good	A hard working and sincere officer	Accepted
01.04.1999 to 31.03.2000	Good +	A sincere officer, whose performance was good.	Not countersigned due to retirement
01.04.2000 to 31.03.2001	Very Good	Very Good	- Do -
14.05.2001 to 31.03.2002	Outstanding	sincere and developed extremely well in hostile environment.	Not countersigned
01.04.2002 to 03.07.2002 04.07.2002 to 31.03.2003	Excellent Outstanding	Not received Outstanding Self motivated And doing exceptionally well	Not countersigned Agreed

This statement, it is stated, is prepared by the counsel after perusal of the confidential reports of the applicant for the period mentioned above. Mr A.K. Chaudhuri, learned Addl. C.G.S.C. appearing for the respondents affirmed the same. On a perusal of the gradings given by the Reporting Authority, by the Reviewing Authority and by the Accepting Authority, it is seen that for the years 1992-93 to 1997-98 the Reporting Authority and the Reviewing Authority had awarded 'Very Good' to the applicant. Of course, for the first four years it appears that there was no Accepting Authority and therefore there is no grading by the said authority. For a portion of the year 1995-96 there was an Accepting Authority who graded the applicant 'Very Good'. Similarly, for a portion of the year 1996-97 there was an Accepting Authority who graded the applicant 'Very Good'. For 1997-98 also the Accepting Authority awarded 'Very Good' to the applicant. In other words, from 1992-93 to 1997-98 the applicant was awarded 'Very Good' by the authorities. However, for the year 1998-99 the

Jpt

Reporting Authority observed, 'A good officer but not Very Good'; the Reviewing Authority observed, 'A hard working and sincere officer', but no grading is given. The Accepting Authority accepted it. Similarly, for the year 1999-2000 the Reporting Authority graded 'Good+' and the Reviewing Officer observed, 'A sincere officer, whose performance was good'. There was no Accepting Authority. For the year 2000-01 the applicant was awarded 'Very Good' by the Reporting and Reviewing Authorities. There was no Accepting Authority. For the year 2001-02 the Reporting Authority awarded 'Outstanding', the Reviewing Authority observed, 'Sincere and developed extremely well in hostile environment', but no grading. There was no Accepting Authority. For a portion of the year 2002 the Reporting Authority graded the applicant 'Excellent', but there were no Reviewing and Accepting Authorities, and for the remaining part of 2002-03 the Reporting Authority awarded the applicant 'Outstanding', the Reviewing Authority graded him 'Outstanding' and observed, 'Self motivated and doing exceptionally well'. This was agreed to by the Accepting Authority. Thus, on the whole we find that the applicant had secured 'Very Good' or 'Outstanding' for all the years from 1992-93 till 2002-03 (both inclusive) except for the years 1998-99 and 1999-2000. For these two years also the Reporting Authority's remark is 'A good officer but not Very Good' and 'Good+' respectively. The Reviewing Authority accepted the observations mentioned earlier, but did not grade him and the same is accepted by the Accepting Authority. We notice here that the authorities entrusted with the duty of writing the ACRs of officers which is the basis for the promotional prospects of officers working under them were not careful in the matter of writing the confidential reports. In other words there was no

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proper application of mind by the Reviewing and Accepting Authorities so far as these two assessment years are concerned. That apart, both under the CPWD Manual (Clause 9 Volume 1) and under the General Law, the authorities who are entrusted with the task of maintaining the confidential reports of officers are bound to intimate any adverse entries in the ACRs to the concerned officer so that he can make representation against such adverse entries in the ACRs before the authorities. The object of affording such an opportunity to the officer against whom adverse entries are made in the ACRs is to enable them to realize their shortfall in the performance of their official duties and to correct such errors and to improve the performance level reaching the level of excellence which is a constitutional obligation imposed on a citizen under Article 51 A of the Constitution of India.

7. In the instant case the applicant has clearly stated that the respondents had never informed the applicant about any shortfall in the performance of his official duties and/or intimated any downgrading in the ACRs of the applicant at any point of time. The respondents, as already noted, has taken the stand that they are obliged to communicate the entries in the ACRs only if such entries are adverse to him. It is also stated that if the gradings given in the ACR is below the benchmark fixed by the DOP&T in the O.M. there is no existing instructions of the Government to communicate such downgrading to the concerned officers. From the above it is clear that the respondents did not communicate the downgrading of the ACRs of the applicant for the years 1998-99 and 1999-2000 to the applicant. As already noted, the applicant was graded 'Very Good' by all the three authorities in the ACRs for the year 1997-98.

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8. In the instant case, as already noted, the applicant was graded as 'Good' and 'Good+' in the ACRs for the years 1998-99 and 1999-2000, which in the ordinary sense cannot be treated as adverse entries, but if the benchmark for promotion to the next higher grade as per the norms is 'Very Good' then the grading of 'Good' is certainly adverse to the officer in that his promotional avenues are hit by such entry. The question whether such downgrading/entries, i.e. 'Good' when the benchmark fixed is 'Very Good', was adverse, was considered by the Hon'ble Supreme Court in 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 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. It the variation warranted be not

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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."

9. 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.

10. 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.

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11. A Division Bench of this Tribunal had also occasion to consider a similar case to which one of us 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 any such entries or remarks the question of communicating does not arise.

12. 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

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

13. 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.

14. A Division Bench of this Tribunal to which one of us (Vice-Chairman) was a party had also occasion to consider this question in its order dated 18.8.2005 in O.A.No.228 of 2004. The Tribunal elaborately considered the decisions of the Supreme Court and the different Benches of the Tribunal and also the Circular No.DDG(P)/GSI/Conf/04 dated 26.2.2004 which deals with the procedure related to writing of confidential reports and communicating entries thereof issued by the Government of India, Geological Survey of India, Kolkata, which contains guidelines similar to the guidelines issued by the DOP&T dated 8.2.2002. The circular mentioned above referred to the observations of the Supreme Court in U.P. Jal Nigam case (supra) 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."

The Tribunal thereafter observed thus:

"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

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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."

15. The Tribunal also referred to the Circular dated 8.2.2004 issued by the DOP&T as also the O.M.No.22011/7/98-Estt.(D) dated 6.10.2000 in which the following observations occurred:

"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."

16. The Tribunal on a conspectus has taken the view that when a benchmark is fixed in the guidelines for promotion to a higher grade and if the grading given to the officer in the ACR for any year is below the benchmark the concerned authorities are bound to communicate the same to the officer to enable him to file his objections to the above. If the downgrading is not communicated to the applicant in view of the various decisions referred to therein, the uncommunicated downgrading should have to be ignored.

17. In the present case, as already noted, the applicant has been graded 'Very Good' from 1992-93 to 2002-03 except for the years 1998-99 and 1999-2000 for which periods the applicant was

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rated as 'Good+' only. Apart from the fact that the entries were not properly made by the Reviewing and Accepting Authorities the downgrading of the ACR for the aforesaid two years was not communicated to the applicant. In view of the settled position of law that uncommunicated downgrading of ACR below the benchmark cannot be acted upon by the DPC and in view of the fact that the applicant had secured 'Very Good' and 'Outstanding' for all the earlier and succeeding years, we are unable to sustain the decision making process adopted by the DPC in its meeting held on 27.6.2003 for selecting officers for promotion to the vacancies of Chief Engineer (Civil) in the CPWD for the year 2003-04. The DPC according to us had failed to keep in mind the well settled legal position in this regard accepted by the Government itself while making selection.

18. The question then is as to what course we should adopt in the matter of disposal of this case. It is open to this Tribunal either to remit the matter to the DPC for a De novo consideration ignoring the uncommunicated downgrading in the ACRs for the years 1998-99 and 1999-2000 which are two of the five preceding years which has to be considered in the matter of selection for the year 2003-04.

19. In the instant case the applicant is due to retire on 30.11.2005. Considering the above and the further fact that his track record for the preceding and succeeding years as per the ACRs are 'Very Good'/'Outstanding' and the services of the applicant during the years 1996-2000 were appreciated by the higher authorities as is evident from Annexure-VIII series produced by the applicant alongwith his rejoinder, we are of the view that the DPC can be directed to review the selection process and to consider the case of the applicant for promotion to the post of Chief Engineer (Civil) on the

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basis of the ACRs of the applicant ignoring the uncommunicated downgrading in the ACRs for the years 1998-99 and 1999-2000 in the light of the observations made in this order and to take a decision in the case of the applicant as expeditiously as possible, at any rate within a period of three months from the date of receipt of this order. We order accordingly. In case the applicant is selected and appointed as Chief Engineer (Civil) the respondents will consider the question of grant of consequential reliefs.

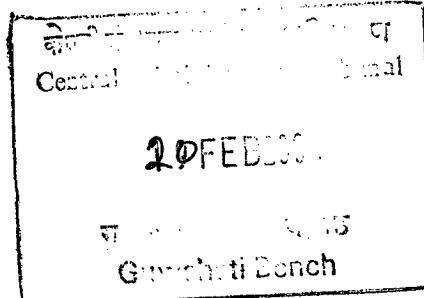
20. The counsel for the respondents will forward a copy of this order urgently to the respondent No.2 so that he will take urgent steps for compliance.

The O.A. is disposed of as above. No costs.


(M. K. MISRA)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O.A. No. 37 /2004

Shri Gauri Shankar Mittal

vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

07.03.1974- Applicant appointed as Assistant Executive Engineer and thereafter promoted to the post of Executive Engineer in May, 1978.

25.09.1989- Applicant promoted to the post of Superintending Engineer.

25.09.1997- Applicant completed 8 years regular service as Superintending Engineer and became entitled for promotion to the post of Chief Engineer as per Recruitment Rules.

14.05.2001- Applicant was posted at Silchar as Superintending Engineer.

25.10.2002- Respondents issued seniority list of Superintending Engineer according to which the applicant was senior to the Respondent No. 3-11.

Gauri Shankar Mittal

01.04.2003-

Some posts of Chief Engineer fell vacant in the respondent department for the year 2003-04 for which the DPC meeting ought to have been held well in advance and the approved panel ought to have been completed latest by 31.03.2003 for being utilized for filling up the vacancies occurring in 2003-04 as per the Recruitment Rules and the model calendar set out by the DOPT, Govt. of India. But the DPC meeting was not held in time.

Meanwhile applicant also completed prescribed tenure of 2 years service in NE Region and became eligible for getting special weightage in matters of promotion as per Government policy.

June, 2003-

DPC meeting was held belatedly. Meanwhile revised norms for Benchmark as fixed by UPSC became effective from 01.04.2003.

20.11.2003-

Respondents issued the impugned promotion order on the basis of DPC's recommendations made in the meeting of June, 2003 following the revised norms whereby the persons junior to the applicant were promoted to the post of Chief Engineer.

Applicant was not promoted presumably due to adverse/downgraded ACR which were not communicated to him but were acted upon by the DPC in violation of settled law.

As per settled law the DPC ought to have followed the earlier (pre-revised) norms which was in force even till 31.03.2003 and the applicant fulfilled the earlier norms for promotion, but for delay in holding the DPC meeting the applicant became the victim of revised norms. Since delayed, the DPC ought to have taken the meeting of June, 03 as the

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meeting of the previous year as per DOPT guidelines i.e. prior to 31.03.03 and ought to have prepared year wise panel following the norms in force at the time as instructed by DOPT. But DPC violated the law and deprived the applicant of his legitimate promotion.

16.01.2004- One more supplementary DPC meeting has been held on 16.01.2004 but result not declared so far. Understood, that even this time also the case of applicant has not been considered although he is in the verge of retirement and a legitimate expectant for promotion to the post of Chief Engineer.

Hence this application before the Hon'ble Tribunal.

PRAYER

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 impugned office order No.30/29/2002-E.C.I/E.W.I dated 20.11.2003 issued by the Respondents be quashed and set aside.
2. That the Respondents be directed to promote the applicant to the grade of Chief Engineer with effect

Savji Sherkhan Mulla

from the date of promotion of his juniors with all consequential service benefits including arrear etc.

3. Costs of the application.

4. 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 pass necessary interim orders directing the Respondents not to implement any promotion to the grade of Chief Engineer without the leave of the Hon'ble Tribunal or till disposal of this application.
2. That the Respondents be directed to keep one post of Chief Engineer reserved for the applicant.

*Yours sincerely
S. S. Sankar Mutt*

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filed by the applicant
Introducing
Subrata Nibha
Advocate
20.2.04

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 37 /2004

Sri Gauri Shankar Mittal : Applicant

- Versus -

Union of India & Others: Respondents.

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Date 20.2.04

Filed by

Subrata Nibha
Advocate

Gauri Shankar Mittal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 37

/2004

BETWEEN

Shri Gauri Shankar Mittal.
Superintending Engineer,
Central Public Works Department,
Silchar Central Circle,
Mela Road, Malugram,
Silchar-788 002, Assam.

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary
Ministry of Urban Development
and Poverty Alleviation,
Nirman Bhawan,
New Delhi- 110 011.
2. The Director General, Works,
Central Public Works Department,
118-A Nirman Bhawan,
New Delhi-110 011.
3. Shri N. Ravi,
Chief Engineer (Valuation),
Central Public Works Department,
Chennai.
4. Shri G.C. Khatter.

Gauri Shankar Mittal

Chief Engineer (Civil)
APWD, Andaman,
Portblair- 744 101.

5. Shri Lalit Mohan,
Chief Engineer,
IT Department,
Kendriya Sadan'
4th Floor, A Wing
17th Main, 2nd Block,
Koramangala,
Bangalore- 560 034.
6. Shri M.K. Goel,
Chief Engineer, CPWD (Retd.)
A-28, Surya Nagar
Ghaziabad,
U.P- 201 011.
7. Shri Suresh Kumar
General Manager (Civil)
Delhi Transco Ltd;
220 K.V Sub-station, Lodhi Road,
New Delhi- 110 002.
8. Shri P.C. Arora,
Chief Engineer (NEZ)
CPWD, Dhanketi,
Shillong-3,
Meghalaya.
9. Shri K. Balakrishnan,
Chief Engineer (SXI)
CPWD, II nd Floor, G-Wing,
Rajaji Bhawan,
Besant Nagar,
Chennai- 600 090.

Suresh Kumar Muttal

10. Shri Virendra Sharma,
Chief Engineer (AA)
IT Department,
54/2 Rafi Ahmed Kidwai Road,
Kolkata- 700 016.

11. Shri A.L. Garg,
Chief Engineer, BFZ,
CPWD, East Block No.I, Level- IV,
R.K. Puram, New Delhi.

Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the Impugned Office Order No. 30/29/2002-EC.I/E.W.I dated 20.11.2003 (Annexure-II) whereby the persons junior to the applicant have been promoted to the post of Chief Engineer in the Respondent Department by superseding the applicant.

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.

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3. Limitation.

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

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. He is now aged about 58 years.

4.2 That your applicant was initially appointed as Assistant Executive Engineer on 07.03.1974. He was promoted to the post of Executive Engineer in the month of May, 1978 and thereafter promoted to the post of Superintending Engineer on 25.09.1989. He was posted at Silchar Central Circle on 14.05.2001 as Superintending Engineer and at present he is working in the same capacity at Silchar. As Superintending Engineer, Silchar he is handling all the works covering Manipur, Mizoram, Tripura and part of South Assam.

4.3 That it is stated that as per the normal promotional avenue, the immediate higher post of Superintending Engineer in CPWD is the Chief Engineer which is a Group 'A' post and has to be filled in by way of promotion from amongst the eligible Superintending Engineers. As per the Recruitment Rules of the respondent department

Sameer Sankar Mukherjee

(CPWD), the criteria for promotion from the grade of Chief Engineer are as follows;

"Superintending Engineer (Civil) with eight years regular service in the grade (including service, if any seventeen years regular service in Group A posts of the service out of which four years regular service should be in the grade of Superintending Engineer (Civil))".

Needless to state that the applicant fulfilled the aforesaid criteria years back and as such entitled for promotion to the grade of Chief Engineer.

(Copy of the relevant page of Recruitment Rule is annexed hereto as ANNEXURE-I.)

4.4 That your applicant begs to state that as many as 9(nine) posts of Chief Engineer fell vacant in the year 2003-04. As per the settled law and instructions of the Dept. of Personal and Training (DOPT), Govt. of India and model calendar, the DPC meeting for the vacancies of 2003-04 ought to have been completed by 30.11.2002 and the panel so prepared, could be utilized w.e.f. 01.04.2003 for filling up the vacancies occurring during the year 2003-04.

4.5 That the Respondents in the instant case, initiated the process belatedly and the DPC was held in the month of June, 2003 instead of November, 2002 for filling up the vacancies of 2003-04 in the grade of Chief Engineer in

Sameer Khan Mulla

violation of the standing guidelines/instructions of the DOPT, Govt. of India.

4.6 That the UPSC revised the norms of promotion w.e.f. 01.04.2003 and as per the review norms effective from 01.04.2003, the criteria for Benchmark for Group 'A' post is understood to have been fixed as 4 "Very Good" gradings in the ACR. According to the earlier norms, only 3 "Very Good" gradings were required for the purpose of Benchmark as per the Office Memorandum dated 08.02.2002 of the DOPT, which was in force till 31.03.2003.

4.7 That the DPC in its meeting held in June, 2003 followed the revised norms in the instant case for drawing the panel for the vacancies of 2003-04. Due to this, the DPC recommended the persons junior to the applicant for promotion and did not recommended the name of the Applicant presently on the ground that the applicant fell short of the required Benchmark. It is stated that the applicant had 2 "Very Good", 1 "Outstanding" and 2 "Good" grading in his relevant ACR which did not satisfy the requirement under revised norms but satisfied the requirements under the earlier norms which was in force even till 31.03.2003

4.8 That due to wrong principle adopted by the DPC in it's meeting of June, 2003, as stated above, the name of the applicant was not recommended for promotion whereas the name of persons junior to the applicant including the

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 Respondent Nos. 3 to 11 in this application were recommended and as such they were subsequently promoted to the grade of Chief Engineer.

4.9 That pursuant to the recommendations of the DPC held in June, 2003, the respondents vide their impugned office order No.30/29/2002-EC.I/E.W.I dated 20.11.2003 promoted 11 (eleven) persons from the grade of Superintending Engineer to the grade of Chief Engineer which includes the names of private respondent Nos. 3 to 11 all of whom are junior to the applicant in the feeder cadre of Superintending Engineer, but surprisingly the name of the applicant did not appear in the list of Promotion.

It is relevant to mention here that the Respondent department vides its Office Memorandum No.37/8/2002-ECI dated 25.10.2002 notified Seniority list of Superintending Engineers (Civil) wherein the name of the applicant appeared at Sl. No.13 whereas the names of Respondent No.3, 4, 5, 6, 7, 8, 9, 10 and 11 appeared at Sl. No. 25, 26, 29, 31, 32, 34, 35, 36 and 38 respectively in the said seniority list. It is evident from the said seniority list that the applicant was senior to the aforesaid respondents and as such a better legitimate claimant than those respondents who have been promoted superseding the applicant.

(Copy of the Impugned Office order dated 20.11.2003 and Seniority list dated 25.10.2002 are annexed here as ANNEXURE-II and III respectively.)

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4.10 That the humble applicant begs to state that as per the standing instructions of the Govt. of India, the DPC Meeting has to be held prior to occurrence of vacancy in a particular year for filling up the vacant posts in the succeeding year. As regards the Frequency of DPC Meetings, the standing instructions of Govt. of India as given in the Swamy's Compilation on "Seniority and Promotion" are quoted below; -

"Frequency at which DPC should meet:

3.1- The DPC should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned Appointing Authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRS, integrating certificates, seniority list, etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date e.g. 1st April or May. The Ministries/Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to

ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meeting of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.]

3.2-The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the Appointing Authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

Gauri Shankar Mittal

It is evident from the above quoted rules that the preparation of the panel for the vacancies occurring during the year 2003-04, as in the instant case, ought to have been completed and approved latest by 31.03.2003 so that it could be utilized for promotion against the vacancies occurring on 01.04.2003. Had it been so done, then the old norms of Benchmark, which was in force up to 31.03.2003, would have been followed in case of this applicant according to which the applicant fully satisfied the required Benchmark. But for the delay in holding the DPC, the revised norms of Benchmark, which came into effect from 01.04.2003 was wrongly followed by the DPC which did not have retrospective effect and hence not applicable in case of the applicant.

It is also a settled position of law that in case of failure in holding DPC meeting in time as per schedule, the 1st DPC which meet next would prepare the panel year wise as per the rules/norms which were in force at the relevant time as if the DPC meeting was held on the due date on which it was supposed to be held and not as per the norms when the DPC actually set on a later/deferred date for the sake of administrative convenience.

The above stated procedure as laid down by the Govt. of India was grossly violated in case of the applicant in the instant case as a result of which the juniors to the applicant were promoted to the post of Chief Engineer superseding the applicant

Sumit Shankar Mittal

which is arbitrary, unjust, unfair, illegal and not in accordance with law.

(Copy of the relevant page of Swamy's Compilation is annexed hereto as ANNEXURE-IV.)

✓ 4.11 That the applicant begs to submit that he had very good ACRs all along and was awarded either "Very Good" or "Outstanding" rating in his ACRs on all occasions. There was no instance or occasion ever where he was advised/cautioned/communicated about any lapses on his part and as such there was no reason of his falling short of Benchmark required for promotion to the grade of Chief Engineer. But since the persons junior to the applicant were promoted superseding the applicant, it is presumed that the DPC did not recommended the applicant's name for promotion presumably on the ground of non-fulfillment of the required Benchmark. It is apprehended that the ACRs of the applicant, which were very good all along, were downgraded causing non-fulfillment of the required Benchmark by the applicant. It is therefore essential that all the ACRs and other records be produced before the Hon'ble Tribunal for proper ascertainment of the facts.

✓ 4.12 That it is stated that at no point of time, the downgrading of ACRs or adverse entries in the ACR, if any, were communicated to the applicant. It is the settled position of law that any adverse entries made in the ACRs or downgrading of the ACRs shall be communicated to the concerned employee and the

Sameer Shankar Mitra

acknowledgement of such communication or representation of the employee, if any, shall be produced before the DPC at the time of selection for promotion/confirmation. It is also mandatory under law that an uncommunicated adverse ACR shall not be acted upon by the DPC. These dictates of law were not complied with by the respondent department and the DPC in the instant case of promotions to the grade of Chief Engineer in complete violation of law. There are numbers of Judicial decisions which have laid down the law in this matter.

In M.A. Rajasekhar-Vs- State of Karnataka & ors. decided on 16.08.1996 in Civil appeal No. 11385 of 1996 [(1996) 10 SCC 369] it has been held by the Apex Court that Adverse remarks in ACR without giving specific instances of working satisfactorily and without affording any opportunity to correct himself is illegal.

In the latest decision in Dr. R. Bhardwaj -Vs- U.O.I & Ors. decided on 09.07.2003 in O.A. No.270 of 1999, the Lucknow Bench of Hon'ble CAT has dealt with a number of judgments and has held that any adverse report in the Confidential report cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned. A grading which was below the Benchmark amounts to an adverse ACR and hence is required to be conveyed. There are similar decisions in numbers of other cases.

Sameer Sanjeev Mittal

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(Copy of the above two judgments are annexed hereto as ANNEXURES-V and VI respectively.)

4.13 That the humble applicant begs to submit further that he is in the verge of retirement and is left with only one year and nine months service before his superannuation. Even at this stage the applicant has been denied of his legitimate promotion to the post of Chief Engineer even though the juniors have been promoted superseding the applicant in an illegal manner by the impugned order dated 20.11.2003.

It is relevant to mention here that as understood from reliable sources, two of his juniors Shri G.C. Khattar and Lalit Mohan (Respondent No. 4 and 5) who have been promoted under the impugned order dated 20.11.2003 do not have better ACR than the applicant.

4.14 That the Govt. of India has granted some incentives for the Central Government employees for serving in remote areas in which it has been provided interalia that 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. The details of such incentives as given in Swamy's Compilation of FRSR are quoted below:-

Ref: - Swamy's Compilation of FRSR (Page-540)

Sandeep Kumar Mittal

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Incentives for Serving in Remote areas

"(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-

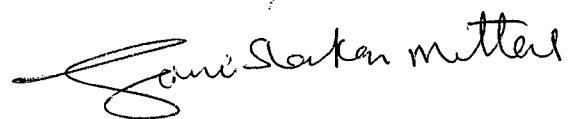
- (a) Promotion in Cadre posts.
- (b) Deputation to central tenure posts; and
- (c) Courses of training abroad.

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 deserving 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".

The applicant has served for the prescribed tenure of 2 years in the North Eastern Region and as such he is entitled to the special weightage stated above in



case of promotion which has not been taken into consideration by the DPC while recommending the names for promotion to the grade of Chief Engineer in the instant case.

(Copy of the relevant page of Swamy's Compilation is annexed hereto as ANNEXURE-VII.)

4.15 That the applicant begs to state further that the applicant is being denied his legitimate promotion to the grade of Chief Engineer repeatedly. Earlier also, the Respondents have issued similar illegal promotion orders whereby the persons junior to the applicant have been promoted superseding the applicant. The applicant having failed to get justice, had filed another O.A before this Hon'ble Tribunal which has been registered under O.A. No.184/2003 whereby the earlier promotion orders have been challenged. When the said O.A is pending before this Hon'ble Tribunal for adjudication, the respondents again issued the instant impugned order dated 20.11.2003 promoting another batch of persons in similar manner. Such actions of the respondents are not only a wanton disregard to the process of law but illegal, malafide, arbitrary, unfair and violative of the principle of natural justice and Article 14 and 16 of the Constitution of India.

4.16 That it is stated that recently one supplementary DPC meeting has further been held on 16.01.2004 and it could be understood from reliable sources that even this time also the name of the applicant has not been

— Somnath Mitter

recommended for promotion by the DPC. The result of this supplementary DPC has however not been declared till date.

4.17 That due to repeated denial of promotion to the applicant to the grade of Chief Engineer, which he is legitimately entitled to, the applicant has been suffering great financial loss and will continue to suffer such losses for his life time in terms of his pensionary benefit and other post retiral benefits in future. The applicant approached the respondents time and again praying for justice but has been denied on all occasions. As such finding no other alternative, the applicant is approaching this Hon'ble Tribunal praying for justice and protection of his legitimate rights and interests and interests and this is a fit case for the Hon'ble Tribunal to interfere with, directing the respondents to promote the applicant to the grade of Chief Engineer with effect from the date on which his juniors were promoted, with all consequential benefits including arrear etc.

4.18 that this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

— Ganeshan Muttai

- 5.1 For that, due to 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.
- 5.3 For that, the DPC has recommended the names of the persons junior to the applicant for promotion and excluded the applicant without assigning any reason thereof.
- 5.4 For that, by promoting the persons junior to the applicant and denying the same benefit to the applicant illegally, the Respondents have acted in violation of the principles of natural justice and the provisions of Article 14, 16 and 21 of the Constitution of India and have also shown wanton disregard to the procedures established by law.
- 5.5 For that, the respondents/DPC have acted upon uncommunicated adverse/downgrading ACRs of the applicant violating the settled position of law.
- 5.6 For that, the Respondents being a model employer cannot deprive the applicant of his legitimate promotion without any justification or reason.
- 5.7 For that, the Respondents cannot deny promotional benefit to the applicant when the applicant had very good and outstanding ACR in his credit all along and

Sanjay Kumar Mitter

more so since the applicant is in the verge of retirement.

5.8 For that the applicant is entitled to get special weightage and incentives in matters of promotion by virtue of serving in the remote N.E. Region as per instructions of the Government which was ignored by the DPC while preparing the panel for promotion.

5.9 For that, the applicant demanded justice but he has been denied time and again in an arbitrary and illegal manner.

5.10 For that, in any view of the matter the action of the respondents are not sustainable in the eye of law as well as fact.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him 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 saves and except one O.A. No. 184 of 2003 filed and pending before this Hon'ble Tribunal against other similar matter, he has not filed any application, Writ Petition or Suit in respect of the subject matter of the instant application before any other Court or any other

Sameer Shukla mittal

authority nor any such application, Writ Petition or Suit is pending before any of them.

B. 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):

- 8.1** That the impugned office order No.30/29/2002-E.C.I/E.W.I dated 20.11.2003 issued by the Respondents be quashed and set aside, *to the extent juniors are promoted.*
- 8.2** That the Respondents be directed to promote the applicant to the grade of Chief Engineer with effect from the date of promotion of his juniors with all consequential service benefits including arrear etc.
- 8.3** Costs of the application.
- 8.4** 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: -

Sanjiv Shankar Muttal

9.1 That the Hon'ble Tribunal be pleased to pass necessary interim orders directing the Respondents not to implement any promotion to the grade of Chief Engineer without the leave of the Hon'ble Tribunal or till disposal of this application.

9.2 That the Respondents be directed to keep one post of Chief Engineer reserved for the applicant.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	:	JJG 738386
ii) Date of Issue	:	G.P.O., Aby.
iii) Issued from	:	<u>Gauhati</u>
iv) Payable at	:	<u>Gauhati</u>

12. List of enclosures.

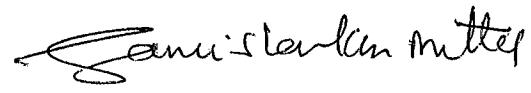
As given in the index.

Sameer Sarker Mitali

VERIFICATION

I, Shri Gauri Shankar Mittal, aged about 58 years, now working as Superintending Engineer, Central Public Works Department, Silchar Central Circle, Silchar-2, 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 20th day of February, 2004.



ANNEXURE - I

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6. [प्रगति II—खण्ड 3(i)]

भारत का राजपत्र : असाधारण

Note : Three posts of Chief Engineer and six posts of Superintending Engineers are common cadre posts for the Central Engineering (Civil) Group 'A' Service and the Central Engineering Electrical and Mechanical Group 'A' Service.

SCHEDULE—II
[See rule 7(iii)]

Method of recruitment, field of promotion and minimum qualifying service in the immediate lower grade for appointment of officers on promotion to duty posts included in the various grades of the Central Engineering (Civil) Group 'A' Service.

Sl. No. and grade	Method of recruitment	Field of selection, minimum qualifying service and educational qualification for promotion	
(1)	(2)	(3)	(4)
1. Chief Engineer (Civil)	By promotion	Superintending Engineer (Civil) with eight years regular service in the grade (including service, if any rendered in the non-functional selection grade) or seventeen years regular service in group A posts of the service out of which four years regular service should be in the grade of Superintending Engineer (Civil).	
2. Superintending Engineer (Civil) (Non-functional) (Selection Grade)	By appointment on the basis of seniority and suitability taking into account the overall performance and other related matters.	Superintending Engineer (Civil) (Junior administrative grade) who have entered fourteenth year of Group 'A' service on the first of July of the year calculated from the year following the year of examination on the basis of which the Officer was recruited or who have rendered nine years Group A service calculated from the date of promotion to the senior time scale in the case of officers promoted from Assistant Engineer.	
3. Superintending Engineer (Civil) (Junior Administrative Grade)	By promotion	Executive Engineer (Civil) with five years regular service in the grade and possessing degree in Engineering from a recognised University or equivalent.	
4. Executive Engineer (Civil)	By promotion	(i) 33 1/3 per cent from Assistant Executive Engineer (Civil) with four years regular service in the grade; (ii) 33 1/3 per cent from Assistant Engineers (Civil) with eight years regular service in the grade and possessing degree in Civil Engineering or any other equivalent qualification; (iii) 33 1/3 per cent from Assistant Engineer (Civil) with ten years regular service in the grade and possessing Diploma in Engineering from a recognised University or Institution or any other equivalent qualification.	
5. Assistant Executive Engineer (Civil)	By direct recruitment through		

(1)	(2)	(3)	(4)
		Engineering Services Examination conducted by the Commission.	

SCHEDULE—III

[See rule 7(i)]

Minimum educational qualification and age limit for direct recruitment to posts in Central Engineering Service (Civil) Group 'A' on the basis of competitive Examination to be conducted by the Union Public Service Commission.

(A) A candidate shall possess :—

(i) a degree in Civil Engineering from;

(ii) a University Incorporated by an Act of the Central or State Legislature in India; or

(iii) an educational institution established by an Act of Parliament or declared to be deemed as University under section 3 of the University Grant Commission Act, 1956, or

(2) Such other equivalent qualification as have been or may be recognised by the Government for the purpose of admission to the said examination; or

(3) A degree/diploma in Engineering from such foreign University/College/Institution and under such conditions as may be recognised by the Government for the purpose from time to time.

NOTES :

(1) In exceptional cases, the Commission may treat a candidate, not possessing any of the above qualifications, as educationally qualified provided that the Commission is satisfied that he has passed examinations conducted by other Institutions the standard of which in the opinion of the Commission, justified his admission to the examination.

(2) A candidate who is otherwise qualified by virtue of his having taken a Degree from a foreign University which is not recognised by Government, may also apply to the Commission and may be admitted to the examination at the discretion of the Commission;

(3) A candidate shall have attained the age of 20 years but not have attained the age of 28 years on the 1st day of August of the year in which the examination is held.

SCHEDULE—IV
[See rule 7(iii)]

Composition of Group 'A' departmental promotion committee for considering cases of promotion and confirmation in the Central Engineering (Civil) Group 'A' Service.

Sl. No. and grade	Group 'A' Departmental Promotional Committee (for considering promotion)		Group 'A' Departmental Promotional Committee (for considering confirmation)
(1)	(2)	(3)	(4)
1. Chief Engineer (Civil)	1. Chairman/Member Union Public Service Commission—Chairman	Not applicable	
2. Director General of Works—Member	2. Director General of Works—Member		
3. Secretary/Special Secretary/Additional Secretary, Ministry of Urban Affairs and Employment—Member	3. Secretary/Special Secretary/Additional Secretary, Ministry of Urban Affairs and Employment—Member		

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20.2.09

(1)	(2)	(3)	(4)
2. Superintending Engineer (Civil) (Non-functional) (Selection Grade)	1. Director General of Works—Chairman 2. Additional Secretary/ Joint Secretary, Ministry of Urban Affairs and Employment—Member		Not applicable
3. Superintending Engineer (Civil) (Junior Adminis- trative Grade)	1. Chairman/Member Union Public Service Commission— Chairman 2. Director General of Works/Additional Director General of Works—Member 3. Additional Secretary/ Joint Secretary, Ministry of Urban Affairs and Employment—Member		Not applicable
4. Executive Engineer (Civil)	1. Chairman/Member Union Public Service Commission—Chairman 2. Director General of Works/Additional Director General of Works—Member 3. Joint Secretary Ministry of Urban Affairs and Employment—Member.		Not applicable
5. Assistant Executive Engineer (Civil)	1. Director General of Works/ Additional Director General of Works— Chairman 2. Joint Secretary, Ministry of Urban Affairs and Employment— Member 3. Director/Deputy Secretary —Mem- ber.		Not applicable.

अधिसूचना

मई दिल्ली, 28 अप्रैल 1996

सा.का.नि. 501(अ).—राष्ट्रपति, अधिकार के अनुच्छेद 309 के पात्रक हारा प्रदत्त शिक्षियों का प्रदोग करते हुए, और केन्द्रीय दैवता और पारिक ईजिनियरी सेवा राष्ट्र के "क" भर्ती नियम, 1954 (का.नि.आ. स. 1843, तारीख 21 मई, 1954) के द्वारा दैवता ईजिनियरी सेवा समूह "क" भर्ती नियम, 1958 (सा.का.नि. स. 36, तारीख 31 दिसम्बर, 1958), और कार्यालय ईजिनियर के द्वारा ईजिनियरी और केन्द्रीय दैवता ईजिनियरी सेवा (समूह "क") घोषणा का नियमन नियम, 1976 (सा.का.नि. स. 892, तारीख 8 अगस्त, 1976) को अधिकार करते हुए नियम उन आंतर्कर्त्ता द्वारा ऐसे अधिकारण से पूर्व किया गया है या करते का सोप किया गया है, नियन्त्रितिया नियम बनाते हैं, अर्थात् :—

१. संक्षिप्त नाम और प्राप्ति—(१) इन नियमों का संक्षिप्त नाम राहीं काम और रोधगार मंशालय (राहीं विकास विभाग), केन्द्रीय ईंजीनियरी (यौवन और यांत्रिक) समूह "क" सेवा नियम, १९६६ ।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त दर्शाएं।
 2. परिभाषाएं—इन नियमों में, अब तक कि संदर्भ से अन्यथा अनेकित न

(क) "निया दिए" से भह तारीख जिसको ये नियम प्रयुत होते ह, अधिकार है।

(३) अगाम राज्य सभा आयोग भारतमा ८,

(ग) "नियन्त्रक प्राधिकारी" से भारत सरकार का राहदार कानून जारी रखना चाहिए अंतर्राष्ट्रीय अधिवेशन द्वारा अनुमति प्राप्त होती है।

(प्र) "विभागीय प्रान्तात सामानां से एसा सामान आपत्ति न, जिसका १०१ किसी भी देशी में प्रोत्तरि या उसकी पुष्टि पर विचार करने के लिए दिया गया है,

(ह) "दृपूर्णी पद" से अनुसूची-1 में सम्बंधित कोई पद आपके पास है।

(घ) "सरकार" से भारत सरकार आभ्यन्तर है,

(४) "श्रेणी" से सेवा का श्रेणी आभ्यरत ह,

(ज) "नियमित सेवा" से किसी व्यक्ति के संबंध में उस व्यक्ति में नियमित नियुक्ति के सिए विहित प्रक्रिया के अनुसार नियमों के अधीन उसके साथ और नियुक्ति के प्रत्यात् उस व्यक्ति में की गई सेवा की अवधियाँ अवधियाँ अधिकृत हैं और जिसके अन्तर्गत नियमित सेवा अवधि या अवधियाँ भी हैं:-

(1) नियम 6 के अधीन नियुक्त किए गए व्यक्तियों के मामलों में उनकी प्लेटफ्लॉट के प्रयोगन के लिए गणना में लिया गया।

(2) जिसके द्वारा उस ब्रेजी में शृंखली पद दिया गया था उसी पर होने के या अन्यथा किसी कारण से ऐसा पद भारत करने के तिए उपस्थित रहा होता तो भारत करता।

(म) "अनुसूची" से इन नियमों से गोसाव अनुमति नप्रियत है;

(अ) "अनुचित जातियाँ और अनुसूचित जनजातियाँ" के बाहर अर्थ होंगे जो भारत के संविधान के अनुचित 366 के फ़ैसले छोड़ (24) और छोड़ (25) में दर्शने दिये संपर्कित हों तो "अपितृ" और अन्य प्रिवेट वार्ता

अधिकृत है और उसका यही अर्थ होगा तथा यह उसी प्रकार लालू होगा जैसा कि कार्मिक और प्रशिक्षण विभाग के कार्यालय शासन संचया

36012/22/93-स्टापन (एस.सी.टी.) सारीख 8 सितम्बर, 1993 में
अधिकारित है, और

(३) "सेवा" से नियम ३ के अधीन गठित केन्द्रीय राजनियती सेवा (वैधुत और

पांचिक) समूह "क" सेवा अभिप्रेत है।

3. सेपा का गठन—अमुसूबी-1 से यथाविनिर्दिष्ट सेपा में सम्मिलित सर्व हृपृष्ठी पट के द्वारा इंजीनियरी (वैद्युत और परिक्रिय) समूह "क" सेपा का गठन करेंगे।
4. ऐड, संख्या और इसका पुनर्वितोक्ति—(1) इन विभागों के प्रारंभ होने के

[E No 85/85/EC/VIEW11]

B. S. MINHAS *et al.*

No.30/29/2002-EC.I/EW.I

Government of India

Ministry of Urban Development & Poverty Alleviation
(Works Division)

New Delhi, dated the 20th November, 2003.

OFFICE ORDER

The President is pleased to promote the following Superintending Engineers (Civil) (pay scale Rs. 14300-18300) to the grade of Chief Engineers (Civil) in the pay scale of Rs. 18400-22400 in the CPWD from the date they assume charge of the post and until further orders.

S/Shri

1. Shri Ashok K. Mittal
2. N. Ravi
3. G.C. Khatter
4. Lalit Mohan
5. M.K. Goel
6. Suresh Kumar
7. P.C. Arora
8. K. Balakrishnan

2. Consequent upon promotion of the above mentioned officers, the Competent Authority has ordered the following postings/transfers in the grade of Chief Engineer (Civil) with immediate effect, until further orders.

S.N.	Name of the officer S/Shri	Present place of posting	Where posted	Remarks
1.	V.K. Ghumre, Chief Engineer (Civil).	CE (IBBR) (M), Siliguri.	CE (AA), Mumbai	Vice Shri A.K. Saxena, promoted.
2.	Ashok K. Mittal On promotion.	SE (Trg.) II, Ghaziabad.	CE (IBBR) (M), Siliguri.	Vice Shri V.K. Ghumre, transferred.
3	N. Ravi On promotion.	SE (SR), Chennai.	CE (Valuation), Chennai.	On proceeding on deputation by Shri H.K. Srivastava.
4.	G.C. Khatter On promotion.	SE (VBC), New Delhi.	Chief Engineer (Civil) APWD	Vice Shri A.K. Majumdar, transferred
5.	A.K. Majumdar Chief Engineer (Civil)	Chief Engineer (Civil), APWD, Port Blair.	Chief Engineer (AA), Chennai	Against a vacant post
6.	Lalit Mohan On promotion.	SE (P&A) SZ- III, Bangalore.	CE (AA), Bangalore.	Against a vacant post.

Contd. - p. 2.

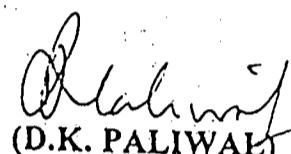
Approved
Approved
On 20.2.04

- 25 -

7.	M.K. Goel On promotion.	SE (Vigilance), New Delhi.	CE (BFZ), New Delhi.	Against leave vacancy of Shri Anant Ram.
8	Suresh Kumar On promotion.	SE (Enquiry), New Delhi.	CE (AA), Kolkata.	Against a vacant post.
9.	P.C. Arora On promotion.	PM (SE), SJFP, PWD, New Delhi.	CE (NEZ), Shillong.	Vice Shri L.P. Srivastava, transferred.
10.	Shri O.P. Bhatia CE (Civil).	On repatriation from deputation.	CE (AA), Lucknow.	Vice Shri S.S. Juncja, retired.
11.	K. Balakrishnan On promotion.	SE, Calicut Central Circle.	CE (SZ-I), Chennai.	Against a vacant post.

3. The posting/transfer orders in respect of Shri O.P. Bhatia are in partial modification of earlier Office Order No.30/8/2003/EC-I/EW-I dated 6.11.2003. Shri M.K. Goel will retire on superannuation on 30.11.2003 and, therefore, Shri Anant Ram, on return from leave, will report back as Chief Engineer (BFZ), New Delhi.

4. The transfer of Shri V.K. Ghumre, Chief Engineer (Civil) from Siliguri to Mumbai has been made on his request. Therefore, he will not get any TA/DA for this purpose. The remaining transfers mentioned are made in public interest.


(D.K. PALIWAL)
UNDER SECRETARY TO THE GOVT. OF INDIA

To

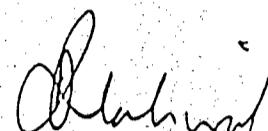
1. DG(Works), CPWD (Shri K.N. Agarwal)
2. All Add. Directors General working in CPWD.
3. Chief Engineer (P&S) (Shri S.K. Singhal), CPWD
4. S/Shri V.K. Ghumre/O.P. Bhatia/P.K. Majumdar, Chief Engineers (Civil)
5. S/Shri Ashok Mittal/N.Ravi/G.C. Khatter/Lalit Mohan/M.K. Goel/Suresh Kumar/P.C. Arora/K. Balakrishnan, Superintending Engineers (Civil)
6. Chief Engineer, Appropriate Authority, Kolkatta/Mumbai/Chennai/Lucknow/Bangalore
7. Office of the Pay & Accounts officers, DG(Works), New Delhi/Northern Region, New Delhi/Eastern Region, Kolkatta/Southern Region, Chennai/Western Region, Mumbai.
8. Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi (Shri D.C. Bhatt, Deputy Secretary) with reference to their letter No.F.1/11(14)/2003-AP.2 dated 1.7.2003.
9. Office of the Establishment Officer, (Ms. R. Jaya, Under Secretary), Department of Personnel and Training, North Block, New Delhi with reference to their letter No. 26/13/2003-EO.(SM.II) dated 11.11.2003.

Contd. - p. 3

-3-

Copy for information to:-

1. PS to Hon'ble UDM
2. Sr. PPS to Secretary (UD)
3. PS to AS (UD)
4. PS to DS (Works)
5. All functionaries in Works Division
6. Hindi Section for Hindi version
7. Guard File



(D.K. PALIWAL)

UNDER SECRETARY TO THE GOVT. OF INDIA

No.37/8/2002-ECI

Govt. of India
Directorate General of Works
CPWD, Nirman Bhawan

New Delhi, Dated: the 25 October, 2002

OFFICE MEMORANDUM

SUB: Issue of seniority list of Superintending Engineers (Civil)

The last seniority list of SEs (Civil) was circulated vide O.M. No.30/44/97-ECI dated 25/9/98. The up to date seniority list in the grade of SEs (Civil) as on 10/10/2002 is circulated herewith for information of all concerned. The seniority list is subject to re-adjustment, if necessary, on opening of sealed covers containing DPC recommendations. Factual errors, if any, may be brought to the notice of this Directorate within a month.

2. This Seniority List is subject to the outcome of CWP No.539/99 (A.P. Gupta & Others Vs. UOI & Others) filed before the Hon'ble Delhi High Court, etc.

DRao
(DR. C.V. BHARMA RAO)
DEPUTY SECRETARY-I

Copy to:

- 1) All Chief Engineers (Civil) in CPWD/PWD, Govt. of Delhi/I.T. Depit., Appropriate Authorities/ Ministry of Environment & Forest, New Delhi.
- 2) Engineer-in-Chief (PWD), Govt. of Delhi, New Delhi.
- 3) All SEs (Civil), CPWD/PWD Govt. of Delhi, I.T. Dep'tt./Appropriate Authority/ Ministry of E&F.
- 4) SE(Vigilance) I & II, CPWD.
- 5) PS to DG(W) and PS to all ADG(Works), CPWD.
- 6) CES Class I (DR) Association.
- 7) CPWD CES & CEMES Class II (DR) Association.
- 8) Section Officers, EC II/CR Cll, CPWD.

Jhunjhunwala
DY. DIRECTOR (EC I)

A. Desai
Advocate
on 20.2.04

SENIORITY LIST OF 2002
SUPERINTENDING ENGINEER (CIVIL), CPWD

S.No.	L/TI	Name (S/Sh.) & Category	Exam	D.O.B.	Date of App't as EE(C)	Date of App't as SE(C)	Remarks
1.	2.	3.	4.	5.	6.	7.	
1)	I	Ashok Aggarwal	1972	25/11/44	7/12/78	31/12/86	
2)	I	S.P. Singh-I	1972	4/1/49	7/12/78	31/12/86	Promoted as CE
3)	I	Pawan Kumar	1972	15/2/45	7/12/78	31/12/86	-do-
4)	I	L.P. Srivastava	1972	31/3/49	7/12/78	31/12/86	-do-
5)	I	O.P. Gadhhyani	1972	14/3/49	7/12/78	31/12/86	Arbitrator Calcutta
6)	I	V.K. Ghumre	1972	17/10/45	7/12/78	31/12/86	
7)	I	Smt. P. Verma	1972	13/12/47	7/12/78	31/12/86	
8)	I	L.C. Rahat	1972	2/1/43	7/12/78	31/12/86	
9)	I	D.N. Tripathy	1972	4/9/43	7/12/78	31/12/87	
10)	I	Ashok K. Mittal	1972	5/10/49	7/12/78	31/12/87	
11)	I	R. Krishnamurthy	1972	4/1/46	7/12/78	31/12/87	
12)	I	B.N. Gupta	1972	3/5/44	7/12/78	31/12/87	
13)	I	G.S. Mittal	1972	9/11/45	7/12/78	31/12/87	
14)	I	R.S. Prasad	1972	15/11/49	7/12/78	31/12/87	
15)	I	✓ P.K. Mazumdar(SC)	1972	2/3/47	7/12/78	31/12/87	
16)	I	✓ S.S. Mondal(SC)	1972	12/12/50	7/12/78	31/12/87	
17)	I	D.Laxminarao(Rao)	1972	15/1/45	7/12/78	31/12/87	
18)	I	Trilok Chandra(SC)	1972	20/3/45	7/12/78	31/12/87	
19)	I	K.V.L.N. Rao	1973	20/9/40	31/12/78	31/12/87	Retired
20)	I	R.D. Aggarwal	1973	13/3/41	17/1/79	31/12/87	Retired
21)	I	✓ C.S. Prasad	1973	3/4/52	17/1/79	31/12/87	
22)	II	O.N. Mathur	0	2/6/32	7/2/79	31/12/87	Retired
23)	I	V.K. Sharma-I	1973	20/11/38	31/12/78	31/12/88	Retired
24)	II	R.M. Matai	0	14/9/31	31/3/79	31/12/88	Retired
25)	I	✓ N. Ravi	1973	8/10/51	16/4/79	31/12/88	

1.	2.	3.	4.	5.	6.	7.
26)	I ✓ G.C. Khatter	1973	14/7/47	16/4/79	31/12/88	
27)	I K.T. Sambandhan	1973	22/12/41	16/4/79	31/12/88	Retired
28)	I Bhartendu Bhushan	1973	25/8/39	16/4/79	31/12/88	Retired
29)	I ✓ Lalit Mohan	1968	9/11/44	5/3/74	31/12/89	
30)	I ✓ D. Hore	1971	12/8/49	28/4/77	31/12/89	
31)	I ✓ M.K. Goel	1973	11/11/43	16/4/79	31/12/89	
32)	I ✓ Suresh Kumar	1973	21/4/48	16/4/79	31/12/89	
33)	I ✓ At.J.P. Gupta (SC)	1973	7/9/47	16/4/79	31/12/89	
34)	I ✓ P.C. Arora	1973	10/8/45	16/4/79	31/12/89	
35)	I ✓ K. Balakrishnan	1973	1/1/45	16/4/79	31/12/89	
36)	I ✓ Virendra Sharma	1973	8/8/50	16/4/79	31/12/89	
37)	I ✓ Pritosh Choudhuri	1973	13/2/47	16/4/79	31/12/89	
38)	I ✓ A.L. Garg	1973	18/8/45	16/4/79	31/12/89	
39)	I Ram Singh (SC)	1973	7/7/41	16/4/79	31/12/89	Retired
40)	I P.N. Singh	1973	20/7/49	7/12/98	9/8/95	Expired 17/8/98
41)	I S. ChinnaSwamy (SC)	1973	5/8/48	16/4/79	31/3/91	
42)	I K.L. Bhulania (SC)	1973	30/7/42	16/4/79	31/3/91	Retired
43)	I S.K. Mittal	1974	22/10/52	29/2/80	31/3/91	
44)	II Abraham Joseph	0	19/9/34	2/4/80	31/3/91	Vol.Retrtd.6/92
45)	I A.K. Trivedi	1974	1/7/51	29/9/80	31/3/91	
46)	I Pradip K Gupta	1974	19/12/51	29/9/80	31/3/91	
47)	I V. Subramanian	1974	8/1/49	29/9/80	31/3/91	
48)	I J.C. Wason	1974	10/1/50	29/9/80	31/3/91	
49)	I Rakesh Mishra	1974	1/1/53	29/9/80	31/3/91	
50)	I V.K. Gupta-I	1974	24/10/51	29/9/80	31/3/91	

1.	2.	3.	4.	5.	6.	7.
51)	I	A.K. Bajaj	1974	5/8/50	29/9/80	31/3/91
52)	I	R. Sircar	1974	19/10/46	29/9/80	31/3/91
53)	I	R.B. Singh	1974	1/6/51	29/9/80	31/3/91
54)	I	S. Baliga	1974	26/6/51	29/9/80	31/3/91
55)	I	Bipin Chand	1974	7/3/52	29/9/80	31/3/91
56)	I	N.K. Sinha	1974	3/4/48	29/9/80	31/3/91
57)	I	S.C. Padhi	1974	1/7/50	29/9/80	31/3/91
58)	I	Rajendra Prasad	1974	11/10/48	29/9/80	31/3/91
59)	I	A.K. Sinha-II	1974	24/4/51	29/9/80	31/3/91
60)	I	Lekhraj Singh(SC)	1974	1/11/45	29/9/80	31/3/91
61)	I	J.M. Baladandapani (SC)	1972	30/3/47	7/12/78	31/3/91
62)	I	Kewal Chand(SC)	1973	6/6/44	16/4/79	31/3/91
63)	I	O.P. Purohit	1973	25/9/50	16/4/79	31/3/92
64)	II	C.L.N. Sharma	0	30/7/34	13/10/80	31/3/92 Retired
65)	II	Ishwar Singh	0	12/10/34	23/3/81	31/3/92 Retired
66)	II	K.A. Nankani	0	27/10/34	24/3/81	31/3/92 Retired
67)	I	P.G. Kavi	1975	22/8/42	9/11/81	31/3/92
68)	I	S.D. Prasad	1975	9/7/51	10/3/82	31/3/92
69)	I	Ashok Khurana	1975	3/2/53	10/3/82	31/3/94
70)	I	Kishori Prasad	1975	20/2/48	10/3/82	31/3/94
71)	I	V.K. Gupta-II	1975	22/8/54	10/3/82	31/3/94
72)	I	A.K. Suri	1975	6/7/43	10/3/82	31/3/94
73)	I				10/3/82	31/3/94
74)	I				10/3/82	31/3/94
75)	I	B.P. Aggarwal	1975	17/7/41	10/3/82	31/3/94 Retired

1.	2.	3.	4.	5.	6.	7.
76)	I	B.N. Nagaraja	1975	10/1/51	10/3/82	31/3/94
77)	I	S.C. Malhotra	1975	20/2/45	10/3/82	31/3/9 Expired 28/9/94
78)	I	R.S. Sheoran	1975	1/7/52	10/3/82	31/3/94
79)	I	E.B. Gupta	1975	10/5/52	15/12/76	31/3/94
80)	I	E.B. Bhatia	1975	6/1/55	11/4/82	31/3/94
81)	I	H.L. Padbanabhan	1975	17/11/49	11/4/82	31/3/94
82)	I	A.K. Sharma	1973	18/6/52	17/1/79	31/3/94
83)	I	A.P. Singh	1974	1/2/51	29/6/80	31/3/94
84)	I	Ramveer Singli	1974	2/6/46	29/9/80	31/3/94 (NBR)
85)	I	P.K. Mathur	1975	29/1/48	20/8/82	31/3/94
86)	I	M.S. Saluja	1975	18/7/51	20/8/82	31/3/94
87)	I	R.K. Govil	1975	1/1/53	3/3/83	31/3/94
88)	I	Neeraj Mishra	1976	23/9/54	3/3/83	31/3/94 (NBR)
89)	I	B.P. Kukreti	1976	23/8/50	3/3/83	31/3/94
90)	I	Satish K. Sharma	1976	8/1/52	3/3/83	31/3/94
91)	I	Vinay Kumar	1976	16/5/54	3/3/83	31/3/94
92)	I	R.K. Ghosh	1976	17/1/51	3/3/83	31/3/94
93)	I	Dharam Pal	1976	9/9/48	15/4/77	26/11/99
94)	I	S.A. Khan	1974	15/6/52	25/1/80	20/11/97
95)	I	A.N. Prasad	1975	1/5/48	11/4/82	31/3/95
96)	I	S.M. Verma	1975	6/8/51	11/4/82	31/3/95
97)	I	Shyamal Sinha	1976	14/11/49	3/3/83	31/3/95
98)	I	V.K. Motwani	1976	28/6/54	3/3/83	8/9/95
99)	I	S.N. Kale	1977	13/9/53	4/12/83	8/9/95
100)	I	Diwakar Garg	1977	9/7/56	18/12/83	5/9/95
101)	I	Dinesh Kumar	1977	23/1/55	18/12/83	5/9/95

1.	2.	3.	4.	5.	6.	7.
102)	I	Sunny Kuruvilla	1977	4/3/55	18/12/82	5/9/95
103)	I	Sunder Jethwani	1977	4/4/53	18/12/83	5/9/95
104)	I	Anil Kumar Verma	1977	26/3/55	21/12/83	7/9/95
105)	I	Anil Kumar Sharma-II	1977	22/9/55	30/12/83	8/9/95
106)	I	V. Ramakrishnan	1977	1/12/50	30/12/83	8/9/95
107)	I	R.C. Gupta	1971	30/11/47	28/4/77	19/9/95
108)	I	B.N. Laha	1974	25/2/46	29/9/80	19/9/95
109)	I	V.K.Sharma-I	1977	8/4/56	30/12/83	5/9/95
110)	I	M. Annamalai(SC)	1977	1/1/55	30/12/83	6/9/95
111)	I	Tejinder Singh(SC)	1977	29/6/54	30/12/86	10/9/95
112)	I	V.K. Rokde(SC)	1977	29/1/54	30/12/86	10/9/95
113)	I	S.H.Gondana(SC)	1977	30/7/52	10/1/84	8/9/95
114)	I	P. Manickam(SC)	1977	10/4/54	10/1/84	6/9/95
115)	I	Adesh Kumar (SC)	1977	21/1/55	10/1/84	6/9/95
116)	I	Suraj Pal(SC)	1977	5/7/42	14/5/85	6/9/95
117)	I	S.K. Singhal	1978	25/5/56	9/6/86	8/9/95
118)	I	R.P. Mathur	1978	4/1/53	9/6/86	8/9/95
119)	I	B.N. Malhotra	1978	22/1/56	9/6/86	8/9/95
120)	I	Mukund Joshi	1978	30/7/56	9/6/86	8/9/95
121)	I	Abhay Sinha	1978	30/6/58	9/6/86	8/9/95
122)	I	Upendra Malik	1978	2/4/57	9/6/86	9/9/95
123)	I	M.Thangamuthu	1978	3/11/55	9/6/86	31/3/97
124)	I	Rajeev Kumar	1978	6/9/56	9/6/86	29/2/97
125)	I	R.P.Golgonda(ST)	1978	2/9/56	9/6/86	2/4/97
126)	I	D.S. Kapoor	1979	21/12/56	9/6/86	31/3/97
127)	I	S.K. Srivastava	1979	18/2/58	9/6/86	31/3/97

1.	2.	3.	4.	5.	6.	7.
128) I	Nand Lal Singh	1979	25/7/57	9/6/86	31/3/97	
129) I	Anil Kr. Garg	1979	19/6/57	9/6/86	31/3/97	
130) I	Sukhdev Singh(SC)	1977	23/1/56	30/12/83	8/9/95	
131) I	Jai Prakash(SC)	1977	5/9/51	10/1/84	8/9/95	
132) I	Surinder Kumar	1975	13/10/40	10/3/82	31/3/97	Retired
133) I	Adarsh Kumar Sharma	1977	22/9/55	30/12/83	31/3/97	
134) I	P.K. Kulshreshtha	1979	13/10/54	9/6/86	28/4/97	
135) I	P.P. Srinivasan	1979	10/8/56	9/6/86	31/3/97	
136) I	Niranjan Singh(SC)	1979	2/7/52	18/7/86	31/3/97	
137) I	Ramesh Chandra(SC)	1979	1/1/58	18/7/86	27/3/97	
138) I	M.C.T. Pareva(SC)	1979	16/7/55	18/7/86	31/3/97	
139) I	Balraj Chadha	1980	2/10/58	4/3/87	31/3/97	
140) I	A. Manicavasagam	1980	9/12/49	27/3/87	31/3/97	
141) I	Narender Kumar	1980	20/2/57	19/4/87	16/5/97	
142) I	S.M. Kohli	1980	2/3/59	19/4/87	19/5/97(NBR)	
143) I	S.L. Jain	1980	27/1/53	1/7/87	19/5/97	
144) I	V.K. Sharma-II	1980	14/12/56	1/7/87	19/5/97	
145) I	S.K. Rastogi	1980	4/9/57	1/7/87	26/5/97	Retired
146) I	Deepak Gupta	1980	16/4/57	1/7/87	19/5/97	
147) I	B.B. Dhar	1980	25/6/55	16/8/87	30/6/97	
148) I	K.P. Abraham	1980	27/11/54	16/8/87	30/6/97(NBR)	
149) I	S.P. Singh	1980	2/3/56	16/8/87	30/6/97	
150) I	V.K. Malik	1980	7/1/58	1/1/88	7/7/97	
151) I	R.S. Rawat (ST)	1979	20/10/57	18/7/86	30/7/97	
152) I	A.K. Silekar(ST)	1979	1/7/56	18/7/86	7/7/97	
153) I	J.M. Swarup	1971	15/1/48	28/4/77	2/12/2000	

1.	2.	3.	4.	5.	6.	7.
154) I	R.K. Aggarwal	1980	20/9/58	30/6/88	18/11/2000	
155) I	S.K. Garg	1980	4/1/60	5/7/88	7/11/2000	
156) I	A.K. Garg	1981	27/3/59	5/7/88	9/11/2000(NBR)	
157) I	M.C. Bansal	1981	21/4/58	5/7/88	9/11/2000	
158) I	A.P. Mathur	1981	21/3/58	5/7/88	8/11/2000	
159) I	Deepak Thakur	1981	2/6/59	5/7/88	8/11/2000	
160) I	Akhilesh Kumar	1981	10/2/59	12/8/88	7/11/2000(NBR)	
161) I	P.K. Vats	1981	27/5/60	12/8/88	7/11/2000	
162) I	N.K. Gupta	1981	17/12/54	12/8/88	9/11/2000	
163) I	Sudhir Singh	1981	7/6/58	12/8/88	8/11/2000	
164) I	P.K. Singh	1981	3/3/60	22/9/88	8/11/2000	
165) I	Adesh Kumar-II	1981	7/4/59	22/9/88	8/11/2000	
166) I	Jayesh Kumar	1981	1/6/59	22/9/88	7/11/2000(NBR)	
167) I	P.K. Aggarwal	1981	22/7/59	22/9/88	7/11/2000 (Notional) 7/6/2001 (Actual)	
168) I	H.N.J. Singh	1981	7/12/58	22/9/88	7/11/2000	
169) I	R.K. Duggal	1981	30/6/59	22/9/88	7/11/2000 (BR)	
170) I	V.K. Jaiswal	1981	16/7/61	22/9/88	7/11/2000	
171) I	K.M. Saini	1981	8/7/59	22/9/88	8/11/2000	
172) I	R.K. Soni	1981	6/11/59	22/9/88	23/11/2000	
173) I	Rajesh Mittal	1981	4/4/61	22/9/88	28/2/2001	
174) I	S.K. Roy	1981	1/6/59	22/9/88	28/2/2001	
175) I	A.S.S. Khurana	1981	23/10/59	22/9/88	28/2/2001 (Notional) 27/12/2001 (Actual)	
176) I	Deepak Panwar(SC)	1981	11/6/57	28/4/89	28/2/2001	
177) I	A.K. Sharma	1982	8/7/60	28/4/89	9/4/2001	
178) I	M.P. Jacel	1976	22/4/53	3/3/83	25/10/2001	

(BR)

(BR)

1.	2.	3.	4.	5.	6.	7.
179)	I	B.B. Popli	1976	19/9/51	3/3/83	31/10/2001
180)	I	S.R. Jaurkar(SC)	1981	21/4/59	24/11/88	29/10/2001
181)	I	V.T. Arasu(SC)	1981	26/3/55	24/11/88	29/10/2001
182)	I	Unnesli C. Mishra	1982	1/7/59	17/8/89	9/11/2001
183)	I	R. Sampath	1982	23/12/56	17/8/89	29/10/2001
184)	I	Rajendra Kalla	1982	1/12/59	17/8/89	29/10/2001
185)	I	A.K. Pandit	1982	22/8/60	17/8/89	29/10/2001
186)	I	G. Radhakrishan	1982	12/6/52	17/8/89	29/10/2001
187)	I	Veer Sain (SC)	1982	1/1/59	17/8/89	29/10/2001
188)	I	A.Anudeshwasan(SC)	1982	25/5/56	17/8/89	9/9/2002
189)	I	Bhagwan Singh(SC)	1982	15/3/58	17/8/89	6/9/2002
190)	I	Shailendra Sharma	1983	21/5/63	16/1/91	6/9/2002
191)	I	A.K. Rastogi	1983	6/3/60	25/7/96	9/9/2002

2. As promotions take effect only from a prospective date, any adjournment of the DPC meetings is not in the interest of employees. Such adjournments also result in disturbance in the time-schedule specified in Model Calendar for DPCs prescribed *vide* the Department of Personnel and Training Office Memorandum No. 22011/9/98-Estt. (D), dated September 8, 1998 for holding regular DPC meetings in advance.

3. All Ministries/Departments are, therefore, advised to ensure participation of the Departmental DPC Members in the DPC meetings convened by the Commission (if necessary, by re-scheduling their work priorities and engagements) so that no DPC meetings are adjourned for want of quorum resulting in disturbance in the prescribed time-schedule as per the Model Calendar for DPCs, delay in promotions and dislocation of the work of the Commission.

[G.I., Dept. of Per. & Trg., O.M. No. 22013/1/2001-Estt. (D), dated the 18th April, 2001.]

2.5 *In the case of Groups 'C' and 'D'*.— In respect of a DPC for Groups 'C' and 'D' posts, the Chairman of the DPC should be an officer of a sufficiently high level and one of the members of the DPC should be an officer from a Department not connected with the one in which promotions are considered. The other member(s) should be an officer of the Department familiar with the work of the persons whose suitability is to be assessed. The officer of another Department appointed as a member of the DPC should also be of an appropriate level keeping in view the level of the other members of the DPC and the post to which promotion is to be made. In the case of a DPC constituted for promotions to a technical post, it may also be ensured that the officer nominated by another Department has also the requisite technical competence to advise on the suitability of the candidates under consideration.

2.6 *Representation for SC/ST and Minorities*.— Wherever a Selection Committee/Board exists or has to be constituted for making recruitment to 10 or more vacancies in Group 'C' or Group 'D' posts/services, it shall be mandatory to have one member belonging to SC/ST and one member belonging to minority community in such Committees/Boards. Where, however, the number of vacancies against which selection is to be made is less than 10, no effort should be spared in finding a Scheduled Castes/Scheduled Tribes Officer and a Minority Community Officer for inclusion in such Committees/ Boards.

Where an outside member has to be associated with the DPC for Group 'C' or Group 'D' posts, there would be no objection to nominate on such a DPC, an SC/ST officer from such other Ministry/Department in the event of such officer not being available in the Ministry/Department itself.

[Para 2.6 as modified by G.I., Dept. of Per. & Trg., O.M. No. 39016/9 (S)89-Estt. (B), dated the 16th August, 1990.]

2.7 In Group 'A' and Group 'B' services/posts, if none of the officers included in the DPC as per the composition given in the Recruitment Rules is an SC or ST officer, it would be in order to co-opt a member belonging to the SC or ST if available within the Ministry/Department. If no such officer is

available within the Ministry/Department, he may be taken from another Ministry/Department.

2.8 *In the case of EB crossing*.— ***

PART - II

FREQUENCY OF MEETINGS

Frequency at which DPC should meet

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned Appointing Authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.]

3.2 The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the Appointing Authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question.

[See O.M., dated 8-9-1998 at the end of this section for Model Calendar.]

PART - III

PREPARATORY ACTION

Determination of regular vacancies

4.1 It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For

I. G.I., Dept. of Per. & Trg., O.M. No. 22011/3/91-Estt. (D), dated the 13th May, 1991.

the date of deposit into court and additional amount under Section 23(1-A) at 13^{(sic) 12} per cent per annum from the date of issue of Section 4(1) notification till the date of the award.

5. The appeal is accordingly allowed. No costs.

ANNEXURE - V

(1996) 10 Supreme Court Cases 369

(BEFORE K. RAMASWAMY AND G.B. PATTANAIK, JJ.)

M.A. RAJASEKHAR

Appellant;

Versus

STATE OF KARNATAKA AND ANOTHER

Respondents.

Civil Appeal No. 11385 of 1996^t, decided on August 16, 1996

A. Service Law — Confidential report — Adverse remarks — Specific instances of shortcomings, when must be given — Integrity not doubted and work also in all respects found satisfactory — In such circumstances, giving an additional remark that he "does not act dispassionately when faced with dilemma", without giving specific instances of working unsatisfactorily and without affording any opportunity to correct himself, held, illegal — Character roll — Adverse remarks

Held:

The integrity of the appellant was not doubted and his work also in all respects was found 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 cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he ought to have acted upon. Since this exercise has not been done by the respondents, the said adverse remark was not consistent with law.

(Para 5)

B. Service Law — Confidential report — Adverse remarks — Object of, restated — Character roll — Adverse remarks

C. Service Law — Confidential report — Assessment of character, integrity and performance of the incumbent — Held, must be done fairly — Character roll — Administrative Law — Fairness in action

Held:

It is now settled law that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent.

Appeal allowed

Advocates who appeared in this case :

S.R. Bhat, Advocate, for the Appellant;

K.L. Taneja, Advocate, for the Respondents.

Appeal allowed (Para 4)

H.M/16667/SL

Ex parte on 11-2-1992

Advances established in the order of the

ex parte application from PW 1 (Shri

Authority, by as order in

From the Judgment and Order dated 11-2-1992 of the Karnataka Administrative Tribunal, Bangalore in Application No. 1961 of 1990

20.2.99

1. Leave granted.

2. We have heard learned counsel for the parties.

3. This appeal by special leave arises from the order of the Karnataka Administrative Tribunal, Bangalore dated 11-2-1992 made in Application No. 1961 of 1990. Admittedly when the appellant was working as a Tehsildar an adverse remark had been made for the year 1988-89 as under:

"Competent, good at getting work done, but does not act dispassionately when faced with dilemma."

4. Calling that in question, the appellant filed an OA. It is now settled law that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent. It is seen that in the review order, various grounds on which the various criteria are to be complied with were specifically noted thus:

"3. A perusal of Annexure A-1 goes to show that in most of the aspects the work of the applicant is satisfactory. According to the form in which the confidential remarks of the officers are to be written, the reporting officer is required to indicate his assessment of the officer on the following aspects of his work:

1. Knowledge of work;
2. Power of expression;
3. Power of acquiring general information;
4. Attention to detail;
5. Industry;
6. Judgment;
7. Speed of disposal;
8. Willingness to accept responsibility and to take decision;
9. Relationship with subordinates and colleagues;
10. Public relations;
11. Integrity.

The report about all the above aspects is satisfactory. There is no adverse report about integrity. However, the underlined remarks in Annexure A-1 are made. The last sentence in those remarks indicates that the intention of the officer who wrote those remarks was to treat the remarks as advisory. He has stated that the officer should evince more interest. When all the ten aspects of the work which are required to be assessed by the rules are satisfactory, the alleged adverse remarks get considerably diluted and we are of the considered opinion that the ends of justice would be served if the remarks are treated as advisory with a direction that they should not be made use of against the applicant for any purpose."

5. 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 cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a 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 remark was not consistent with law.

6. Accordingly the appeal is allowed. The adverse remark stands expunged. No costs.

(1996) 10 Supreme Court Cases 371

(BEFORE K. RAMASWAMY AND G.B. PATTANAIK, JJ.)

N. RAJARATHINAM

Petitioner:

Versus

STATE OF T.N. AND ANOTHER

Respondents.

SLP (C) No. 19334 of 1996[†] (CC No. 4082 of 1996),
decided on September 6, 1996

Service Law — Departmental enquiry — Award of punishment — Power of disciplinary authority to decide the nature of punishment — Imposition of punishment of dismissal on finding the delinquent guilty of demanding and accepting illegal gratification merely on the basis of the solitary evidence of a witness, held, not illegal and not warranting interference by Supreme Court — The fact that there was no allegation of misconduct against the delinquent earlier, held, inconsequential — Recommendation of Public Service Commission to take a lenient view, not binding on the Government — Departmental enquiry — Appreciation of evidence — Standard of proof — Evidence Act, 1872 — Inapplicable to departmental enquiry — Constitution of India, Arts. 136 and 320(3)(c) — Interference in service matters (Para 3)

SLP dismissed

H-M/T/16753/SL

Advocates who appeared in this case :

Ambrish Kumar, Advocate, for the Petitioner.

ORDER

1. Delay condoned.
2. This special leave petition has been filed against an order of the Tamil Nadu Administrative Tribunal, Madras Bench, made on 26-2-1996 in OA No. 2152 of 1991. The petitioner, while working as Assistant Commissioner of Commercial Taxes, demanded and accepted illegal gratification. Consequently, he was suspended from service on 1-10-1995. An enquiry into the charges was conducted by the Tribunal for Disciplinary Proceedings. The Tribunal recommended dismissal of the petitioner from service on the basis of the finding that the preponderance of evidence established that the petitioner had demanded and accepted illegal gratification from P.W 1 (Shammugasundaram). Accepting the report, the disciplinary authority, by its order dated 6-1-1989, dismissed the

[†] From the Judgment and Order dated 29-2-1996 of the Tamil Nadu Administrative Tribunal, Madras in O.A. No. 2152 of 1991

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ANNEXURE - VI

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Sl. No.	Subject	Name of Parties, Citation and Date of Judgment
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Promotion

127. When candidates were selected through prescribed examination and a lapse in not disclosing the circular inviting application that the posts were to be filled up on *ad hoc* basis and even when the appointment orders did not disclose that they were on *ex cadre* posts, candidates are justified in believing that they were regularly promoted to a different cadre.

128. Under ACP Scheme, if the employee does not have an avenue of promotion or even if there be a promotion, does not get actual promotion, he has to be given the benefit under the Scheme.

Seniority

129. 1. Fixing of seniority based on the date of confirmation in the cadre is unconstitutional and discriminatory.

2. If the promotees have not worked on the promotional posts, in any capacity, then there could no question of payment of arrears of salary from the deemed date of promotion.

130. Rule 216 of the Railway Establishment Manual permits the employees to reckon their seniority from the date of their continuance officiation on *ad hoc* basis.

Termination

131. 1. Under Rule 27 (2) of CCS (CCA) Rules, 1965, the Appellate Authority is bound to consider (a) Whether the procedure rules laid down was complied with (b) Whether findings of Disciplinary Authority are warranted by evidence and (c) Whether the penalty is adequate, inadequate or severe.

2. Under Rule 11 (vii) of CCS (CCA) Rules, 1965, an employee cannot be terminated at all and he/she can only be removed.

Sl. No.	Subject	Name of Parties, Citation and Date of Judgment
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Transfer

132. It is not permissible for the Competent Authority to issue transfer proceedings on the ground that a Departmental Enquiry is pending against the employee and the said action taken by the Authority is to be held as punitive in nature and an arbitrary exercise of power.

Tribunal Judgments

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An adverse report in the confidential report cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned

A grading which was below the Benchmark amounts to an adverse ACR and hence is required to be conveyed

Facts: Applicant belongs to 1981 batch of the Indian Railway Traffic Service. He was promoted in 1986 to the Senior Time Scale and on 17-10-1991, was promoted further to Junior Administrative Grade. However, he could not be placed in the selection grade as he was not found fit by the Selection Committee which met in April, 1996, May, 1997, April, 1998, August, 1999, January, 2001, August, 2001, September, 2002 and March, 2003. He was also not considered for promotion to Senior Administrative Grade by the Selection Committee which met in January, 2002 and again in December, 2002. Thus the Applicant continues to be in the Junior Administrative Grade whereas a number of Officers junior to him have been placed not only in the selection grade but have also been promoted to the Senior Administrative Grade. Hence, he filed the present O.A.

Held: Coming to the question of granting Selection Grade to the Applicant, we notice that for the DPC which met in April, 1996, the relevant ACRs were for the years 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96. Similarly, for the DPC which met in May, 1997, the relevant ACRs were for the years 1992-93 to 1996-97. It is an admitted position that the ACR for the year 1997-98 (17-6-1997 to 29-9-1997) contained adverse remarks which were duly communicated to the Applicant and which have not yet been expunged despite the

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Applicant's representation pending before the Railway Board. Therefore, these adverse remarks would be relevant for the DPC which met in April, 1998. For considering the Applicant's case for placement in the Selection Grade, the Selection Committee which met in April, 1998 and in May, 1997, had before them the ACRs for the years 1991-92 to 1996-97. In the year 1992-93 and 1993-94, the ACRs of the Applicant contained adverse remarks which were never communicated to him. In the year 1993-94, the Applicant was also graded as "average" and not fit for promotion. In the ACR for the year 1992-93, despite some uncommunicated adverse remarks, the Applicant was graded as "good" and fit for promotion. The subsequent ACR for the year 1993-94, containing uncommunicated adverse remarks and grading the Applicant as 'not fit for promotion' cannot be taken into consideration for assessing the Applicant's suitability for placement in the Selection Grade. The other five ACRs for the years 1991-92, 1992-93 and for the years 1994-95, 1995-96 and 1996-97 were either 'good' or 'very good' and had graded the Applicant as 'fit' for promotion in all these years. As a matter of fact, from 1991-92 to 1996-97, the Applicant had earned two 'very good' ACRs, three 'good' ACRs and one 'average' ACRs. Admittedly, the prescribed benchmark for placement in the selection grade was two 'good' ACRs out of the preceding five years. In so far as the Selection Committee which met in April, 1996, is concerned, the Applicant was graded as 'very good' in 1991-92 and 'good' in 1992-93, 1994-95 and 1995-96 and also fit in all these years. Similarly, with reference to the Selection Committee which met in May, 1997, the Applicant was graded as 'very good' in 1996-97 and 'good' in 1992-93, 1994-95 and 1995-96. Thus for the Selection Committee which met in May, 1997 and for the Selection Committee which met in April, 1996, the Applicant fully fulfilled the criterion of benchmark having earned more than two 'good' ACRs. The adverse remarks for the years 1992-93 and 1993-94 having not been communicated to the Applicant have to be ignored.

On behalf of the Applicant, reliance was placed on the decision of the Hon'ble Supreme Court in *Gurdial Singh Fiji v. State of Punjab* [1979 (1) SLR 804] extracts of which are reproduced below:—

"The principle is well settled that in accordance with the rules of natural justice, an adverse report in the Confidential Report cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned".

The above principle was relied upon by the Apex Court in the subsequent decision in *Amarkant Choudhry v. State of Bihar*, [AIR 1984 SC 531]. Likewise Allahabad High Court in the case of *Kripashankar Shukla v. State of U.P. and others*, [1999 (3) UPLBEC, 2399] observed as under:

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"An uncommunicated adverse remark cannot as a general rule be acted upon by the employer to the prejudice of the employee. The rules and administrative instructions generally put an obligation on the authorities to communicate the adverse remarks to the employee to enable him to make a representation. Even if the rules or administrative instructions are silent on this aspect, the principles of natural justice require such a communication"

In the case of *State of M.P. v. Yamuna Shankar Mishra and another* (1997) 4 SCC Page 7, the Hon'ble Supreme Court made the following observations:—

"Before framing an opinion to make adverse entries in Confidential Report, the reporting/reviewing officers should share the information which is not a part of the record with the officer concerned. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of judgment, conduct, integrity or corrupt proclivity".

A similar view was taken by the Apex Court in the case of *Sukhdeo v. Commissioner Amravati Division* [1996 SCC (L & S) 1141]. The Hon'ble Supreme Court in *U.P. Jal Nigam and others v. Prabhat Chand Jain and others* [1996 2 SCC 363] took the view that if the grading in the ACR is toned down from 'very good' to 'good', that may not ordinarily be an adverse entry since both are positive gradings. The Apex Court however, held that the authority toning down the grading should record reasons for such downgrading and inform the official concerned of the downgrading in the form of an advice. The Apex Court further observed as under:—

"Even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be quantitatively damaging may not be true".

Thus on the basis of the case-law discussed above, the irresistible conclusion which follows is that, the adverse entry recorded in the ACRs of the Applicant for the year 1992-93, 1993-94 have to be ignored for purpose of considering him for placement in the Selection Grade. On the same analogy, the adverse remarks recorded in the ACR for 1998-99 have also to be ignored for purpose of considering the Applicant for placement in the Selection Grade and for promotion to the Senior Administrative Grade. It is accordingly directed that the Respondents shall convene a review-DPC for reviewing the recommendations of the DPC made in April, 1996 and in May, 1997 and shall reconsider the Applicant for placement in the Selection Grade after ignoring the adverse remarks for the years 1992-93 and 1993-94 as these adverse remarks were never communicated to the Applicant. In case the Applicant is fit for Selection Grade by the said review-DPCs of April, 1996 and May, 1997, he shall be placed in the

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Selection Grade with all consequential benefits with effect from the date his immediate junior was placed in the Selection Grade.

As regards, the applicant's promotion to the Senior Administrative Grade, the DPCs in which the Applicant was considered and 'not found fit' for promotion to the Senior Administrative Grade were held in January, 2002, and in December, 2002, the five ACRs considered by these two DPCs were for the year 1996-97 to 2000-01 and for the years 1997-98 to 2001-2002. Out of these five CRs, the ACR for the year 1997-98 contained adverse remarks which were duly communicated to the Applicant and in respect of which his representation was still pending before the Member (Traffic) Railway Board. These adverse remarks for the year 1997-98 have therefore, not been expunged so far. Further, the ACR for the year 1998-99 graded the Applicant as 'average' and also contained uncommunicated adverse remarks. This ACR, however, was not communicated to the Applicant. Therefore, the ACR for the year 1998-99 could not be taken into account for considering the Applicant for promotion to the Senior Administrative Grade, in terms of the various decisions referred to above.

This is without prejudice to the fact that the ACR for the year 1997-98 (17-6-1997 to 29-9-1997) recording adverse remarks against the Applicant still survives having not been expunged in either of the representations made by the Applicant. Thus, in so far as the Applicant's promotion to the Senior Administrative Grade is concerned, the Applicant would not qualify in our opinion for promotion to the Senior Administrative Grade in the light of the adverse remarks for the year 1997-98. If and when these remarks are expunged, the Applicant shall be considered for promotion to the Senior Administrative Grade also after ignoring the ACR for the year 1998-99 which contained uncommunicated adverse remarks and graded the Applicant below the benchmark as 'average'.

In view of the foregoing discussion, the O.A. is disposed of with the following directions:—

(a) The Respondents shall convene within six weeks from the date of receipt of this order, a review DPC for reviewing the recommendations of the DPC held in April, 1996 and in May, 1997 and shall consider the Applicant for placement in the Selection Grade with effect from the date his immediate junior was so placed. This is, however, without prejudice to the Applicant's right for consideration for Selection Grade by the Selection Committee which might meet in the year 2003 and in subsequent years.

(b) If and when the adverse remarks recorded for the year 1997-98 (17-6-1997 to 29-9-1997) are expunged, the Applicant shall be considered for the Senior Administrative Grade with effect from the

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date of promotion of the immediate junior after ignoring the ACR for the year 1998-99 by a review DPC which shall review the recommendations of the DPC held in January, 2002 and in December, 2002. This is, however, without prejudice to the Applicant's right for consideration for promotion to the Senior Administrative Grade by the Selection Committee which might meet in the year 2003 and in subsequent years.

[Dr. R. Bhardwaj v. Union of India and others, 12/2003, Swamysnews 51, (Lucknow), date of judgment 9-7-2003.]

O.A. No. 270 of 1999

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Disciplinary Authority has to record tentative reasons in the show-cause notice in specific words for disagreement with conclusions arrived at by Enquiry Officer.

When imputation of misconduct levelled against the Disciplinary Authority before his promotion by the charge-sheeted applicants, he ought not act as Disciplinary Authority against them after promotion

Facts: Applicants are working as Inspector of Customs. They were placed under suspension by order, dated 17-2-1994. Charge memo issued. Enquiry conducted. Enquiry Officer in his report held that charges were not proved. But, a common show-cause notice, dated 6-10-1998, was issued by Additional Commissioner informing that he was reconsidering the Enquiry Officer's report and directing them to show cause why the report should not be set aside and penalty imposed. Separate replies were submitted. Both the applicants were imposed with major penalty of removal from service. Appeals filed. Penalty of pay reduction by two stages in time scale of pay for 2 years were imposed. Challenged in separate O.As.

Held: "The question to be examined now is, whether the show-cause notice contains reasons for disagreement with the findings of the Inquiry Officer so as to enable the delinquents to persuade the Disciplinary Authority not to disagree with the conclusion reached by the Inquiry Officer for the reasons given in the inquiry report or to offer additional reasons in support of the findings given by the Inquiry Officer. The Disciplinary Authority in the show-cause notice no doubt purports to give some reasons for its disagreement with the report of the Inquiry Officer. But, we are of the view that the so-called reasons for disagreement as given in the show-cause notice are fallacious. Reasons, according to Beg. J. (with whom Mathew J. concurred) "are the links between the materials on which certain conclusions are based and the actual conclusion. *Union of India v. Mohan Lal Kapoor*

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[(1974) 1 SCR 797] followed in *Gurdial Singh v. State of Punjab* [AIR 1979 SC 1622 Para 18]. All that the Disciplinary Authority states in the show cause notice is firstly, that 'inexperience' of the Charged Officer cannot be quoted as an excuse for gross negligence/derection of duty; and secondly that the Inquiry Officer has not "convincingly" commented on the other charges levelled against the charged officers in the charge memorandum. These are simply conclusions. The Disciplinary Authority does not appear to have directed itself to any material on record nor has it adverted to the conclusions arrived at by the Inquiry Officer in his report. The language in which the show-cause notice is formulated is, in our opinion, far from being sufficient to enable the Applicants to show to the Disciplinary Authority that the findings and conclusions of the Inquiry Officer were 'convincing'. Further, it may be pointed out that the Inquiry Officer in his report attributed 'inexperience' to Sri M. Sudhir Pai who happened to be a young officer and not to Sri K. V. Ravindran. The Disciplinary Authority seems to have acted mechanically and without application of mind to the inquiry report and proceeded as if the Inquiry Officer attributed 'inexperience' to both the applicants in justification of his conclusion. Furthermore, the Inquiry Officer in his report has given his findings on all the charges and if, in the opinion of the Disciplinary Authority, the comments of the Inquiry Officer on all the charges were not convincing, the Disciplinary Authority ought to have tentatively recorded its reasons for its opinion. It was not enough to say that the Inquiry Officer has not 'convincingly' commented on the other charges levelled against the said officers in the charge memorandum. In our view, the Disciplinary Authority in the instant case has failed to record tentative reasons in specific words for disagreement with the conclusions arrived at by the Inquiry Officer. Thus, the ultimate decision in the disciplinary proceeding has been, in our opinion, arrived at in breach of principles of natural justice and therefore, it cannot be sustained.

The next submission made by the learned Counsel for the Applicants is that, Shri K. Shyamsundar who was then the Assistant Collector in charge of exports was disqualified to act as Disciplinary Authority in view of the fact that while acting as Assistant Collector of Exports, he had failed to perform his duty as assigned to him vide Appraisal order No. 131/1991 which provides that in respect of shipping bills for export of goods with a value exceeding Rs. 1 lakh shall be finally approved by the Assistant Collector. A plea in this regard appears to have been raised by the Applicants before the Inquiry Officer. That being so, the Applicants could reasonably apprehend that a 'fair' assessment of merits of the case would not be possible at the hands of Sri K. Shyamsundar, who later became Additional Collector in charge of Customs and acted as

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Disciplinary Authority. There is no denying the fact that justice should not only be done but it must also appear to have been done. Though it is not a case of pecuniary bias, but nonetheless in the fact situation of the case when lapse in performance of duty leading to loss of Government revenue was attributed to the said officer, he may not have been impartially well-disposed towards the Applicants and, therefore, he ought not to have acted as Disciplinary Authority. It is certainly a case where the Applicants could be said to have reasonable suspicion that a fair assessment of merits of the case would not be possible at the hands of the said officer in view of the imputation of misconduct levelled against him by the Applicants. On this ground also, the decision taken by Sri K. Shyamsundar is unsustainable in law.

In the result, the original applications succeed and are allowed. The impugned show-cause notice as also the impugned orders passed by the Disciplinary Authority and the Appellate Authority are hereby quashed. The Disciplinary Authority other than Shri K. Shyamsundar, shall go through the inquiry report and in the event of its disagreement with the report of the Inquiry Officer, it shall tentatively record its reasons for disagreement with the show-cause notice and thereafter proceed in the matter in accordance with law. The Disciplinary Authority, we hope and trust, shall also examine the gravity of lapse on the part of the concerned Superintendent of Customs and the then Assistant Collector of Customs in discharge of their duties in relation to the related shipping bills and take appropriate action in the matter in accordance with law.

[*K.V. Ravindran and another v. Union of India and others* 12/2003
Swamysnews 55, (Bangalore), date of judgment 23-6-2003.]

O.A. No. 484 of 2002

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Preferential qualification of a candidate is to be considered only when the merit in respect of basic qualification is equal and preferential qualification cannot be considered as the sole criterion for preference in appointment

Facts: The applicant was appointed as Gramin Dak Sevak (GDS) by order, dated 22-10-2002. After receipt of some complaint, his appointment was reviewed and was found to be irregular by reviewing authority. By order, dated 23-5-2003, his appointment was cancelled, which was challenged in this O.A.

Held: The Circular, dated 27-11-1997, deals with the subject on reservation of SC/ST/OBC in the appointment of ED categories and

✓ 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. 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.]

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 of 3 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.

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 deserving 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 CC4

(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

देशीय प्रशासनिक अधिकार
Central Administrative Tribunal

GUWAHATI BENCH, GUWAHATI

113 JUL 2004

IN

O.A.No.37/2004

Shri G.S.Mittal

.....

Applicant

Versus

Union of India & Others

.....

Respondents

COUNTER REPLY ON BEHALF OF RESPONDENTS 1 & 2

MOST RESPECTFULLY SHOWETH

That I, **Sh. S. Sharma** working as Superintending Engineer (Admn), in the office of the Chief Engineer(NEZ), Shillong, CPWD, Guwahati under the office of the Directorate General of Works, CPWD, Nirman Bhawan, New Delhi do hereby solemnly affirm and state as under:-

1. That I am well conversant with the facts and circumstances of the case and I am fully competent to swear this counter reply against the OA. I have been authorised to file the counter reply on behalf of Respondents 1 and 2.
2. That the deponent has read and understood the contents of the OA filed by the applicant.
3. That the averments of the applicant, in the aforesaid application which are not specifically admitted, are denied.
4. That in order to have proper appreciation of the facts of the case, the

answering respondents crave leave to submit the following preliminary objections and brief facts of the case before giving the para-wise reply to the application:

Preliminary Objections

1. This OA seeks to quash the office order dated 20th November, 2003 issued by the respondents in pursuance of the recommendations of the DPC held on 27-6-2003, in UPSC for selection of officers for regular promotion to the grade of Chief Engineer (Civil) (Group 'A', Scale of pay Rs. 18,400-22,400) in Central Public Works Department in the vacancies of the year 2003-2004. By seeking directions to quash the office orders mentioned above, the applicant is actually challenging the recommendations of the duly constituted DPC which was chaired by Chairman, UPSC and was vested with full mandate, under the rules and instructions of the Government regarding holding of DPC, issued by Department of Personnel and Training's under O.M.No.22011/5/86-Estt.(D) dated 10.4.89, to devise its own method and procedure for objective assessment of the suitability of the candidates to consider them for regular promotion from the grade of Superintending Engineer (Civil) to the grade of Chief Engineer (Civil) on the basis of their service records. The applicant cannot be permitted to sit in judgment over the DPC in assessing his suitability for promotion to the grade of Chief Engineer(Civil).
2. The applicant has no cause of action because it is well settled that in matter of promotion by 'selection', one has no right to promotion but only the right to be considered for promotion on one's turn along- with other

eligible officers. The applicant was considered for promotion by the DPC but on the basis of his service record he could not be recommended for promotion to the grade of Chief Engineer (Civil) whereas his juniors with comparatively better record of service and conforming to the prescribed bench mark of 'Very Good' were recommended and promoted.

3. Non selection for promotion is not a matter of judicial relief unless such determination is malafide.

Brief Facts of the Case

(i) The post of Chief Engineer (Civil) in CPWD in the pay scale of Rs. 18,400-500-22,400 (revised) is filled on the basis of "Selection" from amongst Superintending Engineer (Civil) with 8 years regular service in the grade (including service, if any, rendered in the non functional selection grade) or 17 years regular service in Group A posts of the service out of which 4 years regular service should be in the grade of Superintending Engineer (Civil). A copy of the relevant Recruitment Rules notified on 29.10.96 is at Annexure R-1.

(ii) In terms of the revised guidelines to be followed by DPCs issued under Department of Personnel and Training OM No. 35034/7/97 -Estt(D) dated 8.2.2002 (Para 3.3) the bench mark prescribed for promotion to the posts in revised pay scale (grade) of Rs.12,000-16,500 and above (which includes the posts at the level of Chief Engineer (Civil) in CPWD) where the mode of promotion is by 'selection' shall continue to be 'very good' and that the DPC shall, for promotion, grade officers as 'fit or 'unfit' only with reference to the

bench mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. A copy of the OM dated 8.2.2002 is placed at Annexure R-2.

(iii) A meeting of the DPC was held in UPSC on 27.6.2003 for selection of officers for promotion to the grade of Chief Engineer(Civil) in CPWD, against 09 vacancies of the year 2003-2004. The DPC, after considering the character rolls of the senior most eligible officers including the Applicant, recommended 9 officers in the normal panel and 01 officer in the extended panel, who was empanelled in place of Shri M.K.Goel (S. No. 5 in the panel) who was to retire on superannuation with effect from 30.11.2003. The Applicant was assessed as 'unfit' by the DPC. However, a number of his juniors were assessed as 'fit' and included in the panel. The recommendations of the DPC was approved by the Appointments Committee of the Cabinet (ACC) and promotion orders in respect of 8 officers included in the panel were issued vide the impugned orders dated 20-11-2003.

(iv) The applicant was considered for promotion by the DPC but was assessed as 'unfit' for promotion on the basis of his service record with reference to the prescribed benchmark and has therefore not been promoted. On the other hand, his juniors, with comparatively better service record, have been assessed as fit for promotion by the DPC with reference to the prescribed bench mark, and have been promoted with the approval of the competent authority. In view of the factual position explained above the applicant has no case to approach this

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Hon'ble Tribunal and this application is non maintainable and is therefore liable to be dismissed with costs in favour of the respondents.

PARAWISE REPLY

1. The impugned office order mentioned in this para have been issued consequent to the acceptance and implementation by the competent authority, the recommendations of the duly constituted DPC held in the UPSC on 27. 6.2003, to draw panel for regular promotion to the grade of CE(Civil), in accordance with the relevant rules and instructions of the Government. It is respectfully submitted that the orders do not suffer from any legal infirmity that would justify intervention of this Hon'ble Tribunal. Law is well settled that the applicant cannot substitute his own assessment for that of a regularly constituted DPC.
2. Jurisdiction of this Tribunal is not disputed.
3. This is a matter for arguments.
4. Facts of the case
- 4.1 The contents of this para are matter of records.
- 4.2 The contents of this para are matter of records.
- 4.3 The contents of this para are matter of records. Promotion to the grade of CE (Civil) is made by 'selection' from amongst Superintending Engineers (Civil) as per the 1996, Rules as amended from time to time.
- 4.4 The contents of this para are matter of record. In reply, it is submitted that the process for forwarding proposal to UPSC for preparation of a panel of officers for promotion to the grade of CE(civil) against the vacancies for the year 2003-04 was initiated by the respondents in November, 2002. But

the required proposal for the 09 firm and anticipated vacancies for the year 2003-04, could only be forwarded to the UPSC in March, 2003 after it became clear that some of the officers who were earlier empanelled for promotion to the grade of CE(civil) the year 2002-03 would not be promoted by 31.3.2003 for want of vacancies in that year and thus would require to be included in the zone of consideration for promotion against the vacancies of the year 2003-04. The Commission, after satisfying itself fully that the proposal was complete in all respects, convened the DPC on 27.6.2003. Since the applicant was also considered for promotion by the DPC for the year 2003-04, on the basis of his relevant service record, the averments made by the applicant regarding the date of holding of DPC is misconceived and does not help him to advance his claim for promotion to the post of CE(Civil) which is to be filled by promotion by 'selection'. Law is settled that in matter of promotion an officer has no right to promotion but only the right to be considered for promotion in his turn along with other eligible officers.

4.5 The contents of this paragraph are wrong and denied. The DPC for promotion to the grade of Chief Engineer(Civil) for the vacancies of the year 2003-04 was held in UPSC on 27th June, 2003 and it would not have made any difference if the said DPC, as averred by the Applicant, had met and prepared the panel before 1.3.2004. Under the existing rules, the DPC is fully competent to devise its own method and procedure for carrying out objective assessment of the suitability of the candidates considered for

promotion. The applicant has not given any reason to believe that the DPC had not followed the existing instructions and had not applied them uniformly while making assessment of the officers in the present case, for promotion to the grade of Chief Engineer (Civil) in CPWD for the year 2003-04.

4.6 The contents of this paragraph are wrong and denied in view of submission made in the preceding paragraphs.

4.7 The contents of this para are wrong and denied. Under the existing instructions of the Govt. regarding holding of DPC, issued by Department of Personnel and Training's under O.M.No.22011/5/86-Estt.(D) dated 10.4.89, the DPC held on 27.6.2003 had full powers to devise its own method and procedure for objective assessment of the suitability of the candidates to consider them for regular promotion from the grade of Superintending Engineer (Civil) to the grade of Chief Engineer (Civil) on the basis of their Annual Confidential Reports(ACRs) . The applicant cannot be permitted to substitute his assessment over that of the DPC which was presided over by a member of the UPSC , in assessing the suitability of candidates for promotion to the grade of Chief Engineer(Civil). The ACRs of an officer is a confidential official document and therefore, the submissions made by the applicant about his ACRs cannot be relied upon. Hence the averments of the applicant are denied.

4.8 The contention of the applicant that due to wrong principle adopted by the DPC in its meeting on June, 2003, his name was not recommended

for promotion is wrong and denied. The officers promoted were assessed as fit for promotion by the DPC on the basis of their service records as per existing rules and instructions of the Government regarding holding of DPC for promotion..

4.9 The contents of this paragraph except matter of record are wrong and denied. As already submitted by the answering respondents in the preceding paragraphs, promotion to the grade of Chief Engineer(Civil) is by 'selection'. In promotion by selection, a candidate has no right to promotion but only the right to be considered for promotion alongwith other eligible officers in his turn. The applicant was considered for promotion but on the basis of his service records, he was assessed as unfit for promotion whereas a number of his juniors were assessed as fit and promoted vide impugned order dated 20.11.2003 after the recommendations of the DPC were approved by the Appointing Authority.

4.10 The contents of this paragraph except matter of record are wrong and denied. It is respectfully submitted that a number of administrative formalities are required to be completed before holding of DPC. The recommendations of the DPC further require approval of the appointing authority [which in the present case was the Appointments Committee of the Cabinet (ACC)] which also takes time. The DPC for promotion to the grade of Chief Engineer(Civil) for the vacancies of the year 2003-04 was held in UPSC on 27th June, 2003 and it would not have made any difference if the said DPC, as averred by the Applicant, had met and prepared the panel

before March, 2004. Under the existing rules, the DPC is fully competent to devise its own method and procedure for carrying out objective assessment of the suitability of the candidates considered for promotion. There is absolutely no reason to believe that the DPC had not followed the existing Government instructions and had not applied them uniformly while making assessment of the officers including the applicant in the present case, for promotion to the grade of Chief Engineer (Civil) in CPWD for the year 2003-04.

4.11. The contents of this para are wrong and denied. The applicant is not supposed to have access of his Character Rolls which are confidential and are maintained under the custody of the answering respondents. Under the existing rules/instructions and guidelines for DPC, issued under OM dated 10.4.89, assessment of the suitability of the candidates considered for promotion is solely a function of the duly constituted DPC on the basis of their ACRs for relevant period. The DPC is not bound by the overall grading given in the ACRs but it has to make its own assessment of the work of the officer to be considered for promotion based on his ACRs. Hence averments are denied.

4.12 The contents of this para are wrong and denied. Under the existing instructions of the Government on maintenance of ACRs, only adverse entries in ACRs are required to be communicated. Any grading below the 'bench mark', prescribed for promotion to the next higher grade in the ACR of the applicant is not an 'adverse' entry and therefore, as per the existing instructions of the Govt. there is no legal requirement that the said

grading should have also been communicated to the applicant before considering his case for promotion to the next higher grade. Besides, the grading of the applicant in the ACR is given by his superior officers on the basis of his performance during a particular year, whereas the assessment of the DPC is based on the overall performance of the officer as reflected in his ✓ ACRs over the period considered by the DPC and is for the purpose of deciding his suitability for promotion. The citations quoted by the applicant in this para are misconceived and misplaced. These may be applicable to the parties concerned in the given facts and circumstances of their cases but not to the applicant whose case stands on different footing.

4.13 The contents of this para except matter of record are wrong and denied.

The applicant could not be promoted against the vacancies of the year 2002-03 because he was assessed as "unfit" for promotion with reference to the prescribed bench mark on the basis of his service records, by the duly constituted DPC,

4.14 The Govt. of India OM dated 14th December, 1983 as amended from time to time, regarding allowances and facilities of Central Government civilian employees posted in North Eastern Region is matter of record. The applicant has been posted in North East (Silchar) in May, 2001. The case of the applicant for promotion to the grade of Chief Engineer(Civil) has been considered by the duly constituted DPC held in UPSC on the basis of the existing instructions on the subject. Hence averments are denied.

4.15. The OA No. 184/2003 filed by the applicant in this Hon'ble Tribunal is matter of record. The rest of the averments are denied in view of the submissions made in preceding paragraphs.

4.16. In reply to this paragraph it is submitted that a DPC was held on 16.1.2004 for drawing a supplementary panel for 03 vacancies which could not be anticipated earlier, in the grade of CE(Civil) for the year 2003-04. The applicant was considered for promotion but on the basis of his service record he was not included in the supplementary panel also.

4.17. In view of the factual position explained above the applicant has no case to approach this Hon'ble Tribunal and this application is non maintainable and is therefore liable to be dismissed with costs in favour of the respondents.

4.18. The contents of this paragraph need no reply in view of the submissions made in the preceding paragraphs.

5. GROUNDS

In view of the submissions made herein above, none of the grounds mentioned by the applicant in sub paragraphs 5.1 to 5.10 is maintainable and the present application being devoid of any merit is liable to be dismissed with costs in favour of the respondents.

6. Needs no reply in view of the submissions made in the preceding paragraphs.

7. The averments made in this paragraph are denied for want of knowledge.

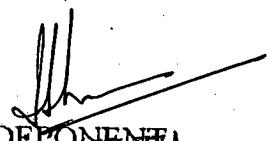
8&9. In view of the factual position and reply on merits furnished herein above, with legal submissions made therein, none of the reliefs prayed for

by the applicant is legally admissible to him. The present OA being devoid of any merit is liable to be dismissed with costs.

It is prayed accordingly.

10 to 12. The contents of these paragraphs need no reply being formal in nature.

VERIFICATION


I. S. Sharma, working as Superintending Engineer (Admn.) in the Office of the Chief Engineer (Civil) NEZ, CPWD Shillong, under the Director General of Works, CPWD, of the Ministry of Urban Development & Poverty Alleviation, Nirman Bhawan, New Delhi do hereby verify that the contents of the above counter reply are true and correct to my knowledge which is derived from the office records and upon information contained therein. Nothing material has been concealed therefrom.

Verified at Guwahati on this 1st day of May, 2004.

July


I. S. Sharma, working as Superintending Engineer (Admn.) in the Office of the Chief Engineer (Civil) NEZ, CPWD Shillong, under the Director General of Works, CPWD, of the Ministry of Urban Development & Poverty Alleviation, Nirman Bhawan, New Delhi do hereby verify that the contents of the above counter reply are true and correct to my knowledge which is derived from the office records and upon information contained therein. Nothing material has been concealed therefrom.

पासु ऐसे अधिकारी हैं—

(I) सेथा में निमुकित पी तारीस से इस वर्ष यही समरपित के चक्रवात् या सेथा में उसके सम्बन्धित थोड़े की तारींग से यथापूर्वोक्त सेथा तारीं की खेती नहीं की जाएगी।

(II) यथापूर्वोक्त सेथा भरने के लिए साधारणताव अपेक्षा नहीं की जाएगी यह उसके आतीस वर्ष की आपु पूरी तरह ती है।

14. निरहा—यह अपि—

(क) जिसने ऐसे अंकित से जिसका चयन या चर्चा जीवित है, जिसाह किया है, या,

(ख) जिसने अपने पति या अपनी पत्नी के जीवित होते हुए किसी अंकित से जिसाह किया है,

रक्षा पद पर विद्युदित्त को पाप्र भर्ती होगा:

परन्तु यदि केन्द्रीय सरकार को यह समझाया ही जाता है कि ऐसा विवाह ऐसे व्यक्तियों और विद्युत के अन्य व्यक्तियों को दाता होने वाली विधि के लाई अनुमति है तो ऐसा करने के लिए कानून लागत होती व्यक्तियों को उस विधय के प्रत्यक्ष से बहुत है सकती।

16. शिक्षा की अन्य रूपाएँ—ऐसे विद्यार्थी की शास्त्र सेवा के समस्तीय की ऐसी रूपी, जिनके इन नियमों में कौन्त्र विनिर्दिष्ट उपर्युक्त भी किया गया है वही होंगी जैसा समय-समय पर केन्द्रीय साकार के सम्बुद्ध रूप के क्षात्रिकारीयों के लाग गी।

16. शिविर कारने की शक्ति—जहाँ फैलाए सरकार की यह एप है कि ऐसा करना आवश्यक या समीचीन है, वहाँ यह उसके लिए जो कारण है ताहें ही कबूल करके गया रोप सोक सेवा आयोग से प्राप्त होकर, इन नियमों के किसी उपर्युक्त की किसी वर्ग मा प्रवर्ग के व्यक्तिमान की शक्ति, आदेश द्वारा लिखित कर सकती।

17. घ्यासिति—इन नियमों की कोई दाता, ऐसे आशेष आपु सीमा में हूट भी अन्य दियावाट पर प्रभाव नहीं आदेती, जिनका केवलीय साकारा हाता इस सम्बन्ध में सम्बन्ध समय पर लिखाते ही गए आदेती के अनुसार अप्यसिति जातियों, अनुसिति जन-जातियों, पृष्ठपृष्ठ सेमियों की अन्य विशेष प्रकार के घ्यासितीयों के स्त्रियों उपर्युक्त कराना अपेक्षिता है।

अनुसन्धानी-१

(प्रियम 3 देविता)

साप (3) में दरिंदा किए गए पर्दों में कुछ विभागों ये जैसे आप-कर आदि शीर्षकीय विभागों (सिविल) समूह "क" पाठ्य में समीक्षित है, स्वीकृत पर भी समीक्षित है।

प्र.सं. दृष्टी पट और ट्रैणी का नाम	पर्टी की रु. ०	देतामाम
1. मुख्य ईज़िनियर (सिविल)	40	5900-200-6700
2. अधिकारी ईज़िनियर (सिविल) भास्करायित	90	4500-150-5700
3. अधीकारी ईज़िनियर (सिविल) (कार्गिल प्रशासनिक ट्रैणी)	130@	5700-125-4700-
4. सार्वजनिक ईज़िनियर (सिविल)	45@	150-5000 3000-100-3500-
5. साधारण कार्यपालक ईज़िनियर (सिविल)	60	125-4300 2200-75-2800-
6. साधारण कार्यपालक ईज़िनियर (सिविल) (दृष्टी भारतित)	20	8.पी.-100-4000 2200-75-2800- 8.पी.-100-4000

* 1936 में, भारतीय भार के आवार पर परिवर्तन लिया गया था।

④ 4500-150-5700 रु. के दैनिक वेतन में लगातार वृद्धि दरमें एक भी सम्भिलित है।

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४० यांत्रिक प्रायामणिक देखी (द्वारी घण्ट) लालूरिक्कु उ क्कीरैहरै देखी उ पर्यं यांत्रिक प्रायामणिक संख्या घ्वेष शुद्धीरै पर्यं उ क्कान्तरै प्रायामणिक देखी घण्ट देखी (लालूरि) घ्वेष देखानाम अरी देखा में कारै फे घरां शुद्धीरै यांत्रिक प्रायामणिक देखी (लालूरिक्कु) में देखी यांत्रिक प्रायामणिक संख्या घ्वेष यांत्रिक प्रायामणिक देखी अर्चीकैरै पर्यं की रीक्काम तक्क सीरिति द्वारी)।

ठिक्कारा : मुख्य ईश्वरिय के दीप चढ़ और अधीक्षण ईश्वरिय के दीप पर्याप्त ईश्वरिय (सिवित) समूह "क" सैद्ध दर्शक ईश्वरिय ईश्वरिय की दीप और परिवर्ती समूह "क" सैद्ध के लिए सम्मान लाभर पर्याप्त है।

અનુસૂચી-૨

[प्रियम् २(II) शैक्षिक]

के नियम इंग्रिजीय (सिपिल) समूह "क" भेदा की विभिन्न शैलियों में लाइनरिंग व्यूटी पर्दों की ग्राम्यता पर अधिकारियों की विपुलता के लिए छोड़ दिया गया था जबकि प्राचीनता के लिए और स्मृति के लिए भी इसका विवरण दिया गया था।

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THE GAZETTE OF INDIA : EXTRAORDINARY

(Part II—See, 302)

[नियम ७(१) देखिए।]

संघ दोषक सेवा आयोग द्वारा संचालित की गई प्रतिवेदित परीक्षा के आधार पर केन्द्रीय इंजीनियरी सेवा (टिकिल) समूह "क्ष" के पदों पर सीधी भर्ती के लिए न्यूमानेशनिक अवधारणा और वापु सीमा।

(1) अन्यथा का सामना

(1) निमालाखत संस्कृत इंग्रीजीमें डिप्री :

(I). कांगड़ा या दूरव विद्युत पर्यावरण के अधिनियम द्वारा भारत में निर्मित कोई विरक्तिविद्यालय, या

(II). संसद के अधिनियम, द्वारा स्थापित शैक्षिक संस्था या विद्यविद्यालय अनुदान आयोग अधिनियम, 1956 की धारा 3 के अधीन सम विद्यविद्यालय के अन्त में भेदित ।

(2) ऐसी अन्य सम्पत्तियां अहिंसा जिसे उक्त परिका में प्रवेश के प्रयोगन के सिए द्वारा यानकारी दी गई है या दी जा सकती है।

(3). ऐसे भिन्नरी विश्वविद्यालय/महाविद्यालय/संस्था से इन्हींकिपरी में डिग्री/डिप्लोमा और ऐसी शर्तों के अधीन ऐसी हस्त प्रयोजन के लिए सरकार द्वारा सम्पर्क पर मान्यताप्राप्त हो सके।

(1) भ्राताभारण, भावदत्ते, में, भाषण उपर्युक्त में से कोई भर्त्ता न रखने वाले अस्यार्थी को गीतिक रूप से अविवृत ग्रान्त भक्तान् हो यह एवं भाषण का यह रूपाभाग हो जिन द्वारा भाषण संस्कृतानि परिधा उत्तीर्ण कर दी ही किंगमानि साद भाषण की राय में परिधा में उत्तरों प्रतेरा जी व्याख्यातिपूर्वक होता है।

(2) ऐसा सम्बन्धी जो विदेशी विद्यालय से जो कि शारकार द्वारा भूम्यताप्राप्त नहीं है उसी पर्याप्त करें।

(ख) यिस वर्ष परीक्षा संचालित की जा रही है। उस वर्ष 1 अगस्त को उम्प्रथी वर्ष की आयु पूरी कर ती है सेकिन 25 वर्ष की आयु पूरी न जी ने।

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[प्रियम २(१) २००७]

वैद्यनीय ईजीनियरी (सिमिस) समूह "क" सेक्युरिटी प्रो-टार्क और पुस्ट के मास्टर्स पर विभाग करने के लिए साथौर "क" विभागीय प्रो-टार्क सिमिस की संरचना

क. दृष्टी पद का नाम सं. और ग्रेनी :	सामूह "क" विभागीय प्रोनेन्टि सामूह "क" विभागीय समिति (प्रोनेन्टि पर विचार करने के लिए)	सामूह "क" विभागीय प्रोनेन्टि समिति (प्रोनेन्टि पर विचार करने के लिए)
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(1)	(2)	(3)	(4)
1. मुख्य हीमियर (मिहिल)	1. यात्र्यात्र तात्र तात्र संपर्क सोक सेवा लापोग- लाप्यथ	सापू चही होगा	

2. संगर्भ महामिदेशक—सदस्य	संगर्भ महामिदेशक—सदस्य
3. संधिष्ठ/संधिष्ठ संधिष्ठ/संधिष्ठ संधिष्ठ, सहरी शारी शैत रोजगार संधिष्ठ—सदस्य	संधिष्ठ, सहरी शारी शैत रोजगार संधिष्ठ—सदस्य
2. अधीक्षण ईजीनियर (सिपिल) (कॉमिट (भृकुलीयक पद्धन श्रेणी)	1. संगर्भ महामिदेशक—सुचना, सांगू नहीं होता 2. अपर संधिष्ठ/संधिष्ठ संधिष्ठ, सहरी शारी शैत रोजगार संधिष्ठ— सदस्य
3. अधीक्षण ईजीनियर (सिपिल) (कॉमिट प्रशासनिक श्रेणी)	1. अध्यक्ष/सदस्य संक सोफ सांगू नहीं होता 20 लाख सेवा अधोग—अध्यक्ष 2. संगर्भ महामिदेशक/संधिष्ठ अपर महामिदेशक—सदस्य 3. अपर संधिष्ठ/संधिष्ठ संधिष्ठ सहरी शारी शैत रोजगार मंत्रालय—सदस्य
4. कार्यपालक ईजीनियर (सिपिल)	1. अध्यक्ष/सदस्य संक सोफ सांगू नहीं होता रोजगार अधोग—अध्यक्ष 2. संगर्भ महामिदेशक/संधिष्ठ अपर महामिदेशक—सदस्य 3. संधिष्ठ संधिष्ठ, सहरी शारी शैत रोजगार, मंत्रालय— सदस्य
महापक कार्यपालक ईजीनियर (सिपिल)	1. संगर्भ महामिदेशक संगर्भ अपर महामिदेशक— अध्यक्ष 2. संधिष्ठ संधिष्ठ, सहरी कार्य और रोजगार मंत्रालय— सदस्य 3. मिदेशक/उप संधिष्ठ—सदस्य

ମିଶନ :

- (1) संघ सोफ सेवा अधीयोग के अध्यक्ष या सदस्य से भिन्न किसी सदस्य की अनुमतिप्राप्ति, विभागीय प्रो-निर्गति है। ये कोई कार्यकालिकी या अधिकारात्मक वहीं करती, यदि तात्परी के अधिक या अधिक सदस्य उपली़चक में हासिल हुए हैं।
- (2) पुस्ति से संबंधित विभागीय प्रो-निर्गति समिति की कार्यकालिकी अनुपयोगन के लिए आयोग को भेजी जाएगी; यदि पिर भी, ये आयोग द्वारा अनुमतिने नहीं की जाती है तो विभागीय प्रो-निर्गति समिति की एक नए पिर से भेजता, जिसकी संघ सोफ सेवा अधीयोग के अध्यक्ष या सदस्य द्वारा अधिकारात्मक जाती है, होती।

प्राप्ति विवरण विवरण विवरण
[पा. स. 8/5/95-हस्ती-प्राप्ति-1]

कृ. एस. भिन्दास, संयुक्त संधिय

[भान्न II—प्रभाग 3(1)]

भारत की राजपत्र : असाधारण

MINISTRY OF URBAN AFFAIRS AND EMPLOYMENT

(Department of Urban Development)

1996

NOTIFICATION

New Delhi, the 26th October, 1996

G. S. R. 802(EY) 1996.—In exercise of the powers conferred by the provisions of article 309 of the Constitution and in supersession of the Central Engineering Services (Civil) 'A' Recruitment Rules, 1934 (No. 9RC-184), dated the 21st May, 1934, and 'The Central Engineering Services (Class-I) Recruitment Rules, 1961 (No. CCR-833), dated the 10th February, 1961, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules, namely :—

1. **Short title and commencement.**—(1) These rules may be called the Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Civil) Group 'A' Service Rules, 1996.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.**—In these rules, unless the context otherwise requires :—

- (a) "appointed day" means the date on which these rules comes into force;
- (b) "commission" means the Union Public Service Commission;
- (c) "controlling authority" means the Government of India in the Ministry of Urban Affairs and Employment;
- (d) "departmental promotion committee" means a Committee constituted to consider promotion or confirmation in any Grade;
- (e) "duty post" means a post included in Schedule-I;
- (f) "Government" means the Government of India;
- (g) "grade" means a grade of the service;
- (h) "regular service" in relation to any grade means the period or periods of service in that grade rendered after selection and appointed thereto under the rules according to the prescribed procedure for regular appointment to that grade and includes any period or periods :—
 - (1) taken into account for the purpose of seniority in case of those appointed under rule 6;
 - (2) during which an officer would have held a duty post in that grade but for being on leave or otherwise not being available for holding such post;
- (i) "Schedule" means a Schedule appended to these rules;
- (j) "Scheduled Castes and Scheduled Tribes" have the same meaning as assigned to them in clauses (24) and (25) respectively of article 366 of the Constitution of India, and "OBC" means Other Backward Classes having the same meaning and applicability as laid down in Department of Personnel and Training O.M. No. 36012/22/93-Estt. (SCT), dated the, 8th September, 1993; and
- (k) "service" means the Central Engineering (Civil) Group 'A' Service constituted under rule 3.

3. **Constitution of the Service.**—All the duty posts included in the Service as specified in Schedule-I shall constitute the Central Engineering (Civil) Group 'A' Service.

4. **Grade, strength and its review.**—(1) The duty posts included in the various grades of the service, their numbers and scales of pay, on the date of commencement of these rules, shall be as specified in Schedule-I.

(2) Notwithstanding anything contained in sub-rule (1), the Government may,

- (a) from time to time, by order make temporary additions or alterations to the strength of the duty posts in various grades, for such period as may be specified therein;

(b) in consultation with the Commission, by order, fix Service posts as can be deemed to be equivalent in status, grade or pay scale to the posts included in Schedule-I or a part from the Service a duty post which is not included in Schedule-I.

(c) in consultation with the Commission, by order, fix a duty post included in the Service under chapter 12 of the appropriate grade in Governmental capacity or in a representative capacity, and fix his seniority in the grade after making due account continuous regular service in the appropriate grade.

5. **Members of the Service.**—(1) The following shall be the members of the Service :—

- (a) persons appointed to duty posts under rule 6; and
- (b) persons appointed to duty posts under rule 7;

(2) A person appointed under clause (a) of sub-rule (1) shall, on such appointment, be deemed to be a member of the Service in the appropriate grade applicable to him under Schedule-I.

(3) A person appointed under clause (b) of sub-rule (1) shall be a member of the Service in the appropriate grade applicable to him under Schedule-I from the date of such appointment.

6. **Initial constitution of the service.**—(1) All existing officers holding Group 'A' duty posts on regular basis in the Central Engineering Service, Group 'A' on the date of commencement of these rules shall be the members of the Service in the respective grades.

(2) The regular continuous service of Officers referred to in sub-rule (1) before the commencement of these rules shall count for the purpose of probation, seniority, qualifying service for promotion, confirmation and pension in the service.

(3) To the extent the controlling authority is not able to fill up the posts in authorised regular strength of various grades in the service in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of rules 7 and 8.

7. **Future maintenance of the service.**—The vacant duty posts in any of the grades referred to in Schedule-I, after the initial constitution under rule 6, shall be filled in the following manner, namely :—

- (i) all the vacancies in the grade of Assistant Executive Engineer shall be filled by direct recruitment on the basis of the results of the Combined Engineering Services Examination conducted by the Commission on the basis of educational qualifications and age limits specified in Schedule-III;
- (ii) all the vacancies in the grades of Executive Engineer and above shall be filled by promotion from amongst the officers in the next lower grade with minimum qualifying service as specified in Schedule-II.
- (iii) (a) The selection of officer for promotion shall be made by the departmental promotion committee as specified in Schedule-IV; by selection on merit except in the case of promotion of the Assistant Executive Engineer to the post of the Executive Engineer and of the Superintending Engineer (Junior Administrative Grade) for appointment to the post of the (Superintending Engineer selection grade);
- (b) selection of the Assistant Executive Engineer for promotion to the post of the Executive Engineer shall be in the order of their seniority, subject to rejection of the unfit;
- (c) placement of the Superintending Engineer (Junior Administrative Grade) in the post of Superintending Engineer (selection grade) shall be made in the order of seniority based on their suitability taking into account their overall performance, experience and other related matters as per Guidelines issued by the Government from time to time;
- (iv) if any officer appointed to any post in the service is considered for the purpose of promotion to the higher post, all persons senior to him in the grade shall also be considered notwithstanding that they do not fulfill the prescribed eligibility service, if

the shortfall is not more than one year and they have successfully completed their probation period, if prescribed.

(v) the post of Chief Engineer and Superintending Engineer borne on the Common Cadre of Central Engineering Service (Civil) Group 'A' and Central Engineering Service (Electrical and Mechanical) Group 'A' shall be filled by appointment of Officers empanelled by the respective departmental promotion committee for the posts of Chief Engineer and Superintending Engineer.

8. **Filling of duty posts by deputation.**—Notwithstanding anything contained in rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with Commission, fill-up a duty post in any grade by transfer on deputation for a period not exceeding three years, which may in special circumstances be extended upto five years, as the Government may think fit. The qualifications, experience and the qualifying service for appointment to any grade of the Service under this rule shall be decided by the Government in consultation with the Commission on each occasion.

9. **Seniority.**—(1) The relative seniority of members of the service appointed to a duty post under rule 6, shall be as obtaining on the date of commencement of these rules:

Provided that if the seniority of any such member had not been specifically determined on the said date, the same shall be determined on the basis of the rules governing fixation of seniority as applicable to the members of the service prior to the commencement of these rules.

(2) The seniority of persons recruited to the Service, other than those appointed under rule 6, shall be determined in accordance with the general instructions issued by the government in this behalf from time to time.

(3) In the cases not covered under sub-para (1) and sub-para (2) above, the seniority shall be determined by the Government in consultation with the Commission.

10. **Probation.**—(1) Every Officer on appointment to the Service either by direct recruitment or by promotion shall be on probation for a period of two years.

Provided that the controlling authority may extend the period of probation in accordance with the instructions issued by the Government in this behalf from time to time:

Provided further that any decision for extension of a probation period shall be taken within eight weeks after the expiry of initial period of probation and communicated in writing to the concerned Officer together with reasons for so doing within the said period.

(2) On completion of the period of probation or any extension thereof, officer shall, if considered fit for permanent appointment, be considered for confirmation in terms of the orders of the Government issued from time to time.

(3) If, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge the officer or revert him to the post held by him prior to his appointment in the Service, as the case may be.

(4) During the period of probation or any extension thereof, an officer may be required by Government to undergo such courses of training or to pass such examinations or tests (including examination in Hindi) as the Government may deem fit, as condition for unsatisfactory completion of probation.

(5) As regards other matters relating to probation, the members of the Service shall be governed by the orders or instructions issued by the Government in this behalf from time to time.

11. **Appointment to the Service.**—All appointments to the Service shall be made by the controlling authority for all the duty posts in various grades of the Service.

12. **Posting.**—Officers appointed to the Service shall be liable to serve anywhere in India or abroad.

13. **Liability to serve defence services or posts connected with defence.**—Any Officer appointed to the Service, if so required, shall be liable to serve in any defence service or post connected with the defence of India, for a period of not less than four years including the period spent on training, if any:

Provided that such Officers,—

- (i) shall not be required to serve as aforesaid after the expiry of ten years from the date of appointment to the Service or from the date of his joining the Service;
- (ii) shall not ordinarily be required to serve as aforesaid if he has attained the age of forty years.

14. Disqualification.—No person

- (a) who has entered into or contracted a marriage with a person having a spouse living;
- (b) who having a spouse living, has entered into or contracted a marriage with any person;

shall be eligible for appointment to the service:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

15. Other conditions of the service.—The conditions of service of members of the service in respect of matters for which no specific provision has been made in these rules, shall be the same as are applicable, from time to time, to officers of equivalent rank of the Central Government.

16. Power to relax.—Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons.

17. Saving.—Nothing in these rules shall affect reservations, relaxation in age, limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Ex-Servicemen and other special categories of persons in accordance with the orders issued by the Government from time to time in this regard.

SCHEDULE—I

(See rule 3)

Posts indicated in column (3) also include posts sanctioned in some departments such as Income Tax etc. and are empanelled in the Central Engineering (Civil) Group 'A' Service.

Sl. No.	Name of the duty post and grade	No. of posts	Scale of pay
(1)	(2)	(3)	(4)
1.	Chief Engineer (Civil)	40	3900-200-6700
2.	Superintending Engineer (Civil) Non-functional Selection Grade	40	4500-150-5700
3.	Superintending Engineer (Civil) (Junior Administrative Grade)	130@ 3700, 125, 4700-150-5000	
4.	Executive Engineer (Civil)	494@ 3000-100-3500-125-4500	
5.	Assistant Executive Engineer (Civil)	60	2200-75-2800-EB-100-4000
6.	Assistant Executive Engineer (Civil) (Leave Reserve)	20	2200-75-2800-EB-100-4000

* In 1996, subject to variation dependent on workload.

@ Includes non-functional selection grade posts also in the pay scale of Rs. 4500-150-5700.

** The junior administrative grade (grade selection) is non-functional and the maximum number of posts in this grade shall be equal to fifteen per cent. of the senior duty posts (i.e. all duty posts at the level of senior time scale and above in the Service) and the maximum number of posts in the selection grade (non-functional) shall be limited to the number of posts sanctioned in junior administrative grade.

भाग II—खण्ड 3(1)

भारत का राजपत्र : असाधारण

Note: Three posts of Chief Engineer and six posts of Superintending Engineers are common cadre posts for the Central Engineering (Civil) Group 'A' Service and the Central Engineering Electrical and Mechanical Group 'A' Service.

SCHEDULE-II
(See rule 7(1))

Method of recruitment, field of promotion and minimum qualifying service in the immediate lower grade for appointment of officers on promotion to duty posts included in the various grades of the Central Engineering (Civil) Group 'A' Service.

Sl. No. and grade	Method of recruitment	Field of selection, minimum qualifying service and educational qualification for promotion	
(1)	(2)	(3)	(4)
1. Chief Engineer (Civil)	By promotion	Superintending Engineer (Civil) with eight years regular service in the grade (including service, if any rendered in the non-functional selection grade) or seventeen years regular service in Group A posts of the service out of which four years regular service should be in the grade of Superintending Engineer (Civil).	
2. Superintending Engineer (Civil) (Non-functional) (Selection Grade)	By appointment on the basis of seniority and suitability taking into account the overall performance and other related matters.	Superintending Engineer (Civil) (Junior Administrative Grade) who have entered fourteenth year of Group A service on the first of July of the year calculated from the year following the year of examination on the basis of which the Officer was recruited or who have rendered nine years Group A service calculated from the date of promotion to the senior time scale in the case of officers promoted from Assistant Engineer.	
3. Superintending Engineer (Civil) (Junior Administrative Grade)	By promotion	Executive Engineer (Civil) with five years regular service in the grade and possessing degree in Engineering from a recognised University or equivalent.	
4. Executive Engineer (Civil)	By promotion	(I) 33 1/3 per cent from Assistant Executive Engineer (Civil) with four years regular service in the grade; (II) 33 1/3 per cent from Assistant Engineers (Civil) with eight years regular service in the grade and possessing degree in Civil Engineering or any other equivalent qualification; (III) 33 1/3 per cent from Assistant Engineer (Civil) with ten years regular service in the grade and possessing Diploma in Civil Engineering from a recognised University or Institution or any other equivalent qualification.	
5. Assistant Executive Engineer (Civil)	By direct recruitment through		

(1)	(2)	(3)	(4)
		Engineering Services Examination conducted by the Commission.	

SCHEDULE-III

[See rule 7(1)]

Minimum educational qualification and age limit for direct recruitment to posts in Central Engineering Service (Civil) Group 'A' on the basis of competitive Examination to be conducted by the Union Public Service Commission.

(A) A candidate shall possess—
(I) a degree in Civil Engineering from—
(i) a University incorporated by an Act of the Central or State Legislature in India; or
(ii) an educational institution established by an Act of Parliament or declared to be deemed as University under section 3 of the University Grant Commission Act, 1956, or
(2) Such other equivalent qualification as have been or may be recognised by the Government for the purpose of admission to the said examination; or
(3) A degree/diploma in Engineering from such foreign University/College/Institution and under such conditions as may be recognised by the Government for the purpose from time to time.

NOTES :

(1) In exceptional cases, the Commission may treat a candidate, not possessing any of the above qualifications, as educationally qualified provided that the Commission is satisfied that he has passed examinations conducted by other Institutions the standard of which in the opinion of the Commission, justified his admission to the examination:

(2) A candidate who is otherwise qualified by virtue of his having taken a Degree from a foreign University which is not recognised by Government, may also apply to the Commission and may be admitted to the examination at the discretion of the Commission.

(B) A candidate shall have attained the age of 20 years but not have attained the age of 28 years on the 1st day of August of the year in which the examination is held.

SCHEDULE-IV

[See rule 7(III)]

Composition of Group 'A' departmental promotion committee for considering cases of promotion and confirmation in the Central Engineering (Civil) Group 'A' Service

Sl. No. of the duty post & grade	Group 'A' Departmental Promotional Committee (for considering promotion)	Group 'A' Departmental Promotional Committee (for considering confirmation)	
(1)	(2)	(3)	(4)
1. Chief Engineer (Civil)	1. Chairman/Member Union Public Service Commission—Chairman	Not Applicable	
	2. Director General of Works—Member		
	3. Secretary/Special Secretary/Additional Secretary, Ministry of Urban Affairs and Employment—Member		

12. रिकार्ड—सेवा में प्रियुक्त अधिकारी भारत या निर्देश में कही जी सेवा करते का धारी होता।

13. रक्षा दीर्घारा रक्षा हो रहा है जबकि पहले पर रक्षा करने का दायित्व रोका गया है तिथुरा को अधिकारी, परिषद् दीर्घारा भरेंगा है, जारी बहुत अन्य अधिकारियों के सिए विवरों के अन्तर्गत प्रतिक्रिया पर चिह्नित गई अवधि ही है, यदि कोई है, किसी रक्षा सेवा या भारत को रक्षा से संबंधित एवं पर सेवा करने का दायी होगा।

परन्तु ऐसे अधिकारी हैं—

(1) गीता में नियुक्ति की गतिशीलता तो दूर तरीके सामाजिक के परिवर्तन गीता में उत्तरीकृत गतिशीलता होने की गतिशीलता तो समाजोदृष्टि गीता करने की गतिशीलता अहो की जाएगी।

(11) यमापूर्वका सेवा करने के लिए यामापूर्वका वर्षेका नहीं की जाएगी पहिले वर्षों चालीस वर्ष की शाय पूरी कर दी ।

14. गिरावट—मह व्यक्ति—

(क) जिसने ऐसे व्यक्तियों से जिसका पति या पत्नी जीवित है, जिनमें से 1

या, विस्तृत भाषण का पतला जापत है, किंवाह किया है, ज) विस्तृत भाषण की अपनी पतली के अधिक होते हुए किसी व्यक्ति से विस्तृत किया है।

विवाह किया है,
उससे पहले पर शिरांशु जाता है ।

परन्तु यदि केन्द्रीय संस्कार का यह भास्माभास हो जाता है कि ऐसा विषाड़ ऐसे अवस्थित और विषाड़ के बन्ध प्रस्कार को लागू स्मृति विधि के अभीन अनुदेश है और ऐसा करने के लिए अन्य भास्माभास हो यह किसी अवस्थित को इस विषय के प्रवर्तन से बहुत दे सकते हैं।

15. सेवा की अन्वय हाँ—ऐसे विवरणों की वाक्ता सेवा के सदस्यों की ऐसी शांति, जिनके इन विवरणों में कोई विविदित उपर्युक्त नहीं किया गया है वही होगा जैसा समय-समय पर क्लेशीप सरकार के समर्पण वैकल्पिक विवरणों के विविदित हैं।

16. शिविल करने की शक्ति—जहाँ के द्वारा सरकारी या राज द्वारा किए गए अप्रभावकारी कानूनों को लागू होती है।

17. व्यापारिति—इन विद्यों की कोई सत्ता, ऐसे भारतवर्ष आमु सीया में नहीं; भीतर भव्य विद्याएँ पर व्यापार नहीं बढ़ाती, विनाका कैल्पिकी पराकर द्वारा इस सम्बन्ध में व्यापार विद्याएँ गए आदेतों के अनुसार अनुसूचित जातियों, अनुसूचित जन-जातियों, भूमध्य सीनियों और अन्य विद्यार प्रवर्गों के व्यक्तियों के लिए उपचार बनाए रखी गयी हैं।

अप्युपासी-१

(निषेद उपरिकां)

सेप (3) में दरित किए गए पदों में कुछ विधानों में दूसे आव-कर आदि और फेनोप्रैविलियरी (प्रैस्ट और राशिक) समूह "क" काढ़े में सम्भितिरा है, स्वीकृत पद भी सम्भितिरा है।

क.स. दमुरी पथ और देवी का नाम, जारी की गयी है ताकि

1.	सुपुत्र ईंजीनियर (सैप्टम्बर और यांत्रिक)	06	5 900-200-6700
2.	अधिकारी ईंजीनियर (सैप्टम्बर और यांत्रिक) अकाउंटिंग व्यवस्था वैणी	10	4 500-150-5700
3.	अधिकारी ईंजीनियर (सैप्टम्बर और यांत्रिक) (कानिंग प्रशासनिक वैणी)	36@	11700-125-4700-
4.	कार्यपालक ईंजीनियर (सैप्टम्बर और यांत्रिक)	156	150-5000 3100-100-3500-
5.	सहायक कार्यपालक ईंजीनियर (सैप्टम्बर और यांत्रिक)	15	125-4500 2200-75-2800- रु. 100-4000

6. राहायक कार्यपालक अधीक्षियर 05 2200-75-2800-
 (पैद्युत और सांचिक) " ए.र. 100-4000
 (प्रति आवधि) :

* 1996 में, कर्तव्यभार के भाग्यार पर परिवर्ती लिया जा सकता है।
 @ 4500-150-5700 रु. की देशभाग में शाकाहारी वर्ष सेवी पद भी समिक्षित
 है।

० कलिष्ठ प्रशासनिक देणी (वीरी घण्टा), अधिकारियक है और इस देणी में पदों की अधिकारतम वार्ता घटें दृष्टी वर्षों के पश्चात् व्यापार होगी। [अधिकारियक घटें वैतानमान और रोका में कार के स्तर पर सभी दृष्टी वर्ष और घण्टा देणी (अधिकारियक) में पदों की अधिकारतम व्यापार कलिष्ठ प्रशासनिक देणी में स्वीकृत पदों की भविष्यत तक सीमित होगी।]

१। मुख्य अधिकारियर के दीर्घ पर और अधीकारियर अधीकारियर के छह पर्दों के अधीकारियर (सिविल) साहू "क" सेवा तारा के अधीकारियर अधीकारियर के समूह और संशिक्षक समूह "क" सेवा के लिए सामान्य साठेर पर्दा ।

भगवान्-२

[नियम ७(१) एवं ८(१)]

(केन्द्रीय ईंजीनियरी (वैमुक्त और यांत्रिक) समूह "क" सेवा की विभिन्न श्रेणियों में समिलित हरकी पदों की प्रोन्ति पर अधिकारियों की विवृति के लिए ठीक नियम श्रेणी में भर्ती पढ़ती, प्रोन्ति सेवा और न्यूनतम अधिक सेवा।

क्र.	सं.	सं.	भाषा पढ़ाती	बचपन के प्रेरणात्मक सिए न्यूट्राल
(1)	(2)	(3)	(4)	भाषण सेवा भी शीर्षक भहता
1.	पुष्ट ईंजीनियर (वैद्युत और प्रौद्योगिक)	प्रोनेशि द्वारा	ब्रेणी में भारत वर्ष की नियमित सेवा सहित अधीक्षण ईंजीनियर (वैद्युत और प्रौद्योगिक) ...	विस्तरे अन्तर्गत सेवा भी है, वही कोई अकृतियक बचपन ब्रेणी में कोई गई थी (या सेवा) समूह "क" पदों से सहज वर्ष की नियमित शील विवाहों से चार वर्ष की नियमित सेवा अधीक्षण ईंजी- नियर (वैद्युत और प्रौद्योगिक) की ब्रेणी भें होती चाहिए।
2.	अधीक्षण ईंजीनियर (वैद्युत और प्रौद्योगिक) (अकृतियक) (भ्रमा ब्रेणी)	संपूर्ण कार्य और वन्य संवेदित मामलों को ध्वनि में रखता हुए प्रेषण और विकास कर पुकारा पर "(पुष्ट द्वारा	अधीक्षण ईंजीनियर (वैद्युत और प्रौद्योगिक) (कनिष्ठ प्रशासनिक ब्रेणी) जो चरीका विस्तरे आधार पर अधिकारी को गति किया गया था के आधारीय वर्ष से संगीत वर्ष की पारसी, भूलांक को समूह "क" सेवा के शीहड़े वर्ष में प्रवेश कर चुके हैं या साधारण ईंजीनियर से प्रोनेशि अधिकारी भी मामलों में जो प्रेषण वेतनमान में ब्रोन्जिट की वारीका से संगीत समूह "क" गे जो वर्ष सेवा कर चुका है।	
3.	अधीक्षण ईंजीनियर (वैद्युत और प्रौद्योगिक) (कनिष्ठ प्रशासनिक ब्रेणी)	प्रोनेशि द्वारा	ब्रेणी में पांच वर्ष की नियमित सेवा सहित कार्यपालक ईंजीनियर (वैद्युत/प्रौद्योगिक) किसी मामला- ग्राम विश्वविद्यालय की वैद्युत और प्रौद्योगिक ईंजीनियरी में छिन्नी या समरूप।	
4.	कार्यपालक ईंजीनियर (वैद्युत और प्रौद्योगिक)	प्रोनेशि द्वारा	(1) ब्रेणी में चार वर्ष की नियमित सेवा सहित साहायक कार्यपालक	

भाग II—खण्ड 3(i)]

भारत का राजपत्र : असाधारण

(1)	(2)	(3)	(4)
			इंजीनियर (ईम्प्रूट और प्रॉफेशनल) से 33%, प्रतिशत।
		(ii)	वैज्ञानिक में भाव वर्ष की नियमित सेवा सहित सहायता इंजीनियर (ईम्प्रूट और प्रॉफेशनल) से 33%, प्रतिशत और ईम्प्रूट या प्रॉफेशनल इंजीनियरी डिप्लोमा या विद्यालय संस्कृत्य भर्ती।
		(iii)	वैज्ञानिक में इस वर्ष की नियमित सेवा सहित सहायता इंजीनियर (ईम्प्रूट) से 33%, प्रतिशत और भारतीयात्रापात्र विद्यालय विद्यालय या संस्कृत्य भर्ती या प्रॉफेशनल इंजीनियरी में डिप्लोमा या संस्कृत्य भर्ती।
5.	सहायक कार्यपालक इंजीनियर (ईम्प्रूट और प्रॉफेशनल)	आयोग द्वारा संचालित समिक्षित इंजीनियरी परीक्षा के माध्यम से सीधी भर्ती द्वारा।	

भाग II-3

[नियम 7(1) देखिए]

संघ सौक सेवा आयोग द्वारा संचालित योग्य प्रतिपोषित परीक्षा के आधार पर¹
फेन्ट्रीय इंजीनियरी सेवा (ईम्प्रूट और प्रॉफेशनल), संपूर्ण "क" के पदों पर सीधी भर्ती के लिए²
संस्कृत्य इंजीनियर अहोनी और अपु सीमा।

(क) अध्यर्थी के पास :—

(1) नियमिति से ईम्प्रूट या प्रॉफेशनल इंजीनियरी में डिप्लोमा :

(i) कैन्ट्रीय सारकार विद्यालय मण्डल के अधिनियम द्वारा भारत में नियमित
फोर्म विद्यालयालय, या(ii) संसद के अधिनियम, द्वारा स्वापित रीयिक भूम्या या विद्यालयालय
संयुक्त आयोग अधिनियम, 1956, की भारत 3 के अधीन सम
विद्यालयालय के स्वयं में घोषित, या(2) ऐसी अन्य संस्कृत्य अहोनी जिसे उक्त परीक्षा में प्रवेश के प्रयोग के लिए³
सरकार द्वारा मान्यता दी गई है या दी जा सकती, या(3) ऐसे विदेशी विद्यालयालय/विद्यालयालय/संस्कृत्य से इंजीनियरी में
डिप्लोमा और ऐसी राती के अधीन ऐसी इस प्रयोग के लिए सरकार द्वारा मान्य-
स्वयं पर माध्यम प्राप्त हो सके।

टिप्पणी :

(1) असाधारण गम्भीरों ये, आयोग उपर्युक्त में से कोई अहोनी न रहने वाले
अध्यर्थी को ईंकिय रूप से अहोनी, गान्धी राजनीति है संस्कृत आयोग या यह
सामाजिक हो जाने वाले गम्भीरों द्वारा विद्यालयालय अहोनी न कर दी
0 यिनका द्वारा आयोग की राती में उक्त प्रवेश की व्याधिविद्या(2) ऐसा अध्यर्थी जो विदेशी विद्यालयालय से जी कि सरकार द्वारा मान्यता
प्राप्त नहीं है डिप्लोमा प्राप्त करके।(4) जिस वर्ष परीक्षा संचालित की जा रही है उस वर्ष 1 अप्रूत को अध्यर्थी
में 20 वर्ष की आयु यूरी कर ली जी सेकेन्ड 28 वर्ष की आयु यूरी कर ली हो।

भाग II-4

[नियम 7(4) देखिए]

(कैन्ट्रीय इंजीनियरी (ईम्प्रूट और प्रॉफेशनल) संस्कृत्य "क" सेवा में शीलित और
युक्ति के आमलों पर विचार फरमे के लिए संपूर्ण "क" विद्यालय शीलित संस्कृति दी
मीलित।)

स. इन्दूरी एवं क्षा शास्त्र से और वैज्ञानिक	संवर्द्ध "क" विभागीय शीलित शास्त्र "क" विभागीय शीलित (प्रोफेशनल पर विचार शीलित शीलित करने के लिए)
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(1)	(2)	(3)	(4)
1. सुख इंजीनियर (ईम्प्रूट और प्रॉफेशनल)	1. अध्यर्थ संस्कृत्य संबंध सोल सेवा आयोग—अध्यर्थ	सांगू नहीं होता	
	2. संकार्य संस्कृतिरेशक—संस्कृत संविधान, गान्धी वर्ष और रोजगार मंत्रालय—संस्कृत		
2. अधीक्षण इंजीनियर (ईम्प्रूट और प्रॉफेशनल)	1. संकार्य संस्कृतिरेशक—संस्कृत 2. अरर संविधान संस्कृत संविधान (अकृतिक संबंध होनी)	सांगू नहीं होता	
	3. अधीक्षण इंजीनियर (ईम्प्रूट और प्रॉफेशनल) (कृतिक प्रशासनिक वैज्ञानिक)	1. संधर्ष संस्कृत्य संबंध सोल सेवा आयोग—अध्यर्थ	सांगू नहीं होता
		2. संसार्व महानिरेशक/संकार्य अपर महानिरेशक—संस्कृत	
		3. अरर संविधान संस्कृत संविधान गान्धी वर्ष एवं रोजगार मंत्रालय—संस्कृत	
4. कार्यपालक इंजीनियर (ईम्प्रूट और प्रॉफेशनल)	1. संकार्य अध्यर्थ/संस्कृत्य संबंध सोल सेवा आयोग—अध्यर्थ	सांगू नहीं होता	
	2. संकार्य महानिरेशक/संकार्य अपर महानिरेशक—संस्कृत		
	3. संपुर्ण संविधान, गान्धी वर्ष और रोजगार मंत्रालय— संस्कृत		
5. सहायक कार्यपालक इंजीनियर (ईम्प्रूट और प्रॉफेशनल)	1. संकार्य महानिरेशक संस्कृत अपर महानिरेशक—अध्यर्थ	सांगू नहीं होता	
	2. संपुर्ण संविधान, गान्धी वर्ष और रोजगार मंत्रालय— संस्कृत		
	3. विदेशी/अपर संविधान, गान्धी वर्ष और रोजगार मंत्रालय—संस्कृत		

टिप्पणी :

(1) संघ सौक सेवा आयोग के अध्यर्थ या संस्कृत्य से फिल्म फिल्मी संस्कृत्य की
अनुपस्थिति, विभागीय प्रोनामी शीलित ही गान्धी वर्ष और अधिकाल्य नहीं
करती, यदि शीलित के अधिक से अधिक संविधान, संस्कृत्य हस्तकी द्वारा ही शीलित
हुए हैं।

(2) युट से संबंधित विभागीय प्रोभेटि समिति की कार्यकालिक अनुपोदन के लिए आयोग को भेजी जाएगी। यदि फिर भी, ये आयोग हारा अनुपोदन नहीं की जाती है तो विभागीय प्रोभेटि समिति की एक नए सिरे से बैठक, जिसकी संघ सोसांसेशन आयोग के अध्यक्ष या भद्रस्य द्वाये अध्यक्षता की जानी है, होगी।

[पा. सं. 8/5/95—सी-1/4 (उत्त्प-1)]

श्री. एस. मिश्र, संपूर्ण सचिव

NOTIFICATION

New Delhi, the 28th October, 1996

G.S.R. 501(E).—In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of the Central Electrical and Mechanical Engineering Services Group 'A' Recruitment Rules, 1934 (No. S.R.O.-1843, dated the 21st May, 1934), the Central Electrical Engineering Services Group 'A' Recruitment Rules, 1958 (No. G.S.R. 36, dated the 31st December, 1958), and the Executive Engineers, Central Engineering and Central Electrical Engineering Service (Group 'A') (Regulation of Seniority) Rules, 1976 (No. G.S.R.-892, dated the 8th June, 1976), except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules, namely :—

1. Short title and commencement :—(1) These rules may be called the Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Electrical and Mechanical) Group 'A' Service Rules, 1996.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions :—In these rules, unless the context otherwise requires :—

- (a) "appointed day" means the date on which these rules comes into force;
- (b) "commission" means the Union Public Service Commission;
- (c) "controlling authority" means the Government of India in the Ministry of Urban Affairs and Employment;
- (d) "departmental promotion committee" means a Committee constituted to consider promotion or confirmation in any Grade;
- (e) "duty post" means a post included in Schedule-I;
- (f) "Government" means the Government of India;
- (g) "grade" means a grade of the service;
- (h) "regular service" in relation to any grade means the period or periods of service in that grade rendered after selection and appointed thereto under the rules according to the prescribed procedure for regular appointment to that grade and includes any period or periods :—
 - (1) taken into account for the purpose of seniority in case of those appointed under rule 6;
 - (2) during which an officer would have held a duty post in that grade but for being on leave or otherwise not being available for holding such post;
- (i) "Schedule" means a Schedule appended to these rules;
- (j) "Scheduled Castes and Scheduled Tribes" have the same meaning as assigned to them in clauses (24) and (25) respectively of article 366 of the Constitution of India, and "OBC" means Other Backward Classes having the same meaning and applicability as laid down in Department of Personnel and Training O.M. No. 36012/22/93-Estt. (SCT), dated the 8th September, 1993, and

(k) "service" means the Central Engineering Service (Electrical and Mechanical) Group 'A' Service constituted under rule 3.

3. Constitution of the Service.—All the duty posts included in the Service as specified in Schedule-I shall constitute the Central Engineering (Electrical and Mechanical) Group 'A' Service.

4. Grade, strength and its review.—(1) The duty posts included in the various grades of the service, their numbers and scales of pay, on the date of commencement of these rules, shall be as specified in Schedule-I.

(2) Notwithstanding anything contained in sub-rule (1), the Government may,

- (a) from time to time, by order make temporary additions or alterations to the strength of the duty posts in various grades, for such period as may be specified therein;
- (b) in consultation with the Commission, include in the Service such posts as can be deemed to be equivalent in status, grade or pay scale to the posts included in Schedule-I or exclude from the Service a duty post included in the said Schedule;
- (c) in consultation with the Commission, appoint an officer to a duty post included in the Service under clause (b) to the appropriate grade in a temporary capacity or in a substantive capacity, and fix his seniority in the grade after taking into account continuous regular service in the analogous grade.

5. Members of the Service.—(1) The following persons shall be the members of the Service :—

- (a) persons appointed to duty posts under rule 6; and
- (b) persons appointed to duty posts under rule 7.

(2) A person appointed under clause (a) of sub-rule (1) shall, on such appointment, be deemed to be a member of the Service in the appropriate grade applicable to him under Schedule-I.

(3) A person appointed under clause (b) of sub-rule (1) shall be a member of the Service in the appropriate grade applicable to him under Schedule-I from the date of such appointment.

6. Initial constitution of the service.—(1) All existing officers holding Group 'A' duty posts on regular basis in the Central Electrical and Mechanical Engineering Services, Group 'A' on the date of commencement of these rules shall be the members of the Service in the respective grades.

(2) The regular continuous service of Officers referred to in sub-rule (1) before the commencement of these rules shall count for the purpose of probation, seniority, qualifying service for promotion, confirmation and pension in the service.

(3) To the extent the controlling authority is not able to fill up the posts in authorised regular strength of various grades in the service in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of rules 7 and 8.

7. Future maintenance of the service.—The vacant duty posts in any of the grades referred to in Schedule-I, after the initial constitution under rule 6, shall be filled in the following manner, namely :

- (i) all the vacancies in the grade of Assistant Executive Engineer shall be filled by direct recruitment on the basis of the results of the Combined Engineering Services Examination conducted by the Commission on the basis of educational qualifications and age limits specified in Schedule-III;
- (ii) all the vacancies in the grades of Executive Engineer and above of the service shall be filled by promotion from amongst the officers in the next lower grade with minimum qualifying service as specified in Schedule-II;
- (iii) (a) The selection of officers for promotion shall be made by the departmental promotion committee as specified in Schedule-IV, by selection on merit except in the case of promotion of Assistant Executive Engineer to the post of Executive Engineer and of Superintending Engineer (Junior Administrative Grade)

for appointment to the post of (Superintending Engineer selection grade);

(b) selection of the Assistant Executive Engineer for promotion to the post of the Executive Engineer shall be in the order of their seniority subject to rejection of the unfit;

(c) placement of the Superintending Engineer (Junior Administrative Grade) in the post of Superintending Engineer (selection grade) shall be made in the order of seniority based on their suitability taking into account their overall performance, experience and other related matters as per Guidelines issued by the Government from time to time;

(iv) If any officer appointed to any post in the service is considered for the purpose of promotion to the higher post, all persons senior to him in the grade shall also be considered notwithstanding that they do not fulfil the prescribed eligibility service, if the shortfall is not more than one year and they have successfully completed their probation period, if prescribed.

(v) the post of Chief Engineers and Superintending Engineer borne on the Common Cadre of Central Engineering Service (Civil) Group 'A' and Central Engineering Service (Electrical and Mechanical) Group 'A' shall be filled by appointment of Officers empanelled by the respective departmental promotion committee for the posts of Chief Engineer and Superintending Engineer.

8. Filling of duty posts by deputation.—Notwithstanding anything contained in rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fillup a duty post in any grade by transfer on deputation for a period not exceeding three years, which may in special circumstances be extended upto five years, as the Government may think fit. The qualifications, experience and the qualifying service for appointment to any grade of the Service under this rule shall be decided by the Government in consultation with the Commission on each occasion.

9. Seniority.—(1) The relative seniority of members of the service appointed to a duty post under rule 6, shall be as obtaining on the date of commencement of these rules :

Provided that if the seniority of any such member had not been specifically determined on the said date, the same shall be determined on the basis of the rules governing fixation of seniority as applicable to the members of the service prior to the commencement of these rules.

(2) The seniority of persons recruited to the Service, other than those appointed under rule 6, shall be determined in accordance with the general instructions issued by the government in this behalf from time to time.

(3) In the cases not covered under sub-rule (1) and sub-rule (2) above, the seniority shall be determined by the Government in consultation with the Commission.

10. Probation.—(1) Every Officer on appointment to the Service either by direct recruitment or by promotion shall be on probation for a period of two years :

Provided that the controlling authority may extend the period of probation in accordance with the instructions issued by the Government in this behalf from time to time :

Provided further that any decision for extension of a probation period shall be taken within eight weeks after the expiry of initial period of probation and communicated in writing to the concerned Officer together with reasons for so doing within the said period.

(2) On completion of the period of probation or any extension thereof, officer shall, if considered fit for permanent appointment, be considered for confirmation in terms of the orders of the Government issued from time to time.

(3) If, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an officer is not fit for permanent appointment, Government may discharge the officer or revert

him to the post held by him prior to his appointment in the Service, as the case may be.

(4) During the period of probation or any extension thereof, an officer may be required by Government to undergo such courses of training or to pass such examinations or tests (including examination in Hindi) as the Government may deem fit, as condition for satisfactory completion of probation.

(5) As regards other matters relating to probation, the members of the Service shall be governed by the orders or instructions issued by the Government in this behalf from time to time.

11. Appointment to the service.—All appointments to the Service shall be made by the controlling authority for all the duty posts in various grades of the Service.

12. Posting.—Officers appointed to the Service shall be liable to serve anywhere in India or abroad.

13. Liability to serve defence services or posts connected with defence.—Any Officer appointed to the Service, if so required, shall be liable to serve in any defence service or post connected with the Defence of India, for a period of not less than four years including the period spent on training, if any :

Provided that such Officers,—

(i) shall not be required to serve as aforesaid after the expiry of ten years from the date of appointment to the Service or from the date of his joining the Service;

(ii) shall not ordinarily be required to serve as aforesaid if he has attained the age of forty years.

14. Disqualification.—No person—

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to the service :

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

15. Other conditions of the service.—The conditions of service of members of the service in respect of matters for which no specific provision has been made in these rules, shall be the same as are applicable, from time to time, to officers of equivalent rank of the Central Government.

16. Power to relax.—Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons.

17. Saving.—Nothing in these rules shall affect reservations, relaxation in age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Ex-Servicemen and other special categories of persons in accordance with the orders issued by the Government from time to time in this regard.

SCHEDULE—I

(See rule 3)

Posts indicated in column (3) also include posts sanctioned in some departments such as Income Tax etc. and are empanelled in the Central Engineering (Electrical and Mechanical) Group 'A' Service

Sl. No.	Name of the duty Post and grade	No. of posts ^o	Scale of pay
(1)	(2)	(3)	(4)
1	Chief Engineer (Electrical and Mechanical)	06	5900-200-6700/-

(1)	(2)	(3)	(4)
2.	Superintending Engineer (Electrical and Mechanical) Non-functional Selection Grade	** 4500-150-5700/-	
3.	Superintending Engineer (Electrical and Mechanical) (Junior Administrative Grade)	36@ 3700-125-4700-150-5000/-	
4.	Executive Engineer (Electrical and Mechanical)	156 3000-100-3500-125-4500/-	
5.	Assistant Executive Engineer (Electrical and Mechanical)	15 2200-75-2800-EB-100-4000/-	
6.	Assistant Executive Engineer (Electrical and Mechanical) (Leave Reserve)	05 2200-75-2800-EB-100-4000/-	

* In 1996, subject to variation dependent on workload.

** Includes non-functional selection grade posts also in the pay scale of Rs. 4500-150-5700/-.

** The junior administrative grade (grade selection) is non-functional and the maximum number of posts in this grade shall be equal to fifteen per cent of the senior duty posts (i.e. all duty posts at the level of senior time scale and above in the Service) and the maximum number of posts in the selection grade (non-functional) shall be limited to the number of posts sanctioned in junior administrative grade.

Note: Three posts of Chief Engineer and six posts of Superintending Engineers are common cadre posts for the Central Engineering (Civil) Group 'A' Service and the Central Engineering Electrical and Mechanical Group 'A' Service.

SCHEDULE—II

[See rule 7(l)]

Method of recruitment, field of promotion and minimum qualifying service in the immediate lower grade for appointment of officers on promotion to duty posts included in the various grades of the Central Engineering (Electrical and Mechanical) Group 'A' Service.

Sl. No. and grade	Name of duty Post	Method of recruitment	Field of selection, minimum qualifying service and educational qualification for promotion
(1)	(2)	(3)	(4)

1.	Chief Engineer (Electrical and Mechanical)	By promotion	Superintending Engineer (Electrical and Mechanical), with eight years regular service in the grade (including service, if any rendered in the non-functional selection grade) or seventeen years regular service in group A posts of the service out of which four years regular service should be in the grade of Superintending Engineer (Electrical and Mechanical).
2.	Superintending Engineer (Electrical and Mechanical) (Non-functional) (Selection Grade)	By appointment on the basis of seniority and suitability taking into account the overall performance and other	Superintending Engineer (Electrical and Mechanical) (Junior Administrative Grade) who have entered fourteenth year of Group A service on the first of July of the year calculated from the year following the year of examination on the basis of which the Officer was recruited or who have rendered nine years Group A service calcu-

(1)	(2)	(3)	(4)
3.	Superintending Engineer (Electrical and Mechanical) (Junior Administrative Grade)	By promotion	related matters. related from the date of promotion to the senior time scale in the case of officers promoted from Assistant Engineer, Executive Engineer (Electrical and Mechanical) with five years regular service in the grade and possessing degree in Electrical or Mechanical Engineering from a recognised University or equivalent.
4.	Executive Engineer (Electrical and Mechanical)	By promotion	(i) 33 1/3 per cent from Assistant Executive Engineers (Electrical and Mechanical) with four years regular service in the grade.
			(ii) 33 1/3 per cent from Assistant Engineers (Electrical) with eight years regular service in the grade and possessing degree in Electrical or Mechanical Engineering or any other equivalent qualification.
			(iii) 33 1/3 per cent from Assistant Engineer (Electrical) with ten years regular service in the grade and possessing Diploma in Electrical or Mechanical Engineering from a recognised University or Institution or any other equivalent qualification.
5.	Assistant Executive Engineer (Electrical and Mechanical)	By direct recruitment through Combined Engineering Services Examination conducted by the Commission.	

SCHEDULE—III

[See rule 7(l)]

Minimum educational qualification and age limit for direct recruitment to posts in Central Engineering Service Electrical and Mechanical Group 'A' on the basis of Competitive Examination to be conducted by the Union Public Service Commission.

(A) A candidate shall possess :—

- a degree in Electrical or Mechanical Engineering from:
 - a University incorporated by an Act of the Central or State Legislature in India; or
 - an educational institution established by an Act of Parliament or declared to be deemed as University under section 3 of the University Grants Commission Act, 1956, or
- Such other equivalent qualification as have been or may be recognised by the Government for the purpose of admission to the said examination; or
- A degree/diploma in Engineering from such foreign University/College, Institution and under such conditions as may be recognised by the Government for the purpose from time to time.

NOTE 1 :

In exceptional cases, the Commission may treat a candidate, not possessing any of the above qualifications, as educationally qualified provided that the Commission is satisfied that he has passed examinations conducted by other institutions the standard of which in the opinion of the Commission, justified his admission to the examination.

[भाग II—खण्ड 3(1)]

भारत का राजपत्र : असाधारण

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NOTE 2 :

A candidate who is otherwise qualified by virtue of his having taken a Degree from a Foreign University which is not recognised by Government, may also apply to the Commission and may be admitted to the examination at the discretion of the Commission;

(B) A candidate shall have attained the age of 20 years but not have attained the age of 28 years on the 1st day of August of the year in which the examination is held.

SCHEDULE—IV
[See rule 7(4)]

Composition of Group 'A' departmental promotion committee for considering cases of promotion and confirmation in the Central Engineering (Electrical and Mechanical) Group 'A' Services

Sl. No.	Name of duty post	Group 'A' Departmental Promotional Committee (for considering promotion)	Group 'A' Departmental Promotional Committee (for considering promotion)
(1)	(2)	(3)	(4)
1.	Chief Engineer (Electrical and Mechanical)	1. Chairman/Member Union Public Service Commission—Chairman 2. Director General of Works—Member 3. Secretary/Special Secretary/Additional Secretary, Ministry of Urban Affairs and Employment—Member	Not applicable
2.	Superintending Engineer (Electrical and Mechanical) (Non-functional) (Selection Grade)	1. Director General of Works—Chairman 2. Additional Secretary/ Joint Secretary, Ministry of Urban Affairs and Employment—Member	Not applicable
3.	Superintending Engineer (Electrical and Mechanical) (Junior Administrative Grade)	1. Chairman/Member Union Public Service Commission—Chairman 2. Director General of Works/Additional Director General of Works—Member	Not applicable

(1)	(2)	(3)	(4)
4.	Executive Engineer (Electrical and Mechanical)	1. Chairman/Member Union Public Service Commission—Chairman 2. Director General of Works/Additional Director General of Works—Member 3. Joint Secretary Ministry of Urban Affairs and Employment—Member	Not applicable
		4. Assistant Executive Engineer (Electrical and Mechanical)	Not applicable
			1. Director General of Works/ Additional Director General of Works—Chairman 2. Joint Secretary, Ministry of Urban Affairs and Employment—Member 3. Director/Deputy Secretary Ministry of Urban Affairs and Employment—Member.

Note :

1. The absence of a Member, other than the Chairman or a Member of the Union Public Service Commission shall not invalidate the proceedings of the Departmental Promotion Committee if more than half the members of the Committee had attended its meeting.

2. The proceedings of the Departmental Promotion Committee relating to confirmation shall be sent to the Commission for approval. If, however, these are not approved by the Commission, a fresh meeting of the departmental promotion committee to be presided over by the Chairman or a Member of the Union Public Service Commission, shall be held.

[F. No. 8/5/95/ECI/EWT]
B.S. MINHAS, Jr. Secy.

Government of India

Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and TrainingNew Delhi - 110 001
February 8, 2002OFFICE MEMORANDUM

Subject:-Procedure to be observed by Departmental Promotion Committees (DPCs) - No supersession in 'selection' promotion - Revised Guidelines regarding.

- (i) DoP&T O.M.No. 22011/5/86-Estt(D) dated 10.3.1989
- (ii) DoP&T O.M.No. 22011/5/86-Estt(D) dated 10.4.1989
- (iii) DoP&T O.M.No. 22011/5/91-Estt(D) dated 27.3.1997

The undersigned is directed to invite reference to the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No.22011/5/86-Estt(D) dated March 10, 1989 and O.M. of even number dated April 10, 1989 [as amended by O.M.No.22011/5/91-Estt(D) dated March 27, 1997] which contain the instructions on the Departmental Promotion Committees (DPCs) and related matters. In regard to the 'selection' mode of promotion ('selection-cum-seniority' and 'selection by merit'), the aforesaid instructions prescribe the guidelines (as briefly discussed in paragraph 2 below) for overall 'grading' to be given by the DPC, 'bench-mark' for assessment of performance and the manner in which the 'select panel' has to be arranged for promotions to various levels of post/grade.

2. Existing Guidelines

2.1 As per the existing (aforementioned) instructions, in promotions *up to and excluding* the level in the pay-scale of Rs.12,000-16,500 (excluding promotions to Group 'A' posts/services from the lower group), if the mode happens to be 'selection-cum-seniority', then the bench-mark prescribed is 'good' and officers obtaining the said bench-mark are arranged in the select panel in the order of their seniority in the lower (feeder) grade. Thus, there is no supersession among those who meet the said bench-mark. Officers getting a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.2 In the case of promotions from lower Groups to Group 'A', while the mode of promotion happens to be 'selection by merit', the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supercedes those graded as 'very good' and an officer graded as 'very good' supercedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.3 In promotions to the level in the pay-scale of Rs.12,000-16,500/- and above, while the mode of promotion is 'selection by merit', the bench-mark prescribed is 'very good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per the grading obtained, officers getting superior grading supersede those getting lower grading as explained in paragraph 2.2 above. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('very good') are not empanelled for promotion

5. Revised Guidelines

The aforementioned guidelines which permit supersession in 'selection' promotion ('selection by merit') have been reviewed by the Government and after comprehensive/extensive examination of relevant issues it has been decided that there should be no supersession in matter of 'selection' (merit) promotion at any level. In keeping with the said decision, the following revised promotion norms/ guidelines, in partial modification (to the extent relevant for the purpose of these instructions) of all existing instructions on the subject (as referred to in paragraph 1 above) are prescribed in the succeeding paragraphs for providing guidance to the Departmental Promotion Committees (DPCs).

3.1 Mode of Promotion

In the case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to the relevant bench-mark ("Very Good" or "Good") prescribed for promotion.

3.2 'Bench-mark' for promotion

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

3.2.1 Although among those who meet the prescribed bench-mark, inter-se seniority of the feeder grade shall remain intact, eligibility for promotion will no doubt be subject to fulfilment of all the conditions laid down in the relevant Recruitment/Service Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder post.

3.3 Promotion to the revised pay-scale (grade) of Rs.12,000-16,500 and above

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'very good'. This will ensure element of higher selectivity in comparison to selection promotions to the grades lower than the aforesaid level where the bench-mark, as indicated in the following paragraphs, shall be 'good' only.
- (iii) The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'.

3.4 Promotion to grades below the revised pay-scale (grade) of Rs.12,000-16,500 (including promotions from lower Groups to Group 'A' posts/grades/services)

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'good'.
- (iii) The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'good'.

- 5 -

3.5 Zone of consideration

The guidelines relating to the 'zone of consideration' in its existing form (twice the number of vacancies plus four) shall continue to have general application. However, in view of the modifications in promotion norms indicated in paragraph 3.3 above, the following stipulation [as is already applicable in the case of promotions below the revised pay-scale (grade) of Rs.12,000-16,500/- *vide* DoP&T O.M.no.22011/8/98-Estt(D) dated November 6, 1998] is also made in the regard to the zone of consideration for promotion to the revised pay-scale (grade) of Rs.12,000-16,500/- and above:

"While the zone of consideration would remain as already prescribed, the DPC, in the aforesaid category of cases, may assess the suitability of eligible employees in the zone of consideration (in the descending order) for inclusion in the panel for promotion up to a number which is considered sufficient against the number of vacancies. With regard to the number of employees to be included in the panel, the DPC may also be required to keep in view the instructions issued *vide* Department of Personnel and Training Office Memorandum No. 22011/18/87-Estt(D) dated April 9, 1996 relating to norms for preparing extended panel for promotion. In respect of the remaining employees, the DPC may put a note in the minutes that "the assessment of the remaining employees in the zone of consideration is considered not necessary as sufficient number of employees with prescribed bench-mark have become available."

4. Provisions of the paragraph 1 (vii) of the DoP&T O.M.No.AB-14017/2/97-Estt(RR) dated May 25, 1998 stand modified in accordance with these revised instructions. In addition to this, if the guidelines contained in this Office Memorandum come in conflict with the provisions of any other executive instructions (O.M.) issued by DoP&T on this subject, the same shall be taken to be modified to the extent provided herein.

5. The instructions contained in this Office Memorandum shall come into force from the date of its issue.

6. Ministries/Departments are requested to give wide circulation to these revised instructions for general guidance in the matter so that immediate steps are taken to amend the Service Rules/Recruitment Rules of various services/posts/grades so as to appropriately incorporate the mode of promotion as 'selection' (in accordance with these instructions) in place of 'selection by merit' and 'selection-cum-seniority' (as was hitherto prescribed by the aforementioned O.M. dated March 27, 1997) as the case may be. The powers to amend Service Rules/Recruitment Rules in this regard are delegated to the Ministries/Departments. DoP&T need not be consulted to carry out the required amendments.

1/2/2001
(ALOK SAXENA)

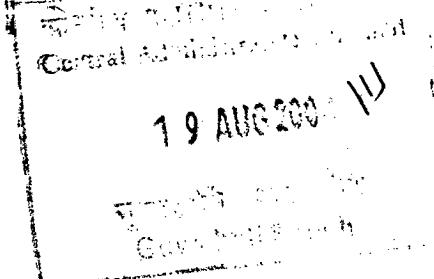
Deputy Secretary to the Government of India

To

All Ministries/Departments of the Government of India

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. The Cabinet Secretariat, New Delhi.
4. The Rajya Sabha Secretariat, New Delhi.
5. The Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Audit General of India, New Delhi.
7. The Union Public Service Commission, New Delhi with reference to their letter No.10/7/2001-AU(C) dated 30.10.2001 (20 copies).
8. The Staff Selection Commission, New Delhi.
9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions
10. Establishment Officer & Secretary, ACC (10 copies) (Smt Chitra Chopra)
11. All Officers and Sections in the Department of Personnel and Training.
12. Establishment (RR) Section, DoP&T (10 copies). They may also issue separate instructions in terms of the position indicated in paragraph 4 above.
13. Facilitation Centre, DoP&T - 20 spare copies
14. NIC (DOP&T Branch) for placing this Office Memorandum on the website of DoP&T.
15. Establishment (D) Section, DoP&T (500 copies)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No.37/2004

Shri Gauri Shankar Mittal.

-vs-

The Union of India & Others.

-AND-

In the matter of:

Rejoinder submitted by the applicant in
reply to the written statement submitted by
the respondent No.1 and 2.

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

1. That in reply to the statements in Para 1,2 and 3 of the preliminary objections
made in the written statement, the applicant begs to state that the respondents
actions were contrary to the O.M dated 10.04.1989 of DOPT referred to by them
since they made subjective assessment instead of objective assessment as directed
in the O.M in as much as they acted in violation of the set rules as stated
hereinafter in determining the suitability of the applicant for promotion to the
grade of Chief Engineer.

Further the applicant has bonafide cause of action since he has
been denied selection for promotion in an illegal and arbitrary manner, which
smacks malafide and as such attracts judicial scrutiny and relief.

2. That in reply to the statements in Para (i),(ii),(iii) and (iv) under brief facts of the
case made in the written statement, the applicant begs to state that for selecting
the candidates against the 9(nine) vacancies of the year 2003-2004 for the post of
Chief Engineers, the DPC meeting ought to have been completed by 30.11.2002
and the panel ought to have been made finally ready by 31.03.2003 as per the

settled law and model calendar laid down by the Department of Personnel and Training (DOPT), govt. of India. But in the instant case the DPC meeting was delayed and held on 27.06.2003 which illegally followed the revised norms of promotion effective from 01.04.2003 which ought to have been done in the instant case as per the norms provided under DOPT's O.M dated 08.02.2002 which was in force till 31.03.2003 i.e. prior to the commencement of the revised norms on 01.04.2003. The requirement of Bench mark provided under the revised norms dated 01.04.2003 is not applicable in case of the applicant since the vacancies relate to the year 2003-04. This apart, the adverse ACR's /service records vis-à-vis down graded Benchmark etc. in respect of the applicant were never communicated to the applicant which is mandatory under rules and the DPC acted upon the uncommunicated adverse ACR's and rejected the applicant from promotion and promoted his juniors which is arbitrary, illegal, malafide, unfair and contrary to the settled laws. On these counts alone, the O.A deserves to be allowed with costs.

3. That the applicant categorically denies the statements made in Para 1 and 4.4 in parawise reply of the W.S and begs to state that the exclusion of the applicant from his promotion to the grade of Chief Engineer by the DPC held on 27.06.2003 was contrary to the relevant rules and instructions of the Govt. and the selection was vitiated by serious infirmities. The delay in holding the DPC meeting is not attributable to the applicant, which definitely jeopardized the selection of the applicant for promotion. Further, promotion is an incidence of service and the applicant has full legal right to claim his promotion, as it is bonafide and legitimate in the instant case.
4. That the applicant emphatically denies the statements made in Para 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.15, 4.16, 4.17 and 4.18 of the W.S and begs to state that as per the instructions and model calendar laid down by the Deptt. of Personnel and Training (DOPT), Govt. of India, the DPC meeting meant for selecting the candidates for promotion against the vacancies of the year 2003-04 ought to have been completed by 30.11.2002 and the panel so prepared ought to have been finally ready by 31.03.2003 so as to be utilized w.e.f 01.04.2003. But in the instant case, the DPC meeting was delayed and was held on 27.06.2003 for the

reasons best known to the respondents, which is not attributable to the applicant. As per the settled position of law, the DPC held on 27.06.2003 was to follow the norms of promotion which were in force at the relevant time i.e. till 31.03.2003, although it was held belatedly on 27.06.2003. But since the DPC was held belatedly on 27.06.2003 and since in the meantime the revised norms of promotion came into force w.e.f 01.04.2003, the DPC acting illegally, followed the revised norms which was not in force prior to 1.04.2003 whereas it ought to have followed the pre revised norms since the vacancies for which the said DPC was held, was for the year 2003-04. It is relevant to mention here that as per the earlier (pre-revised) norms, the required Benchmark fixed for promotion to the Group A posts were 3 "very good" gradings as per DOPT's O.M dated 08.02.2002 which was in force till 31.03.2003. But under the revised norms effective from 01.04.2003, the said benchmark was fixed as 4 "very good" gradings. It is evident from the records produced by the respondents before this Hon'ble Tribunal in O.A No 184/2003 and O.A no. 276/2003 that even in the previous DPC held on 31.07.2002, the applicants in O.A No. 184/03 and 276/03 who had got 3 "very good" gradings in CRs were considered fit for promotion. But the DPC held on 27.06.2003 declared the present applicant unfit although this applicant had got 3 "very good" gradings in his CRs. It appears from the observations made by this Hon'ble tribunal after perusal of the relevant records in its proceeding dated 13.05.2004 in O.A No.184/2003 that the findings of the DPC, grading made by the DPC on assessment of ACR's of the officers have not been made properly in terms of the relevant instructions of the Govt. of India. It also transpired from the records produced before the Tribunal that the gradings in the ACR of the applicant were down graded from "very good" to "above good" in some cases without providing any opportunity to the applicant and the DPC acted upon those downgraded ACR's to deny promotional opportunity which is contrary to the settled position of law. There is no provision of a nomenclature of grading as "above good" under the rules but the same was done by the downgrading the ACR's of the applicant from the "very good" to "above good" i.e a grading created arbitrarily and that too with a malafide intent to provide undue privilege to the juniors for promotion and to deny the same to the applicant, on the vague plea of non- fulfillment of the prescribed Benchmark, now

contended by the respondents. Surprisingly, at no point of time any lapses or shortcomings on the part of the applicant was communicated to him nor any note of caution was sounded to him ever for correction of his lapses, if any. Even the downgrading of ACR below the required Benchmark was not communicated to the applicant and the DPC acted upon the uncommunicated downgraded ACRs to deny promotion to the applicants. It is relevant to mention here that the applicant had unblemished service career all along and was even awarded with letters of appreciations on various occasions during the period for which the ACRs were downgraded. Some of the appreciation letters received by the applicant during 1996 to 2000 are annexed herewith for kind perusal of the Hon'ble Tribunal.

Thus the contention of the respondents that the DPC made objective assessment and that the applicant as a candidate has no right to selection for promotion but only a right to be considered along with other candidates are not sustainable in law. It is clearly evident from the above facts that the DPC held on 27.06.2003 acted with malafide intention and in an arbitrary, unjust, illegal and unfair, manner and thus made only subjective assessment. Further promotion is an incidence of service and the applicant has full right to claim his promotion, as it is bonafide and legitimate in the instant case.

(Copies of appreciation letters dated 1996 to 2000 are annexed hereto as Annexure-VIII series).

5. That the applicant categorically denies the statements made in para 4.12 and 4.13 of the written statements and begs to submit that it is the settled position of law that; -

- (i) Grading below bench-mark has to be treated as adverse and must be communicated within one month.
- (ii) Any downgrading from bench-mark has to be communicated.
- (iii) Uncommunicated adverse ACRs have to be ignored.

The above principles of Law have been reiterated under various innumerable judicial decisions rendered by different courts including the Apex Court and even in a recent judgment and order dated 24.05.2004 passed by the Hon'ble Central Administrative tribunal, Allahabad Bench in O.A. No 587 of 1997, the matter has been dealt threadbare wherein the "ratio" of as many as 16

judgments have been cited in support of the above stated principles of law. Hence the contentions of the respondents otherwise is not sustainable in law.

(Copy of the Judgment and Order dated 24.05.2004 is annexed hereto as Annexure-IX).

6. That the applicant categorically denies the statements made in para 4.14 of the written statement and begs to submit that as per government rules, a specific entry shall be made in the ACR of the employee who renders full tenure of 2 years service in the North east region and special weightage be given in case of promotion which was not done in the instant case inspite of proper recommendations issued by Superintending Engineer (Admn.) vide his letter No. 9/156/2001-Admn. Dated 21.11.2003.

(Copy of letter-dated 21.11.2003 is annexed hereto and marked as Annexure-X).

7. That the applicant denies the statements made in Para 5,6,7,8 and 9 of the written statements and begs to reiterate that all the grounds stated and all the reliefs prayed for in the instant O.A are bonafide, legal, full of merit and the O.A deserves to be allowed with costs.

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

VERIFICATION

I, Shri Gauri Shankar Mittal, aged about 58 years, now working as Superintending Engineer, Central Public Works Department, Silchar Central Circle, Silchar-2, do hereby verify that the statements made in Paragraph 1 to 3 and 7 are true to my knowledge and those made in Paragraph 4, 5 and 6 are true to my records and I have not suppressed any material fact.

And I sign this verification on this the 14th day of August, 2004.

Gauri Shankar Mittal

Er. C. B. LAL
गुरु इंजीनियर (प. 31.) II
CHIEF ENGINEER (WZ) II

D.O. NO. WZ-11/12(9)/99/ 22.01

केन्द्रीय लोक निगमन विभाग
CENTRAL PUBLIC WORKS DEPARTMENT
री.जी.ओ. काल्पनिक, ए-क्लॉक,
C.G.O. COMPLEX, A - BLOCK,
रोमीनी हिल्स, SEMINARY HILLS,
नागपुर / NAGPUR - 440 006.
फोन नं. / Ph. No. : 549776
फैक्स / FAX : (0712) 523246

दिनांक/Dated 26 August 1999

Dear Shri Mittal,

Subject: CTC-III Campus for CRPF at
Mudkhed.

Enclosed please find herewith copy of
d.o. letter no. PM/DG(W)/308/3272 Dated 18th
August 1999 from DG CPWD in connection with
works of above Campus., I join DG in conveying
my appreciation to you and all your Officers
for the dedication shown in completing above
Complex which has been to the liking and
satisfaction of CRPF authorities.

I hope you and your Team of Officers
will keep up high standards and continue to
earn good name for the Department.

With best wishes.

Enclo: As above.

Yours sincerely

(Er. C.B.LAL)

To

Shri G.S.Mittal
Superintending Engineer
Nagpur Central Circle
CPWD, Nagpur.

Copy
Sarkar
Advocate
19.08.99

B.S. DUGGAL
Tele. No. 3018556

84
संस्थानालय/ D.O. No. P.H. (D.G.(V)) / 308/ 227
निर्माण विभाग/ देशभक्त
DIRECTOR GENERAL OF WORKS
केन्द्रीय संस्थान निर्माण बाबुल
CENTRAL PUBLIC WORKS DEPARTMENT
निर्माण विभाग
NIRMAN BHAWAN

नई दिल्ली - 110011 August 18, 1999
New Delhi - 110011, the

Dear Shri C.B. Lal,

I am happy to learn that the Phase I works of CTC-III for CRPF at Mudkhed has been completed to the satisfaction of the Client Department. It is also heartening to note that the DG(CRPF) who had Inaugurated this work on 21-7-99 was very happy with the work and the commitment of the CPWD in raising this Campus.

I wish to convey my appreciation to you and all the other concerned officers by whose hard work and dedication an excellent job has been accomplished.

I hope you and your team of officers will keep up the high standards and continue to earn a good name for the department.

With regards,

9/26.8

Yours sincerely,

B.S. Duggal

(B.S. DUGGAL)

✓ Shri C.B. Lal,
Chief Engineer (WZ) II,
Central P.W.D.,
CGO Complex, Seminar Hills,
Nagpur - 440006.

True copy
from private
19.88. on

"हीरा निमी में पतापार भारतके, देश का पोरव पदार्थ" १

C. V. MATTHEW

प्रदूष शासकीय पत्र संख्या

D. O. No. V-II-1/99-ST

कमांडेंट मौ०टी०ग्गी०-III

COMMANDANT C.T.C.-III

मेन्ट्री प्रिंसिपल पुलिस बल

CENTRAL RESERVE POLICE FORCE

मुख्खेड, जिला नांदेड (महाराष्ट्र)

Mudkhed, Distt. Nanded (Maharashtra)

Dated the 25 / JULY, 1999.

Dear Shri Mittal,

The visit of the DG, CRPF and inauguration of completed works of phase - I of development of the institution was indeed a grand success, and it would not have been possible without your conscientious efforts and commitment which was amply seen during your stay for the purpose in this Institution 10 days prior to the event.

I am expressing my sincere thanks and gratitude for all your help and advises to make the show a total success and also for gracing the occasion by your esteemed presence.

Kindly continue to bestow the same attention towards the works and development of this Institution.

With崇高的敬意

Yours Sincerely

25/7/99
/ C. V. MATTHEW

Shri G.S. Mittal,
Superintending Engineer, [Civil] [PW-II]
Bungalow No 6, Seminar Hills,
Nagpur - 440 006.

True Copy
Sanjiv
19.08.04

Mr. Nandyal
CTOR

- 9 -

महाराष्ट्र राज्य
GRAM C D COLLEGE

महाराष्ट्र

महाराष्ट्र

महाराष्ट्र राज्य सुरक्षा प्रशिक्षणालय

संस्कृति, सिंचल लाईप, नागपुर - 440 001

Government of India

Ministry of Home Affairs

NATIONAL CIVIL DEFENCE COLLEGE

611, Civil Lines, NAGPUR - 440 001

Tel & Fax: 0712-531014

Resi: 0712-234423

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No. NCDC/RD/2000

8th May, 2000.

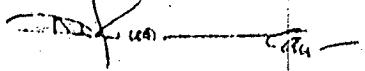
Dear Sirs Mittal,

I am writing this to convey my grateful thanks for the help and assistance rendered by you to make the College Raising Day a grand success. In fact it was your co-operation which made the function achieve the highest standards.

2. The help and assistance given by your officers in making our building look presentable at such short notice was indeed a model of co-operation and all my faculty and staff members appreciated your assistance. Please do not hesitate to call on me in case you need any help from my side.

With regards

Yours sincerely



Mr. G.S. Mittal
Supdtg. Engineer
C.P.W.D.
Seminary Hills
Nagpur.

S.

True copy
Lokendra
19.05.00



MAHADEV SHASTRI
ADDITIONAL DIRECTOR GENERAL
अग्र ग्राहनिदेशाय

राष्ट्रीय प्रत्यक्षकर अकादमी
चिंचवडा वास, नागपुर-440029.

NATIONAL ACADEMY OF DIRECT TAXES
CHHINDWARA ROAD, NAGPUR-440029

Telephone: OII: 537375, R65: 533056
Fax: 0712-5363177/542367
Telex: 715-383
GRAM: AAYAKARSHALA

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दिनांक/Date September 17, 1996

Dear Mr. Lal

Distinguishing one organisation from another through the advertising hype that pervades our world is a tiring adventure. Many organisation claim superiority because of low prices or unparalleled service. Withstanding the test of promotion is the axiom, "People want to do business with people, not organisations".

Whenever someone does an outstanding job, it's imperative to recognize his or her extra effort. I had the pleasure recently of meeting you and your band of dedicated officers and staff during the recent visit of the Finance Minister. Their diligence and professionalism have reassured the National Academy of Direct Taxes that there are other organisations like us that fulfil their promises.

Human nature normally responds only when things go wrong. For this reason, I write to give the CPWD and especially Mr. Mittal a big pat on the back. I hope this dedication typifies your organisation. People like him are an organisation's best advertisement.

C
HR 2209
Sincerely yours,

[Signature]
(MAHADEV SHASTRI)

Mr. C.P. Lal,
Chief Engineer,
CPWD,
NAGPUR.

-:100:-

True copy
from private
19-08-01

ANNEXURE-IX

Reserve

CENTRAL ADMINISTRATIVE TRIBUNAL
ALBAREWAL BEACH ALJAWAHAR.

Original Application No.587 of 1997.

नियुक्त प्रतिलिपि

albared, this the 24th day of May 2001.

Hon'ble Maj Gen K.K. Srivastava, Member-A.

Hon'ble Mr. A.K. Bhainagur, Member-J.

A.K. Goel,
S/o Shri P.C. Goel,
P/o P-85, S.P.H. Scheme
Sector-26, NOIDA-201 310.

.....Applicant

(by Advocate : Sri Giridhar Gopal/
Sri R.C. Sinha

versus,

1. Union of India through
Secretary, Ministry of Urban
Affairs & Employment, Government
of India, Bhawan Bhawan,
New Delhi- 110 011.
2. The Director General of Works,
Central Public Works Department
Bhawan Bhawan, New Delhi- 110 011.

....., Respondents.

(by Advocate Sri Satish Chaturvedi).

ORIGIN

by Hon'ble Maj Gen K.K. Srivastava, A.M.

In this O.A., filed under section 19 of the
Administrative Tribunals Act 1985, the applicant has sought
the following relief(s):-

- (i) That in the light of the facts and circumstances
detailed in the application and latest Rulings of
the Hon'ble Supreme Court and Hon'ble C.A.,
works which are below the Bench-mark ~~1987/1988~~
and are prima facie not ~~overdue~~ in the relevant
terms of the applicant as is clear from the
signed order (Annexure-1) should not deny him
promotion which he was targeted from 31-12-1988 and
his ~~1988~~ Bench-mark targeted as ~~1988~~ 1989.
- (ii) That since the applicant is not already regularly
promoted, the respondents may be asked to
straightway give all the promotional benefits
with back wages and seniority to the applicant on
regular basis with effect from 31-12-1988, the
date from which his junion has been regularly
promoted as Superintending Engineer in Junior

True copy
Subj. to
19/08/01

Administrative Grade below Sl. No.13, Shri Nandan Swaroop and above Shri J.B. Padia at serial No.14 in the seniority list 1994 (Part-II) circulated vide office order No.359 of 1994 on 25.11.1994 (Annexure A-1).

(iii) That the applicant be given non-functional selection Grade w.e.f. 31.12.1992 like his juniors.

(iv) To grant any other relief including costs which the Tribunal deems fit and proper in the circumstances mentioned above".

2. We have heard the counsel for the parties at length and perused records as well as the pleadings.

3. Sri Giridhar Gopal, learned counsel for the applicant submitted that the applicant, having distinguished educational career joined Group-A Central Electrical and Mechanical Engineering Service in the first attempt through All India Combined Engineering Services Examination conducted by Union Public Service Commission. He was confirmed and got his regular promotion as Executive Engineer in time because of his unblemished record and meritorious service. Applicant was promoted as Superintendent Engineer on adhoc basis due to his hard work, good conduct and result oriented performance on 25.03.1987. The applicant has served the department very well for more than 31 years till date, with good conduct, without communication of any adverse remarks or any adverse performance, whatsoever. There has been no vigilance/ disciplinary case against him. The applicant earned appreciations during his unblemished and distinguished result-oriented-service. Applicant has already served for more than 17 years, as now, as Superintendent Engineer and is stagnating now. If his promotion and seniority are justifiably restored, the applicant will be considered for promotion as Chief Engineer in September this year in retirement vacancy as his immediate senior in the list of Executive Engineers, Sri Nandan Swaroop, has already been promoted.

4. The grievance of the applicant is that he was

-3-

not promoted on regular basis as Superintending Engineer w.e.f. 31.12.1993 above Sri J.B. Fadia, his junior at S.I. No.14 in the Seniority List-1994 (Part-II) (Annexure A-1 of the O.A.) (Page 23 of O.A.) circulated by the respondents vide Office Order No.359 of 1994, which was made final by the competent authority vide Office Memorandum No.30/11/1994-EC.1 dated 5.2.1997 (Annexure A-1, page 25 of O.A.). Subsequently consequent to this, the applicant has not been appointed to N.F.S.G as per Office Order No.166 of 1996 (Annexure A-5 of O.A.). Applicant made several representations against this injustice and finally the respondents intimated the applicant that the applicant has not been promoted in the list because 'The grading assigned to him on the basis of the service record was below bench mark for this level of post.' It was also found that there were no adverse remarks which might have been turned down or expunged vide Office Memorandum No.30/13/95-EC.1 dated 18.06.1996 (Annexure A-3 of O.A.) (Page 26).

5. The learned counsel for the applicant submitted that from the above communication two points emerge i.e.

(i) GRAVING IS BELOW BENCH MARK.
(ii) THERE ARE NO ADVERSE REMARKS.

These are contradictory remarks and service jurisprudence, which has developed on this point from the latest pronouncements of Hon'ble Supreme Court, Hon'ble High Court and C.A.T., leads one to the following clear and categorical conclusions:

- (i) Downgrading below bench-mark has to be treated as 'ADVERSE' and must be communicated within one month.
- (ii) Any downgrading from bench-mark has to be communicated.
- (iii) Uncommunicated adverse remarks have to be ignored.

6. Thus the law has developed that any remark which is below bench mark and affects the promotion adversely is an adverse remark, therefore, considering the above O.M. dated 18.06.1996 referred to in para 4 above, applicant sent representations dated 07.03.1997 to the respondent No.2. The representations were forwarded to the respondent No.2 by the Chief Engineer (Electrical), Northern Zone vide letter No. 23/1/96.C.E. (E) NZ/875 dated 17.04.1997. These representations were to be decided within 3 months as per O.M. dated January 30, 1978 but as nothing was heard from the respondents, this O.A. was filed which has been contested by the respondents. However, the applicant forwarded the representations to the reporting officer also of relevant periods who were approaching retirement as any delay would have been prejudicial to the interest of the applicant.

7. The learned counsel for the respondents raised preliminary objections about limitation and non-joinder. The applicant's counsel gave reasons to justify the O.A. and cited numerous orders in its support, according to which those objections were not sustainable as detailed in paras (3) (A) (ii) and 3 (A) (iii) of the rejoinder affidavit. On the point of limitation, applicant's counsel further elucidated that the provisional promotion list of appointing Engineers was made final on 05.02.1997 and the reason of non-promotion of the applicant was communicated on 18.06.1996. Thus the O.M. dated 28.03.1997 is well within one year of the period of limitation from both the dates of 05.02.1997 and 18.06.1996, when the cause of action had arisen. We find substance in the submission of the learned counsel for the applicant and reject the objection of the respondents in regard to limitation.

8. As regards non-joinder, the learned counsel for the applicant submitted that the present O.A. is not against promotion of any particular individual but against defective

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writing of A.C.Rs. In-fact this is a case against the department. The Hon'ble Supreme Court has also held in the case of G.M., S.C.R. Vs. A.V.R. Siddhanti 1974 SCC (L.S) 290 that non-joinder is not fatal in such cases where selection of juniors is not challenged. This case is filed against the respondents because as per applicant, they have considered the invalid and baseless A.C.Rs wherein unjustified, illegal and contradictory remarks, which were 'adverse' and have affected the promotion of the applicant adversely in contravention of rules. The learned counsel placing reliance on the judgment of Hon'ble Supreme Court in case of Janardan Vs. Union of India A.I.R. 1983 SC 769 submitted that the Hon'ble Supreme Court held that where relief is sought against the Union of India or a Ministry and not against any individual, even if technically some direct recruits (two juniors) were not before that Court, the petitioner could not make them parties. Besides in the case of N. Dutt Vs. U.C.I. 1990 (2) S.L.J (C.A.T) 294 it was held that when challenge is not against any individual but only against Govt. Policy, question of non-joinder of parties does not arise. Similarly, in a recent case of Mr. T.K. Aryavir 2003 (1) A.T.J. 130, it was remarked in para 18 that the applicant's case cannot be treated as prejudicial to the interest of the private respondents as they are admittedly senior juniors and only correction of mistake has been prayed for by the applicant. He accepted the arguments advanced by Sri Giridhar Gopal learned counsel for the applicant and held that in the present case, the objection of non-joinder of parties raised by the respondents shall not hold good.

9. The learned counsel for the applicant submitted various points before us which are as under:-

"(i) The ACIs are to be written on the basis of the Ephemeral Rolls as per para-6 of Section 5 of CPWD Manual Volume-1 (1996 Edition) but the respondents have not maintained any Ephemeral Roll. The Ephemeral roll of the official concerned should be consulted and all entries in the confidential reports should be made after assessing the remarks in the ephemeral roll. Instances of defects in the work, character and conduct, if any, should be quoted briefly. The reporting officer should also give an indication of the efforts he had made, by way of guidance, admonition etc., to get the defects removed and results of such efforts. All the adverse ACIs written without maintaining the Ephemeral Roll are baseless and unjustified, therefore liable to be upgraded on representation or ignored. In Girija Shanker Misra Vs. U.O.I (1996) 34 ATC 43 the Tribunal was highly critical of non maintenance of Memorandum of Service (Ephemeral Rolls).

(ii) The reports which affect the service prospects adversely, should be communicated and officer should be guided to improve the performance as per the Ministry of Home Affairs Office Memorandum No. 51/3/68-Estt (A) dated 02.03.1968 circulated vide office memorandum No. 51/5/72-Estt (A) dated 20.05.1972 under para 8.3 (c) on page 7 but the respondents have not communicated anything adverse to him throughout his service and denied promotion without any notice and chance to represent.

(iii) Hon'ble Justice Pandian (Retired Judge of the Hon'ble Supreme Court) has also observed in the 5th Pay Commission Report that any grading below the bench mark, prescribed for promotion to the next higher post, should be treated as adverse and communicated.

(iv) As per para-12.1 contained in Office Memorandum No. 22011/3/88-Estt (U) dated 21.03.1990 of Department of Personnel & Training it may not be quite appropriate that an officer is passed over only on the basis of adverse remarks against which he has had no opportunity to represent as they have not been communicated.

In order to appreciate the above points we consider it appropriate to reproduce para 12.1 of D.O.P&T O.M. dated 21.03.1990 as under:-

"12.1 where the D.O.P&T finds that the adverse remarks in the CIs of an officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the committee shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the CIs pertaining to three immediately preceding years prior to the year in which the DPC is held and direct the concerned authority concerned to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a representation against the same. Where the uncommunicated adverse remarks pertain to a period

earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the officer concerned, the DPC may proceed with the consideration of the case but may ignore the remarks while making assessment".

1. In view of the above memo, we are of the view that the applicant should not have been denied promotion by DPC on the basis of the reports up to 1985 as these were more than 3 years prior to the year of DPC (1994) and there was no other option for the DPC but to ignore the negative effect of the NCRs and DPC should have granted the promotion to the applicant. DPC has erred in denying promotion to the applicant in contravention of above O.M. dated 11.05.1990.

11. It is a well settled fact that promotion is normal incidence of service. Every employee has right for consideration for promotion. This right cannot be snatched away without any notice. Natural justice demands that any such eventuality like grading him below benchmark is required to be conveyed, if such grading deprives him of promotion. Non-promotion in mid-service is stigmatic and the sufferer feels hurt, as if, it is a social death and as such must be cared for, in the interest of equity and natural justice, following due process of law.

12. We would like to observe that the applicant after denial of promotion in one D.P.C. was given promotion in the very next D.P.C. and in Narayan Vs. Maharashtra (W.P. No.45/1984) dated 30.06.1990 (pr. 13)-H.C. Bombay found that similar non-promotion in the immediately preceding D.P.C. was unjust and unfair and should be restored.

13. The upgrading/modifications in ACLs have been upheld by the Hon'ble Supreme Court in the case of K. Prasad Vs. U.O.I. 1988 SCC (L&S) 710. The modification and upgrading have been held to be legal by Hon'ble High Court, Madhya Pradesh in the case of S.R. Kesharwani Vs. State of M.P. 1978 SLJ 178 (M.P.).

14. The learned counsel for the applicant during arguments submitted a set of sixteen rulings from 1995 to 2003, all, in one way or the other, holding what is 'adverse', what is 'downgrading' both to be communicated in time, and if not communicated to be ignored. Wherever necessary, benchmarks have been upgraded, D.P.C's recommendations quashed, review D.P.C ordered and also, if necessary, relief/promotion was granted straightway. The counsel, for the sake of brevity, has given the list with brief 'ratio' which are being quinfully reproduced below:-

- (1) Uday Krishna Vs. U.O.I. (1996) 33 AIC 80, para 7. "To sum up the entry which adversely affects the interest of a person is adverse" to be communicated.
- (2) (1996) 34 AIC 43-Girija Shankar Misra Vs. U.O.I quoting Jagul Kishore Goyal's case found this 'pigeon holding' of an officer, into the category of 'good', 'very good', 'outstanding', resulting in supercession without opportunity of rebuttal, puritatively (lits. rt. 3(1) against the circulatory nature of justice; not to be condemned unhesitatingly". 1996, 10.
- (3) Bhaktidas Nay Vs. U.O.I. Cr. No. 25/9- Bombay HC-para 21, following Gurdayal Singh (1977) 1979 SCC (L.S.) 197; if good is not enough "GOOD", it is treated as adverse and had to be conveyed to the applicant. Uncommunicated adverse remarks to be ignored.
- (4) O.P. Jal Nigam Vs. Prabhat (1996) 1 SC para 3 "Even a positive confidential entry in a given case can perilously be adverse".
- (5) Shivanand Prasad Vs. U.O.I-CMJP No. 1066 of 1989 decided by Jabalpur High Court gives similar views.
- (6) Gurmohan Singh Vs. U.O.I-1976 S.L.R. 338 para 19, a report even though not strictly adverse but may prejudicially affect his chances of promotion of future prospects, should be communicated.
- (7) Krishna Vs. U.O.I-(1993) 30 AIC 10, para 18 "Just adequate treated as 'GOOD'.

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(8) G.Chankamalam Vs. UOI-(1998) 37 ATC (345) Pr.H.N., 8, 9, 19-even a Good grading, if bench mark is VERY GOOD, has to be communicated.

(9) Tharwala Vs. UOI-(1998) 37 ATC 601-mara 7-Graduation from outstanding to very good should also be communicated.

(10) State of Gujarat Vs. S. Tripathy-1986 SCC. (L&S) 273 pr.4 relief granted straightway without review DPC.

(11) Bani Singh Vs UOI 1989 9 ATC 849 pr.32 (3) Relief granted straightway without review DPC.

(12) M.P.-Vs. Bani Singh-1991 SCC (L&S) 638 pr.7 Upholds ATC above.

(13) Narayan Vs. Maharashtra-W.P. No.45/1984 dt. 30.05.1990 Bomb. HC @ Nagpur, pr. 13-If selected in next D.P.C., why placed below?

(14) Dr. Bincy Gupta Vs. UOI-ATJ 2002 (3) p.7-HC+DB pr. Last letter communication of downgrading has not been made, initiates the proceedings directed for review DPC; and if found suitable, give promotion from the date of others.

(15) Dr. J. P. Srivastava Vs. UOI-ATJ 2003 (2) p.392 (relying HC, SC, Cst and distinguishing Cst's FB Hanik Ch Vs. UOI-2002 (3) ATJ p.268) pr. 16-19, 26, 27, 29 held review DPC after ignoring adverse remarks and down grading, in two months.

(16) Smt. T.K. Aryavir Vs. UOI ATJ (1) p.30-CAT, pr. 16-19 To convene review DPC, ignoring the UCIs which were adverse being below the bench mark but were not communicated. If found fit, promote her from the date of her immediate junior, Kailash Pd. with consequential benefits, arrears of pay etc.

In view of the law laid down in above cases there is no reason, in our opinion, to deny the rightful and legal claim of the applicant.

15. The learned counsel for the applicant invited our pointed attention to the fate of applicant's representation dated 07.03.1997 against the communication of reasons for his non-promotion vide O.M. dated 18.6.1996 (Annex. L3). Since the representation dated 07.03.1997 was to be decided

within three months by the respondents but having heard nothing from the respondents, the applicant has also forwarded his representation to his reporting officers of relevant periods. All the reporting officers of the relevant period have confirmed that the overall performance was either 'outstanding' or 'very good' as depicted in Annex. 10-20 to the rejoinder affidavit. For the last seven months of the relevant period, actual production details have been given as better than that of his successor, who has already been promoted; therefore performance of the applicant for this period will also not be below bench-mark.

Sri V.A.D. Kutty, Chief Engineer and the then reporting officer was in service when he had communicated comments on the representation vide his letter No.1/5/CE/5/12/97/ Com/101 dated 23.12.1997 for the periods 1983-84, 1984-85 classing the applicant 'very good' (Annex. 10-3).

Sri M.M. Reddy, the then reporting officer has sent his comments on the representation within a month of retirement vide his letter dated 15.11.1997, for the periods 1984-85, 1982-83 and 1983-84, classing him 'Very Good'. (Annex. 10-2) Sri G.K. Khemani, the then reporting officer sent his comments on the representation vide letter dated 22.10.1997 for the periods 1978-79 and 1979-80 and classed him 'outstanding'. (Annexure 10-1).

Cumulative effect of the above comments (Annex. 10-1-1) as tabulated in Annex. 10-2 to the rejoinder affidavit is reproduced below:

S.No.	Year	Rating
1.	1978-79	Outstanding
2.	1979-80	Outstanding
3.	1980-81	Very good.
4.	1981-82	Very good

-11-

5.	1982-83	Very good
6.	1983-84	Very good
7.	1984-85	(i) Very good (ii) Performance 26% above successor.

successor.
16. On perusal of record, we find that none of the above facts contained in Annex. No. 15 to the rejoinder affidavit has been denied or refuted by the respondents and as such they stand admitted. Neither they have been challenged in oral arguments on behalf of the respondents.

17. The counsel for the applicant further urged that the applicant has already suffered humiliation for no fault of his for a very long period and the counsel has cited various judgments of Hon'ble Supreme Court and High Court in the case of S. Tripathy, Bani Singh and Narayan, detailed in the list at Sl. No. 10, 11, 12, 13 respectively (in para 14 above) wherein relief of promotion etc. has been ordered directly in similar circumstances and as such this is also a fit case for issuing the orders for promotion straightway.

18. The learned counsel for the applicant finally submitted that if, with good-luck, this O.A. succeeds; for expediency, it may kindly be ordered that, since the next promotion of Chief Engineers is likely to take place shortly, the decision of this O.A. may be implemented before the next promotion of Chief Engineers, so that the applicant with his modified/latest ACRs and seniority is considered in the interest of 'just justice' and fair play.

19. Having heard the learned counsel for both the parties in detail and perused the records, we are of the view that controversy in this case is short, facts are brief and, by passage of time, law on the point has crystallized. O.M. dated 18.05.1996 (Annexure A-3) is contradictory, inasmuch as, it says that the applicant

-12-

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was denied promotion because he was below bench-mark and there was nothing adverse to be communicated. The law is absolutely settled that any ACR below bench-mark is adverse and has to be communicated, and if not communicated in time, has to be ignored by D.P.C. This Rule of law has been flouted with impunity in this case. This by itself is enough to justify acceptance of the prayer of the applicant.

20. In the facts and circumstances and pur aforesaid discussions, the O.A. is allowed. Since the latest assessment about the applicant, as depicted in Annexures R4-1-5 to the rejoinder affidavit for seven relevant years, contains two 'outstanding' and five 'very good' grades, there is no justification in denying promotion to the applicant, when it was granted to his next junior w.e.f. 31.12.1992. This is a mistake of law coupled with the mistake of fact, which is ordered to be rectified. The office order No. 359 of 1994 dated Nov. 25, 1994 may be modified to the extent that the applicant be placed below Mohan Swaroop (Sl. No.13) and above J.B. Redia (Sl. No.14) with consequential benefits including non-functional selection grade from the date 31.12.1992, his junior was given. However, the applicant shall not be entitled for any back wages. This order should be implemented before the next promotion of Chief Engineers (Electrical) takes place in which the applicant may also be considered with his modified/latest ACRs and seniority.

21. There shall be no order in this regard.

Sd/
J.M.

TRUE
COPY

Edy 4/14/94
25-5-04
Personnel Officers (1)
Central Administrative Service, Subdivision
Allahabad.

10.5.94
25-5-04

For C.R.
For Govt. of India
P. 10. 88

No.9/156/2001-Admn.

Government of India

Office of the Chief Engineer(NEZ)

Central Public Works Department

Dhankheti, Cleve Colony,

Shillong-03.

Dated, 21.11.2003

To,

The Director Genl.(Works)
 Central P.W.D.,
 Nirman Bhawan,
 New Delhi-110011.

Subject:- Issue of certificate for successful completion
 of tenure in North East by Shri G.S. Mittal, SE/
 SCC, Silchar.

Sir,

Shri G.S. Mittal, had assumed the charge of SE/SCC, CPWD, Silchar on 14.5.2001 and he has completed the normal tenure for 2 years in North East on 14.5.2003. As per rule, a specific entry shall be made in the confidential report of the employee who render full tenure of service. This may kindly be made in the confidential report of Shri G.S. Mittal.

2. Further, under the provisions of concessions for serving in the North East region (weightage for promotion), the eligible officer shall be given due recognition in the matter of promotion in cadre post. As such, weightage may kindly be given to this aspect while considering his case for promotion in due course.

Yours faithfully,

(Shailendra Sharma)
 Suptdg. Engineer(Admn)

Copy to:-

1. Shri G.S. Mittal, SE/SCC, CPWD, Silchar-02 for information.

Steno

S C C	
SE	
EE (A)	19/11/03
EE (P)	
OS	


 Suptdg. Engineer(Admn)

True copy
 Sub. & Verified
 19.11.03

Central Adminis.	Guwahati
8 MAR 2005	
Guwahati Bench	

101

13
Filed by the applicant
through: Subrata Nath
14/3/05.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No.37/2004

Shri Gauri Shankar Mittal.

-Vs-

The Union of India & Others.

-AND-

In the matter of:

Additional Rejoinder submitted by the applicant in the above stated O.A No. 37 2004.

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

1. That the applicant being aggrieved due to denial of his promotion to the grade of Chief Engineer on the basis of uncommunicated adverse downgraded ACRs and promotion of his juniors by superseding him, approached this Hon'ble Tribunal challenging the legality and validity of the action of the Respondents and the DPC and prayed for his promotion.
2. That the Respondents filed their written statement and the applicant thereafter filed the Rejoinder against the said written statement. In the said Rejoinder, it has been stated under Para 4 (at page 3) that the downgrading of ACR below the required Benchmark was not communicated to the applicant and the DPC acted upon the uncommunicated downgraded ACRs to deny promotion to the applicants.

3. That the applicant further begs to submit that under Rule 9 of the CPWD Manual it has been laid down that-

" Apart from the adverse remarks in the confidential reports, in case it is noticed at any time that there is a fall in the standards of an officer in relation to his past performances as revealed through the assessment, his attention should be drawn to the fact so that he can be alerted for improving his performance and does not suffer in his service prospects without knowing about the deterioration in his performance."

From the above quoted lines it is clearly evident that not only the Adverse ACR but even any fall in the standards of performance of the officers, if noticeable, has to be brought to the notice of the concerned officer and as such it is mandatory under Rule 9 of the CPWD Manual.

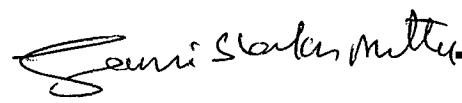
Further, the Hon'ble High Court of Delhi vide its judgment and order dated 16.08.2002 in W.P (C) No. 350/2001 (J.S. Garg -Vs- U.O.I & Ors.) also held that it was obligatory on the part of the Respondents to communicate his purported fall in standard to the petitioner pursuant to or in furtherance of Rule 9 of the CPWD service manual which also confirms that the provision of Rule 9 is mandatory. But the Respondents in the instant case acted illegally by not communicating his downgrade ACRs fall of standard to the applicant which is in utter violation of Rule 9 of the CPWD Service manual as stated above. As such, the impugned ACRs and the impugned order dated 20.11.03 (Annexure-II of the O.A) are liable to be set aside and ignored and must not be acted upon.

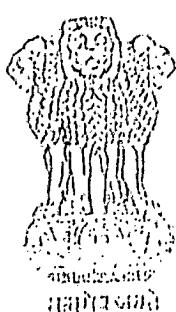
(Copy of the CPWD Manual (relevant pages only) and the judgment dated 16.08.02 are annexed hereto as Annexures-XI and XII respectively)

VERIFICATION

I, Shri Gauri Shankar Mittal, aged about 59 years, now working as Superintending Engineer, Central Public Works Department, Silchar Central Circle, Silchar-2, do hereby verify that the statements made in Paragraph 1 to 2 are true to my knowledge and those made in Paragraph 3 are true to records and I have not suppressed any material fact.

And I sign this verification on this the ____ day of March, 2005.



L.B. NO 191/2008
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कानूनीय लोक नियमित विभाग

C. P. W. D.

नियम-प्रसिद्धिका

MANUAL

भाग 1

VOLUME I

(कार्यालयी, स्थानीय, संस्थान और कार्यपालिका क्रियाएँ)
(Staff, Establishment, Organisation and Office Procedure)1992 क्रमाराम
1991 क्रमारामTrue copy
for reference

mentioned in the earlier report should also be communicated to the officer in a suitable form. A copy of the letter communicating the adverse remarks duly acknowledged by the official concerned should be kept in the CR file and fact of communication of the entries should be recorded in the report itself by the authority communicating them.

While communicating the adverse remarks to the Govt. servant concerned, the identity of the superior officer should not normally be disclosed. The communication should be in the form of a D.O. letter and sent direct to the persons concerned in a sealed cover. The adverse remarks should be communicated within one month of the completion of the report.

Representation against adverse remarks and their disposal

Representation against adverse remarks should be made through proper channel within 15 days of the date of communication of such remarks. However, the competent authority may in its discretion, entertain representation made beyond this time if there is satisfactory explanation for the delay.

Representation against adverse remarks lie to the authority immediately superior to the countersigning authority, if any, or to the reporting officer. If the immediate superior authority has already reviewed the confidential report in question and has also expressed his view either agreeing or disagreeing with the adverse remarks recorded and accepted by the countersigning authority, the representation should, in that event, lie to the next higher authority.

The following procedure should be adopted in dealing with representations from the employees against the adverse remarks communicated to them:

- (1) Representations against adverse remarks should be examined by the competent authority in consultation if necessary, with the reporting officer and countersigning authority, if any.
- (2) If it is found that the remarks were justified and that the representation is frivolous, a note may be made in the confidential report of the petitioner that he did not take the correction in good spirit.
- (3) If the competent authority feels that there is no sufficient ground for interference, the representation should be rejected and the petitioner informed accordingly.
- (4) If however it feels that the remarks should be toned down, it should make necessary entries

separately with proper attestation at the appropriate place of the report. The correction should not be made in the earlier entries themselves.

(5) In the event of the competent authority coming to the conclusion that the adverse remarks were inspired by malice or was entirely incorrect or unfounded, and therefore, deserve expansion, it should order accordingly.

But before doing so, it should bring it to the "notice of the Head of the Department or office if it is an authority other than these.

8. All reporting officers are required to keep a register to enable them to record their observations and instances of good and bad work as they occur from time to time.

9. Apart from the adverse remarks in the confidential reports, in case it is noticed at any time that there is a fall in the standards of an officer in relation to his past performances as revealed through the assessment, his attention should be drawn to this fact so that he can be alerted for improving his performance and does not suffer in his service prospects without knowing about the deterioration in his performance.

10. The general policy should be discouraged the practice of granting letters of appreciation or notes of recommendations to Govt. servants and placing them in the CR dossiers. Exception may however, be made in the following cases:

- (1) Letters of appreciation issued by the Govt. or a Secretary or Head of Department in respect of any outstanding work done may be placed in the CR dossier.
- (2) Letters of appreciation issued by special bodies or Commissions or Committees etc. or experts of their reports expressing appreciation for a Govt. servant by name may also be placed in CR dossier, and
- (3) Letters of appreciation from individual non-officials or from individual official (other than a Secretary or Head of Department) may be placed into the CR dossier if confined to the expressing appreciation for services rendered for beyond the normal call of duty and provided the Secretary or Head of Department so desires.

11. Appreciation of work should more appropriately be recorded in the annual confidential report rather than in such letters of appreciation which do not give a complete perspective of the employee's good and bad points. However, the mere fact that a stray letter of appreciation goes into his CR dossier does not give the officer undue advantage in the matter of promotion which is governed more by consideration of general and consistently high performance than by occasional flashes of good work.

(Ministry of Home Affairs O.M. No. 51/5/72-Estt.(A) dated 20-5-72 as circulated by Central Officer No. 14/1/77-EC VIII dated 25-4-1977.)

Efficiency Bar

12. Where an efficiency bar is prescribed in a time scale, the increment next above the bar shall not be given to a Govt. servant without the specific sanction of the authority empowered to withhold increments under P.R. 24 or the relevant disciplinary rules applicable to the Govt. servant or of any other authority whom the President may, by general or special order, authorises in this behalf.

(P.R. 25)

Procedure for consideration of cases for Crossing of Efficiency Bar

Cases of Govt. servants for crossing of efficiency bar in a time-scale of pay shall be considered by a Committee which shall be the same as the DPC constituted for the purpose of considering cases of confirmation of the Govt. servants concerned.

The following time schedule may be observed in the processing the cases for crossing the efficiency bar:

Months in which the date of crossing the E.B. falls	Months in which E.B. cases should be considered by DPC
1	2
1. January to March	January
2. April to July	April
3. August to October	July
4. November to December	October

*Temporary
Acting
Advocate*

Where reports of performance are not prescribed or maintained for any category of Govt. servants, the administrative Ministry/Department may consider the introduction of written/trade tests for the purpose of assessing the suitability with the above time schedule.

The decision to enforce E.B. should be formally communicated to the Govt. servant concerned in all cases. If a Govt. servant is not allowed to cross E.B. on due date, his case may be reviewed again next year. Such review should be done annually in accordance with the above time schedule.

In the event of DPC being convened after a gap of time following the date on which the Govt. servant became due to cross the E.B., the committee should consider only those confidential reports which it would have considered had the DPC been held as per the prescribed schedule. If the Government servant is found unfit to cross the efficiency bar from original due date, the same DPC can consider the report for subsequent year also, if available to assess his suitability in the subsequent year.

Where a Govt. servant held up at the E.B. stage on account of unfitness is allowed to cross the E.B. at a later date as a result of subsequent review, his pay shall normally be fixed at the stage immediately above the E.B. In case the competent authority proposes to fix his pay at a higher stage by taking into account the length of service from the due date of E.B., the case should be referred to the next higher authority for a decision.

In case of Govt. servant is under suspension, disciplinary proceedings/criminal court proceedings against him are contemplated or pending, the DPC shall assess their suitability without taking into consideration the disciplinary case/criminal prosecution pending against him. However, the recommendations of the DPC shall be kept in a sealed cover. If on conclusion of the disciplinary proceedings the Govt. servant is exonerated of the charges against him, the recommendations in sealed cover may be considered by the competent authority, who may lift the E.B. retrospectively from the date it originally became due. If the proceeding and in imposition of one of the minor penalties the E.B. case may be reviewed by the DPC.

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

Karpal 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 363

Mr. V. Shekhar and Mr. S. Madhavan, 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 363, 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 a Original Application before the Central Administrative Tribunal, New Delhi, questioning the said order dated 2nd February, 1993 which was marked as Original Application No. 2369/99 in June, 1993. Two other persons, namely, Mr. S. Jakkar 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.

To be typed
for advocate

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

1. 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.

2. 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 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 only true 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 the writ 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

6. 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 required 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, dated 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.

THE FIVE YEAR GRADING ASSESSED FROM 1992 TO 1997 WITHOUT UNCONDITIONED REMARKS :

UN DATED 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 ranked 'Good' had never communicated to him. From the facts as noticed hereinbefore, it would appear that although he received the remarks 'good' consecutive for the period 1992-93, 1993-94 as also 1995-96, he received 'very good' remarks 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 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 altered 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 standards. The ACP has clearly held

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 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 sting of aduerseness must in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can periously 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.

S. 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 graced 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 hereunder the petitioner has been superseded by his juniors must be held to be bad in law.

13. The learned Counsel also contended that in the instant case, the petitioner has alleged malice against the respondent No. 7 as contained in para 3 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 ('CPC' for short) makes its own grading solely relying on or on the basis of the CRs of the candidates concerned. Before us, a chart has been placed to show that the other promoted candidates had fulfilled the prescribed bench mark which in the following terms :

Name (S/H.)	Date of birth	of 91-92 92-93 93-94 94-95 95-96 96-97 97-98						
		Good	Good	Good	V.G.	Good	V.G.	Good
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.	V.G.	V.G.	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 ARs. 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 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 a 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 reasonable reach."

Sirman, 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 a 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 qualification 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 68. 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 belie 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. (1973) p 300), where he says :

'Secondly, a Court may hold that it can interfere if 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 criteria are sufficiently elastic

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 reason to interfere if there are no grounds on which a reasonable authority 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.*, (1998) 3 SCJ 143, the law is stated in the following terms :

"It is not in dispute in this case that after the management sent letters 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 the 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 aforesaid pugnacious 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; or, if it is, to *admitus* to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter."

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

19. However, in the facts and circumstances of the case, there shall no order as to costs.