

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. _____

Misc. Petition No. _____

Contempt Petition No. 35/05 (OA 228/04)

Review Application No. _____

Applicant(s) S. K. Pattnaik

Respondent(s) two Sri A. K. D. Jadhav & anrs.

Advocate for the Applicants Mr. M. Chanda, Q. N. Chakrabarty
Mr. S. Nain

Advocate for the Respondent(s) Miss U. Das, ESSC
Addl. CSE
Rly. St. Counsel

Notes of the Registry Date Order of the Tribunal

21.12.05.

Mr. M. Chanda learned counsel for the petitioner. Notice to the Respondents to show cause as to why the Contempt proceeding shall not be initiated against the alleged contemners for alleged non compliance of the directions issued in the order in O.A. No. 228 of 04.

Post the matter on 7.2.06. Affidavit of the respondents in the meantime. Personal appearance is dispensed with for the time being.

This C.P. was filed by the applicant who is a lawyer under Section 17 of the C.A.T. Act, 1985 for initiation of a contempt proceeding against the alleged contemners for non-compliance of the order dated 18.08.2005 passed in OA No 228/04.

Laid before Hon'ble
Court for orders.

1m

07.02.2006

Post on 17.02.2006.

N. S. B.
20.12.05
SOP

mb

Notice & order sent to
D/Section for issuing
to resp. Nos. 1, 2 by
regd. A/D post.

21/1/06. D/No = 11, 12
D/E 3/1/06.

Vice-Chairman

Contd....

17.02.2006 Mr. M. Chanda, learned counsel for the applicant and Ms. U. Das, learned Addl. C.G.S.C. for the respondents were present.

Let the case be posted on 2.3.2006 alongwith the extension petition.

6-2-06

Notice duly served on R. No. 1. (Affidavit filed)

Vice-Chairman

for 2.3.2006

Post the case on 4.4.2006 along with M.P.

6-2-06

bb

An affidavit submitted by the Respondent No. 1.

4.4.06

Post the matter on 18.5.06.

alongwith M.P. No. 10 of 2006.

Vice-Chairman

16-2-06

lm

Affidavit filed on

behalf of the R. No. 1.

Affidavit awaited from R. 2.

My

1-3-06

⑭ Affidavit filed on behalf of the R. No. 1, affidavit awaited from R. No. 2.

(17)

My

~~An affidavit filed by R. No. 1.~~

My

17.3

17-5-06

18.05.2006 Present : Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

An addl. affidavit
has been filed by
R.No. 1, thought Ms.
Usha Das, Addl.
C.G.S.C. at Flag "A"

Heard Mr. M. Chanda, learned
counsel for the applicant and Ms. U. Das,
learned Addl.C.G.S.C. for the alleged
contemners.

Alleged Contemner No. 1 has filed
reply statement. The paragraphs 2, 3 and
4 of the same are quoted below :-

2. Respondents have taken all
steps towards implementation
of the judgment dated
18.8.2005 of the Hon'ble
Tribunal and has requested
UPSC. Since UPSC is the
Competent Authority to hold
the Review DPC as the post
pertains to the Group 'A'
cadre, so the matter is not in
the hands of the respondent.
Thus the Hon'ble Tribunal
may not be pleased to punish
the respondent as the
respondent has already taken
action as per the directions of
Hon'ble CAT order.
3. That the respondent
immediately after receipt of
the judgment sent a proposal
to UPSC for holding Review
DPC and till date UPSC has
not fixed a date for the same.
Hence the respondent is again
requesting UPSC to hold the
Review DPC without delay and
Hon'ble CAT may also be
pleased to issue suitable
orders to UPSC to speed up
the matter.

Contd/-

Contd/-
18.05.2006

4. That the respondent begs to submit that the respondent has taken all steps and hence there is no willful and deliberate violation of the judgment and order passed by this Hon'ble Tribunal. That it is stated that respondent has the highest respect for the orders of the Hon'ble Central Administrative Tribunal, Guwahati bench. The respondent therefore prays that in the circumstances of the case mentioned above, the Hon'ble Central Administrative Tribunal, Guwahati bench may be pleased to exempt the respondent from the contempt proceedings."

It appears that UPSC was not a party in the Original Application. Now, when the matter came up for hearing, learned counsel for the contemnors submitted that whatever is to be done from the side of the Government, has been done, but the ball in the Court of the UPSC and UPSC vide letter dated 17.03.2006 stated that orders of the Tribunal is not in conformity with the instructions of the DOP&T. Learned counsel for the applicant submitted that the respondents and UPSC are sitting over the Judgment and Order of this Tribunal, which is per se contempt. However, four weeks time is granted to both the parties to improve their pleadings.

Post on 16.06.2006.

Vice-Chairman

/mb/

18/5/06

Contempt Petition 35/05

Notes of the Registry	Date	Order of the Tribunal
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26.5.06

16.6.2006

An affidavit or
compliance report for
and on behalf of
Respondent No. 2 has
been filed by the
Additional Case.

Ms. M-Das.

Law before the
Hon'ble Court for further
order.

When the matter came up today Ms.U. Das, learned Addl.C.G.S.C. submits that it has been stated in the letter addressed by UPSC dated 9.6.2006 (Annexure-R-2) that involvement of UPSC in the selection process is not required. However, this Tribunal has passed an order that review DPC should be conducted for which involvement of UPSC is essential. Ms.U.Das, learned Addl.C.G.S.C. has produced a copy of ~~the~~ an order dated 10.5.2005 passed in C.P.35/2003 (OA. 260/02) wherein though UPSC was not a party they were asked to comply with the order and the C.P. was closed.

However, considering the larger issue involved in this case post the matter before the next Division Bench. Counsel for the alleged contemners ~~xxx~~ is directed to give a copy of the order in C.P.38/03 which will be placed on record.

26/5/06

15 - 6 - 06

bb

① Affidavit filed on behalf of R.No-1,2.
② ~~Affidavit awarded to~~
~~com. R.No.~~

01.08.2006 Present: Hon'ble Shri K.V. Sachidanandan, Vice-Chairman

Hon'ble Shri G. Ray,
Administrative Member.

Heard the learned counsel for the parties. Vide orders passed separately the Contempt Petition is closed and dismissed. No order as to costs.

Member

16.6.06

An Additional
affidavit on behalf
of Respndt No 1 has
been filed by Miss
G. Das, Addl. C.G.S.C.
at flag. 'A'

nkm

*Received
Lisha Das
Addl. C.G.S.C.
19/6/06*

Vice-Chairman

C.P. 35/05

Notes of the Registry Date Order of the Tribunal

31-7-06

21.6.07

Affidavit filed on
behalf of R.No-1.

My

Received

Alsha Das
Addl. C.G.S.C.
4/8/06

lm

Ms.U.Das learned Addl. C.G.S.C. for
the respondents has submitted that the
order of this Tribunal has already
complied with and matter may be kept on
record and closed.

✓
Vice-Chairman

Received
Statement
07.08.06.

7.3.07

Compliance report
has been submitted
by the Respondents.

Ok

Received

MM 26/6/2007

for Respondent No.1

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Contempt Petition No.35 of 2005
(In Original Application No.228 of 2004)

Date of Order: This the 1st day of August 2006.

The Hon'ble Shri K.V. Sachidanandan, Vice-Chairman

The Hon'ble Shri G. Ray, Administrative Member

Shri Subodh Kumar Pattnaik,
S/o Late Bansidhar Pattnaik,
Geologist (Sr.), M.G.P. Division,
O/o The Dy Director General, NER,
Geological Survey of India,
Shillong, Meghalaya

.....Petitioner

By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Nath.

- versus -

1. Shri A.K.D. Jadhav,
Secretary, Ministry of Mines,
Shastri Bhawan,
2 Rajendra Prasad Marg,
New Delhi - 110001.

2. Shri M.K. Mukhopadhyaya,
Director General (Acting),
Geological Survey of India,
27, J.L.N. Road, Kolkata.

.....Alleged Contemners/
Respondents

.....

✓

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

Heard Mr M. Chanda, learned counsel for the applicants and Ms U. Das, learned counsel for the respondents.

2. The UPSC were not parties to the O.A. wherein this court vide order dated 18.08.2005 has given a direction as follows:

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

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

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

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

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

3. The specific direction of the court was to convene a Review DPC for selection to the post of Director (Geology) and consider the case of the applicant in the light of the observations made in the order and pass appropriate orders in the matter within a period of three months from the date of receipt of the order. The order was dated 18.08.2005. When the matter was not complied with the applicant has filed this Contempt Petition for non-compliance of the order of this Tribunal.

4. The learned counsel for the respondents, has filed a detailed written statement wherein it is stated that on receipt of the order of the Tribunal dated 18.08.2006, a proposal was sent to the UPSC for holding a Review DPC. The UPSC in turn has given a letter to the respondents, which is reproduced as under:

"Dear Shri Jadhav,

Please refer to your letter No.10/69/2004-M II dated 01.06.2006 regarding Review DPC for the post of Director (Geology) in Geological Survey of India on the basis of the order dated 18.08.2005 passed by the Hon'ble CAT, Guwahati Bench in O.A.No.228/2004 filed by Shri S.K. Pattnaik, Geologist (Sr.), GSI.

The main crux of the problem is that the Hon'ble CAT had presumed that in this case bench mark of Very Good was not applicable prior to 08.02.2002. This is not correct as the Bench Mark system was introduced by the Government w.e.f. 10th April, 1989 onwards. As such the observations of the Hon'ble Tribunal are not in keeping with the instructions issued by DOP&T regarding the applicable bench-mark in the instant case.

As regards Para 31 of the order dated 18.08.2005, the DPCs are held strictly in accordance with the statutory Recruitment Rules and the relevant guidelines/instructions issued by the Govt. of India in the DOP&T vide their O.M. No.22011/5/85-Estt (D) dated 10.04.1989 which stipulates that at present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. While merit has to be

recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the ACRs and based on the strict and rigorous selection process. There are no such instructions from DOP&T according to which DPC can eschew the downgrading of ACRs/remarks given by the Reviewing and Accepting authority etc. In view of this, since the orders of the Hon'ble Tribunal are not in conformity with Govt. of India instructions on service matter, consultation with Ministry of Law and DOP&T on the question of filing appeal before implementation of the court orders in terms of O.M.No.20027/9/99-Estt(A) dated 1st May, 2000 (copy enclosed) has become all the more necessary."

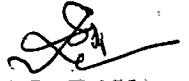
5. The UPSC had also recommended filing of an appeal in consultation with Ministry of Law and DOP&T in terms of certain O.M. However, when the matter came up for hearing, the learned counsel for the respondents submitted that in an identical matter this court directed to furnish a copy of the order to the UPSC and due compliance may be ensured. The learned counsel for the respondents submitted that as far as the respondents are concerned they have already complied with the order on their part and what is left is with the UPSC.

6. In view of the above we direct the respondents to write to the UPSC with a copy of this order with direction for convening a Review DPC as directed by this Tribunal and finalise compliance of this order as expeditiously as possible at any rate within a period of three months from the date of receipt of this order.

7. In the circumstances of the case we do not find any reason to hold this Contempt Petition on file and therefore the Contempt Petition is closed and dismissed on the ground that substantial compliance has been made by the respondents.

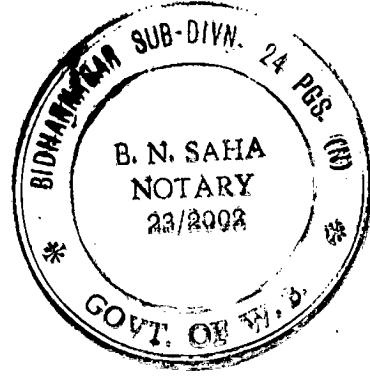
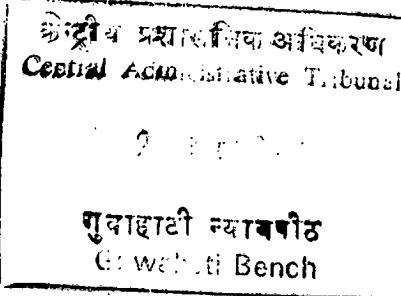
8. The applicant is also given liberty to approach the appropriate forum, if the applicant has got any further grievance.

The Contempt Petition stands closed and dismissed. No costs.


(G. RAY)
ADMINISTRATIVE MEMBER


(K. V. SACHIDANANDAN)
VICE-CHAIRMAN

nkm



2
I.Y. & It. C. & Gen. rul. (RD)
Geological Survey of India
Eastern Region
Guwahati Bench
Sub-Div. Ch. No. 26/5704

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Contempt Petition No. : 35/2005
in Original Application No. 228/2004

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

----- Petitioner

-Versus-

Shri M.K. Mukhopadhyay
Director General (Acting)
Geological Survey of India
27 J.L. Nehru Road,
Kolkata- 700016

----- Alleged Contemner/
Respondent No. 2

And

IN THE MATTER OF :

An Affidavit and/ or Compliance Report for and on
behalf of Respondent No. 2

I, Shri M.K. Mukhopadhyay, son of late Jitendorn Nath Mukhopadhyay

Ex- Sr. Dy. Director General, Geological Survey of India, Eastern Region, Kolkata do
hereby solemnly affirm and state as follows :-



1. That I am the Respondent No. 2 in the instant Contempt Petition and have gone through the aforesaid contempt petition filed by the petitioners and have understood the contents thereof and I am well acquainted with the facts and circumstances of the case based on records.
2. At the outset I submit that I have the highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any order passed by the Hon'ble Tribunal. I also beg to state that I had no involvement in the decision making process hence there is no question of violation of your Lordships judgment dated 18.08.2005 in OA No. 228/2004 pronounced by the Hon'ble Tribunal.
3. That there is no any willful or deliberate and reckless disobedience of the aforesaid order by me in my service tenure and showing any contempt to the order of this Tribunal does not arise.
4. That, I was made party to the case while holding the post of the Director General (Acting), in the office of Geological Survey of India, Central Hqr., Kolkata at that point of time and I have now been retired from Government service w.e.f. 31.03.2006 (A.N.).

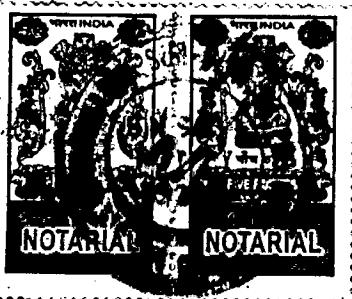
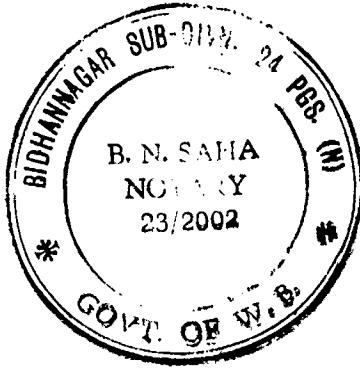
A copy of order of retirement on superannuation is annexed and marked as Annexure-I.

P R A Y E R

Under the above circumstances, your Lordship would be pleased to admit this petition/affidavit and delete/ strike out my name from the instant case for the ends of justice and equity.

- And -

For this act of kindness your petitioner shall ever pray



BEFORE THE NOTARY PUBLIC

AFFIDAVIT

I, Shri M.K. Mukhopadhyay, son of late Jitendra Nath Mukhopadhyay
Ex- Sr. Dy. Director General, Geological Survey of India, Eastern Region, Kolkata, aged
about 60 years, resident of 31/M, Block-H, B.P. Township, Kolkata. 700094
do hereby solemnly affirm and say as follows :

1. That I am the respondent No. 2 in the above case .
2. That the statement made in Para to of the Written Statement are true
to the best of my knowledge and belief.

SIGNATURE

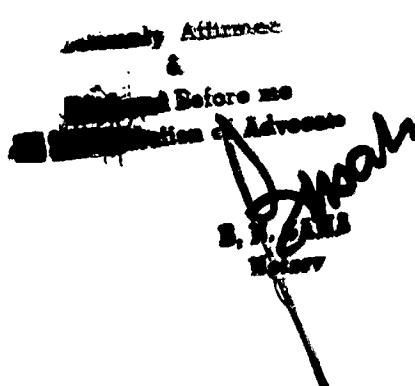
Identified by :

M K. MUKHOPADHYAY
Ex- Sr. Dy. Director General (Rtd)
Geological Survey of India
Eastern Region.

Advocate

Solemnly affirmed before me by the
deponent Shri M.K. Mukhopadhyay, who is
identified by U. P. Pal
Advocate at Kolkata on the 16th
day of May, 2006.


B. N. SAHA
NOTARY
Bhush Bhawan
North Block, Gr. floor
Babu Nagar, Kolkata
West Bengal



16 MAY 2006

GOVERNMENT OF INDIA

Annexure - 1

No. 198 /ER/Adm.(G)/Charge Report/2006

Dated the 10th May' 2006

From
Office of the
Deputy Director General,
Eastern Region,
Geological Survey of India,
Block DK - 6, Sector - II,
Salt Lake,
Kolkata - 700091.

To
The Director General,
Geological Survey of India,
27, J. L. Nehru Road,
Kolkata - 700016.

Attention : Deputy Director General (Personnel),
Geological Survey of India,
Central Headquarter, Kolkata.

Subject : Charge Report for handing over charge
consequent upon superannuation
retirement.

Sir,

Enclosed please find Charge Report, in duplicate, in respect
of Shri M. K. Mukhopadhyay, Senior Deputy Director General, Eastern
Region, Geological Survey of India, Kolkata, consequent upon his supera-
nnuation retirement w.e.f. 31.3.2006 (A.M.).

Yours faithfully,

Enclo : As above.

(C. Chakraborty Biswas)
Administrative Officer Gr.-I
for Director,
Eastern Region,
Geological Survey of India.

No. /ER/Adm.(G)/Charge Report/2006 Dated the 10th May' 2006

Copy together with copy of Charge Report forwarded for
information and necessary action to :-

1. The Director (Personnel), Geological Survey of India, Central
Headquarter, 27, J.L. Nehru Road, Kolkata - 700016.
2. The Director (Adm.), Geological Survey of India, Central Head-
Quarter, 27, J.L. Nehru Road, Kolkata - 700016.
3. The Controller of Accounts, Central Pay and Accounts Office
(Department of Mines), Geological Survey of India,
16A, Brabourne Road, Kolkata - 700001.
4. The Administrative Officer, Account - I Section, Eastern Region,
Geological Survey of India, Salt Lake, Kolkata - 700091.

(C. Chakraborty Biswas)
Administrative Officer Gr.-I
for Director,
Eastern Region, Geological Survey of
India.

Amrit
Bardham 11/5/06
Mamata Bardhan
Administrative Officer Gr. II
Eastern Region
Geological Survey of India.

6

बज़ारा अधिकारी के वर्णन/Details of Treasury Balances

विवरण/Description*	दोहरे लॉक में Under double locks	कोपाता के पास With treasurer	नव छताने में In Sub-treasuries	गोपनीय Total
1. सुरक्षित अधिकारी में रखी गयी सरकारी प्रति- भूतियां Government Securities held in safe custody
2. जमाकर्ता के ज्ञाप खाते अतिशेष रु. Balance at credit of Depositor, Rs.
(a) नोट्स* (a) Notes* (b) सिंपके:— (b) Coins— (i) चांदी* Silver* (ii) निकल* Nickel* (iii) तांबा कांसा* Copper and Bronze* (iv)
3. स्टाम्प और दियासनाइट्रों के उत्पादन-शुल्क बैन्डरोल। Stamps and Match Excise Bandrols
4. अफीम मनों रु. Opium in maunds
5. रिजर्व बैंक द्राफ्ट प्रस्तुत आदि (संख्या) Reserve Bank Draft Forms, etc. (Number)
6. चेक प्रस्तुत (संख्या) Cheque Forms (Number)

*विभिन्न अधिकारी के नोट और सिंपके पूर्वकतः दर्ज किये जायेंगे, अध्यवलित रिकॉर्ड की भी यदि नोट्स ही, सुमित्रता दर्जित रिकॉर्ड जाएंगे।

£इस सामग्री में रोकड़ धाकी का बही योग वर्णित किया जाना चाहिए जो उत्तराखण्ड में, नोट और शिक्के आदि के विवरणों

के बिना प्राप्त नवीनतग दैनिक शीटों में अंकित किया गया है।

£The total of the cash balance reported in the latest daily sheets received from sub-treasuries without any details of notes or coins etc. need only be shown in this column.

स्थान/Station: Kolkata - 91
तारीख/Date: 31.03.1996 19

Receiving Officer

प्रभार गद्दण करने वाला अधिकारी

Relieving Officer

MGIPRRNID/570 GIES/95—II—D—13-6-95--2,00,000

11/5/06
Bardhaman
Mamata Bardhan
Administrative Officer Gr. II
Administrative Section
Geographical Survey of India

20 DEC 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH: GUWAHATI

(An application under Section 17 of the Administrative Tribunal Act, 1985)

CONTEMPT PETITION No. 35 /2005

In O.A No. 228/2004

In the matter of:

Shri Subodh Kumar Pattnaik

... Petitioner.

-Versus-

Union of India & Ors.

-And-

In the matter of:

An application under Section 17 of the Central Administrative Tribunals Act, 1985, praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the order dated 18.08.2005 passed in O. A. No. 228/2004.

-And-

In the matter of:

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

... Petitioner.

-Versus-

Filed by the petitioner
through: Subodh Nath
Advocate
20.11.05

1. Shri A.K.D. Jadhav,
Secretary, Ministry of Mines,
Shastri Bhawan,
2, Rajendra Prasad Marg,
New Delhi- 110 001.

2. Shri M.K. Mukhopadhyaya,
Director General (Acting),
Geological Survey of India,
27, J.L.N. Road,
Kolkata- 700 016.

... Alleged contemnors/
Respondents.

The humble petitioner above named

Most respectfully sheweth:-

1. That your petitioner being aggrieved with the impugned Memorandum No. __/ A-32013/1-Dir (G)/2003-04/19 A dated 13.08.2004, issued from the Office of the alleged contemnor No. 2, whereby 64 Officers have been promoted from the post of Geologist (Sr.) to the post of Director (Geology) including some Juniors of the petitioner ignoring name of the petitioner approached this Hon'ble Tribunal through O. A. No. 228/2004, praying for a direction to the respondents to promote the petitioner to the grade of Director (G) with effect from the date his juniors were promoted by holding a review DPC, ignoring uncommunicated downgraded ACR, with all consequential service benefits including arrear etc.
2. That this Hon'ble Tribunal after hearing contention of the parties was pleased to dispose of the O.A. No. 228 of 2004 on 18.08.2005, directing the respondents as follows: -

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

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

(A Copy of the judgment and order dated 18.08.2005 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- I).

3. That petitioner begs to state that immediate after receipt of the judgment and order dated 18.08.05 passed in O.A. No. 228/2005, he approached the alleged contemner No. 1 through a representation dated 07.09.2005 enclosing a copy of the judgment and order dated 18.08.05, praying for compliance of the direction of this Hon'ble Tribunal.

(Copy of the representation dated 07.09.2005, <sup>and forwarded letter
and due</sup> is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- II).

4. That the humble petitioner begs to state that more than 3 (months) time have passed since the passing of the judgment and order by this Hon'ble Tribunal but the alleged contemnors have not initiated any action for implementation of the direction passed by this Hon'ble Tribunal in it's judgment and order dated 18.08.2005.
5. That it is stated that the alleged contemnors deliberately and willfully did not initiate any action for implementation of the judgment and order dated 18.08.2005 passed in O.A. No. 228/2005, which amounts to contempt of Court. Therefore, the Hon'ble Tribunal be pleased to initiate a

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Contempt proceeding against the alleged contemnors for willful violation of the order dated 18.08.2005 in O.A. No. 228/2005 of this Hon'ble Tribunal and further be pleased to impose punishment upon the alleged contemnors in accordance with law.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate Contempt proceeding against the alleged contemnors for willful non-compliance of the judgment and order dated 18.08.2005 passed in O.A. No. 228/2004 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.

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AFFIDAVIT

I Shri Subodh Kumar Pattnaik, S/o- Late Bansidhar Pattnaik, aged about 57 years, working as Geologist (Sr.), MGP Division, office of the Director General, NER, Geological Survey of India, do hereby solemnly declare as follows:-

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statements made in paragraph 1 to 5 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before this Hon'ble Tribunal, Guwahati Bench, Guwahati for non-compliance of the Hon'ble Tribunal's order dated 18.08.2005 passed in O.A. No. 228/2004.

And I sign this Affidavit on this 19th day of December 2005.

Subodh Kumar Pattnaik
Deponent

Identified by
Surajit Choudhury
Advocate.

The above named deponent has solemnly affirmed and declared before me on this the 19th day of December '05 who is identified by Shri Surajit Choudhury.

Subodh Kumar Pattnaik
Advocate.

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of the order of the Hon'ble Tribunal dated 18.08.2005 passed in O.A. No. 228/2004 and further to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 18.08.2005 passed in O.A. No. 228/2004.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.228 of 2004

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

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

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

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

.... Applicant

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

- Versus -

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



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

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

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

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

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

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

... Respondents

ORDER

SIVARAJAN. J. (V.C.)

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

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

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

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

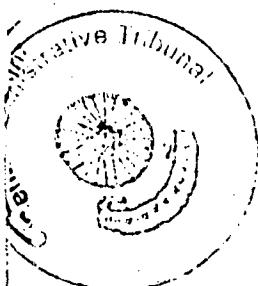
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his claim. He had also alleged mala fide against his reporting authority, the 7th respondent.

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

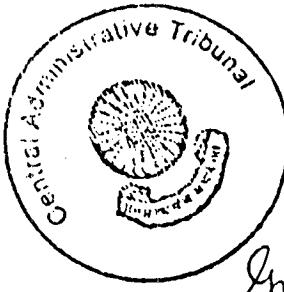
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has been accepted by him in the O.A. The applicant, it is stated, was not recommended by the DPC for promotion keeping in view his performance; his senior and junior were recommended according to the performance/grading reflected in their CRs.

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

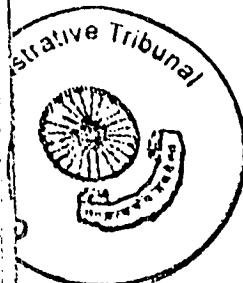
6. Learned Mr J.L. Sarkar assisted by Mr M. Chanda, learned counsel for the applicant, and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. An officer from New Delhi has brought the confidential records of the applicant and also the DPC proposal records maintained by the Government of India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



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

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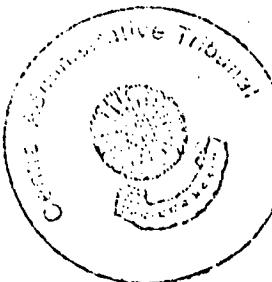
Authorities. He also submitted that the malafide action of the Reporting/Reviewing/Accepting Authorities had vitiating the entire proceedings.

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

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

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

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

10. Now let us consider the vital issue involved in the case

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

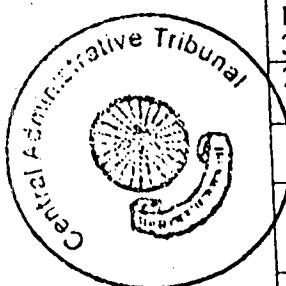
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years 1998-99 to 2002-2003 for the vacancies for the year 2004-2005. The gradings given for the above years are also furnished. It is also stated that as per the criteria adopted by the UPSC, if an officer having four Confidential Reports out of five Confidential Reports up to the Bench Mark then he will be recommended for promotion to the higher grade. The applicant, it is stated, did not satisfy the above and therefore he was not recommended by the DPC for promotion to the post of Director (Geology).

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

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

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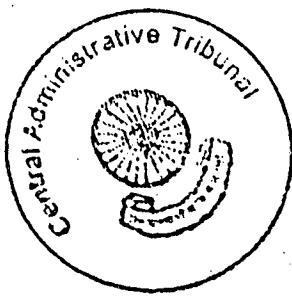


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From the above it is seen that the applicant's grading was 'Good' for the first half of 1996-97 and 'Very Good' for the second half. Similarly, for the first half of the Assessment Year 1997-98, though the Reviewing Authority had graded 'Very Good',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

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

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

"It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy."

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

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

"..... The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon the facts or circumstances. Though sometimes, it may not be part of record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before

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

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

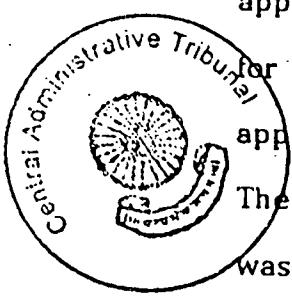
"2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

"3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration

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

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



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

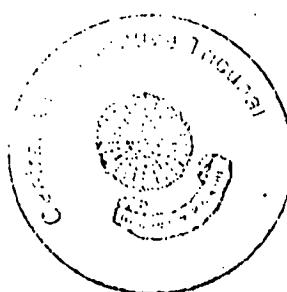
19. This Bench had also occasion to consider a similar case to which one of us (Hon'ble Administrative Member) was a party in Dr Ajoy Roy Vs. Union of India and others, 2005 (1) SLJ (CAT) 243. The applicant therein, a Divisional Medical Officer in the Railway Hospital was not considered for the Junior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

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

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

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



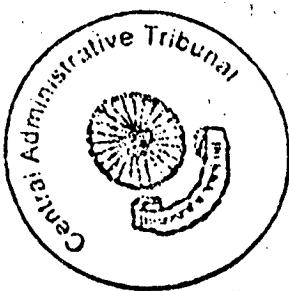
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declaration that the applicant is unfit will not stand in its legs and the impugned action is to be set aside."

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

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

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



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

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

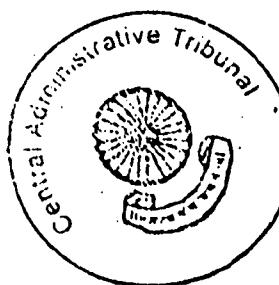
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has been downgraded to 'Good' by the Accepting Authority. It was argued that downgrading of the 'Very Good' remark to 'Good' by the Accepting Officer amounts to adverse remark and as such should have been communicated to the applicant before the same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

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

23. It is unnecessary for us to refer to any more decisions of

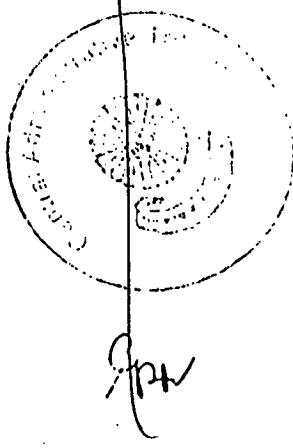
Courts and Tribunals, for, the Government of India, Geological Survey of India, Kolkata itself issued a Circular No.DDG(P)/GSI/Conf/04 dated 26.2.2004 (Annexure-XIX to the application) which deals with the procedure related to writing of confidential reports and communicating entries thereof. The procedure prescribed therein accords with the legal principles stated hereinabove. It refers to the need for evolving



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clear guidelines with regard to the question of communication of entries in the ACRs to the reportee in view of a large number of administrative orders and decisions of the Tribunals and Courts including the decisions of the Hon'ble Supreme Court. It is stated that there is some confusion as to what constitutes adverse remarks, whether and under what circumstances an advisory remark is to be deemed adverse and whether downgrading of a reportee's overall assessment as compared to the previous years, even where the new assessment is not adverse in itself, is to be considered as adverse and thus needs to be communicated to the reportee. It was observed that a related question which also arises is that where the overall assessment of the reportee falls below the benchmark prescribed for his promotion to the next senior grade, then should such an entry be deemed adverse or not. The circular then refers to the decision of the Supreme Court in U.P. Jal Nigam and others Vs. Prabhat Ch. Jain and others, 1996 (2) SCC 363 and observed that the said decision provides clear guidelines with regard to the above mentioned issues. The circular refers to the observations of the Supreme Court that "Even a positive confidential entry can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true" and observed thus:

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



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

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

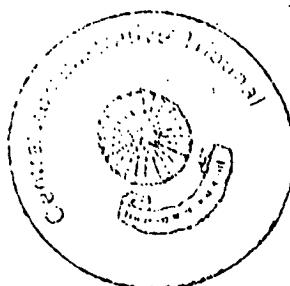
Note: The communications as above should be effected within one month of the remark/rating being recorded.

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

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

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

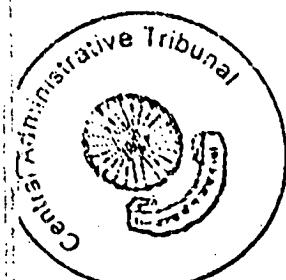
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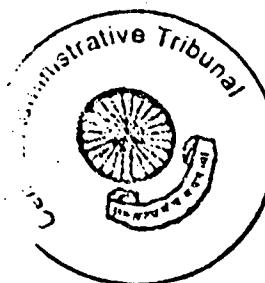
job in public interest to make a realistic assessment of the work and conduct of the employees working under them. The said authorities, in the circumstances, must read beforehand all the relevant instructions and guidelines on the subject issued by the Government from time to time to understand the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

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

[Signature]



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



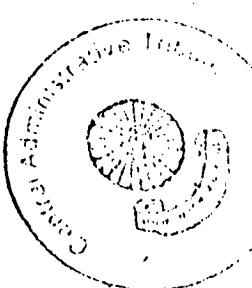
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all the authorities have assigned 'Very Good' to the applicant, but for the years 2002-03 and 2003-04 only 'Good' grading is given to the applicant by all the authorities. Here it must be noted for the year 2002-03 the Reporting Authority had only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

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

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

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

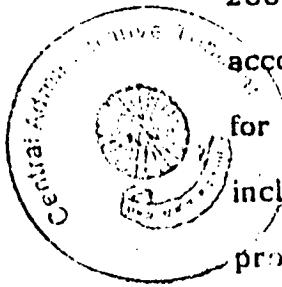


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Thus it will be seen that when an employee is being considered for promotion by selection, he is required to be found "Fit" for such promotion on the basis of his service record and CRs for the preceding 5 years. It follows that in case the overall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

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

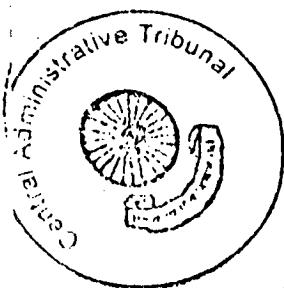
28. Now, reverting to the present case, the case of the applicant for promotion to the post of Director (Geology) in the scale of pay of Rs.12000-16,500/- was considered for the years 2003-04 and 2004-05. The ACRs, relevant for the assessment year 2003-04, according to the respondents are the years 1997-98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



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

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



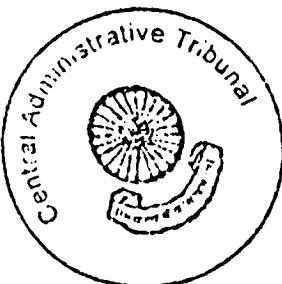
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any reason and for two years had downgraded as 'Good' stating that the applicant 'is not a willing field worker'. In this context it is also relevant to note that the very same Accepting Authority who had assigned 'Good' for 1998-99 and first part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

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

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

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

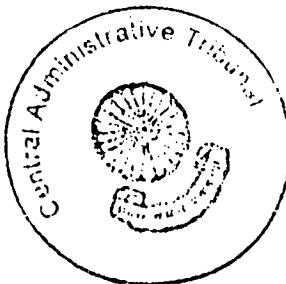


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alkaline complex' (BRAC) in Nuapara district of Orissa and studied it quite elaborately as regards its tectonics, petrology, geochemistry and petrogenesis with specific details regarding alkaline magnetism. He has classified the hitherto unclassified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

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

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

the applicant has relied on a large number of

the years 2003-04 and 2004-2005.

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

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

The application is allowed as above. No order as to costs.
Sd/ VICE CHAIRMAN

SD/VICE CHAIRMAN
SD/MEMBER (A)

26. 8. 05
31. 8. 05
31. 8. 05

✓ 31/8/05
Sect. 1
C.A.L. to submit revised
General

No.01/SKP/GSI/CAT/O.A-228/2004

Dated .07.09.2005.

To :
The Secretary,
Govt. of India,
Ministry of Mines,
Shastri Bhawan,
New Delhi.

(Through Proper channel)

Sub : Judgement and order dated 18.08.2005, passed on O.A. No.228/2004
(Sri Subodh Kumar Patnaik -Vs-Union of India and Others) by the
Honble Central Administrative Tribunal, Guwahati Bench,Guwahati,
Implementation of - regarding.

Sir,

With due respect and humble submission I beg to inform you that my O.A, as quoted above, filed in the Hon'ble CAT, Guwahati Bench, has been kindly allowed vide their Lordship's judgement and order dated 18.08.2005, collected on 31.08.2005. The photocopy of the judgement and order (27 pages), duly attested, is enclosed, herewith, for your kind information and necessary action for its implementation.

With kind regards.

Encl : As above.

Yours faithfully,

Subodh Kumar Patnaik
07.09.2005

(SUBODH KUMAR PATNAIK)
Geologist (Sr.), TCD,
OP:AMN, GSI, NER, SHILLONG.

Received
17/09/2005
Geologist
TCD
OP:AMN
GSI, NER, SHILLONG
Subodh Kumar Patnaik
07.09.2005

Attested
Subodh Kumar Patnaik

GOVERNMENT OF INDIA

रा./No. /DDG/ADMN/NER/2005

प्रेसका/From:
 उप प्रभारी/Deputy Director General
 भारतीय गैजेटिकल सर्वेषन /Geological Survey of India
 नॉर्थ एस्टर्न रेजियन /North Eastern Region
 'जोरेम', नोंग्रिम हिल्स /'ZOREM', Nongrim Hills
 पोस्ट बॉक्स सं. ११ /Post Box No. 11
 शिल्लंग /Shillong - 793003



दिनांक/Dated, 07 - 09 - 2005
 Telegram : GEOSURVEY SHILLONG
 फ़ॉन्स : (0364) - 2520228 | FAX : 2520033
 EPBX : 2521506, 2521407, 2520429
 E-mail : meggsi@sanchurnet.in

To
 The Director General
 Geological Survey of India
 27, J.L.Nehru Road
 Kolkata - 700016

Sub :- Forwarding a letter as received from Shri S.K.Patnaik, Geologist(Sr.), GSI, NER.
 regarding judgement of Hon'ble CAT, Guwahati.

Sir,

Please find enclosed a letter along with other enclosures as received from Shri S.K.Patnaik, Geologist(Sr.), GSI, NER as regards the judgement and order dated 18th August, 2005 passed on OA No. 228/2004 by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for your kind perusal and necessary action.

Yours faithfully,

(Dr. Vimal Kumar)
 Director
 for Dy. Director General

No. 860 /DDG/ADMN/NER/2005

Dated 07 - 09 - 2005

Copy forwarded for information to:
 Shri S.K.Patnaik, Geologist(Sr.), OP:AMN, Geological Survey of India, NER, Shillong.

(Dr. Vimal Kumar)
 Director
 for Dy. Director General

- 1 FEB

गुवाहाटी बायपोर्ट
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH

Filed by
Respondent/Complainant
through
Globe
Date
6/2/2005
the

Contempt Petition No. : 35/2005
in Original Application No. 228/2004

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

Versus

Shri A.K.D. Jadhav
Secretary
Government of India
Ministry of Mines
New Delhi ----- Respondent No. 1

And

IN THE MATTER OF :

An Affidavit for and on behalf of Respondent No. 1

I, Shri A.K.D. Jadhav, son of

Jawlatrao Gulji Jadhav

working as Secretary, Government of India, Ministry of Mines, New Delhi do hereby solemnly affirm and state as follows :

1. That I am the Respondent No. 1 in the Contempt Petition and have gone through the aforesaid contempt petition filed by the applicant have understood the contents thereof and I am well acquainted with the facts and circumstances of the case based on records.
2. That with regards to Para 1,2 and 3 of the Application, the Respondent No. 1 begs to state that these are matter of record.

3. With regards to Para 4 of the application, the respondent No. 1 begs to state that :

- (i) That the respondent has initiated action for convening the Review Departmental Promotion Committee (hereinafter as DPC) for selection to the post of Director (Geology) at the earliest date as per the directions of the Hon'ble Central Administrative Tribunal, Guwahati Bench and that the delay in the implementation of the Hon'ble Central Administrative Tribunal, Guwahati Bench directions is not the willful delay.
- (ii) That it is stated that Hon'ble Central Administrative Tribunal, Guwahati Bench direction dated 18.08.2005 passed in the Original Application No. 228/2004, filed by Shri S.K. Pattnaik Vs. UOI and Others was received on 12th September 2005 and accordingly Geological Survey of India was requested to furnish the DPC proposal for promotion of Shri S.K. Pattnaik, Geologist (Sr.) to the post of Director (Geology) on 23.09.2005 for timely compliance of Hon'ble Central Administrative Tribunal, Guwahati Bench order.
- (iii) That subsequent to the receipt of the Review DPC proposal from Geological Survey of India on 13.10.2005, the proposal was sent to the Union Public Service Commission (UPSC), who is the competent authority to convene DPC/Review DPC for Group A officers, to convene a Review DPC meeting at an early date keeping in view the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 18.08.2005.
- (iv) That the UPSC, while scrutinizing the proposal however, advised this Ministry to consult the Department of Personnel & Training (DOPT) and Department of Legal Affairs (D/o LA) in accordance with the DOPT's Office Memorandum No. 20027/9/99-Estt (A) dated 01.05.2000, vide their letters dated 08.11.2005 and 06.12.2005.
- (v) That thereafter the case was referred to DOPT on 20.12.2005 and subsequent to receipt of the case on 04.01.2006 by the Ministry, it was referred to D/o LA on 12.01.2006 for their advice in the matter of compliance of Hon'ble Central

Administrative Tribunal, Guwahati Bench order dated 18.08.2005. The advice of D/o Legal Affairs has been received on 16th January, 2006 and UPSC has been again requested to convene the Review DPC at the earliest in compliance of Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 18.08.2005.

4. With regard to Para 5 of the Application, the Respondent No. 1 begs to state that the Respondent has initiated action for convening the Review DPC for selection to the post of Director (Geology) at the earliest date as per the directions of Hon'ble Central Administrative Tribunal, Guwahati Bench and that the delay in the implementation of Hon'ble Central Administrative Tribunal, Guwahati Bench directions is of administrative nature and not the willful delay.
5. That it is stated that respondent has the highest respect for the orders of Hon'ble Central Administrative Tribunal, Guwahati Bench and regrets any inconvenience caused inadvertently to the Hon'ble Central Administrative Tribunal, Guwahati Bench. The respondent therefore prays that in the circumstances of the case mentioned above, the Hon'ble Central Administrative Tribunal, Guwahati Bench may be pleased to exempt the respondent from the contempt proceedings and further be pleased to grant extension of time of at least three months for consideration of implementation of Hon'ble Central Administrative Tribunal, Guwahati Bench direction dated 18.08.2005.

....Affidavit...

51

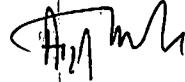
AFFIDAVIT

I, Shri A.K.D. Jadhav, son of Daulat Rao Gulabji Jadhav

Secretary, Government of India, Ministry of Mines, New Delhi, aged 58 about years, resident of New Delhi

do hereby solemnly affirm and say as follows :

1. That I am the respondent No. 1 in the above case and I am acquainted with facts and circumstances of the case.
2. That the statement made in Para 1 to 5 of the Written Statement are true to the best of my knowledge and belief.



ए.के.डी.जाधव/A.K.D. JADHAV

सचिव/Secretary

खान मंत्रालय/Ministry of Mines

भारत सरकार/Govt. of India

नई दिल्ली/New Delhi

Identified by :


Elsha Das

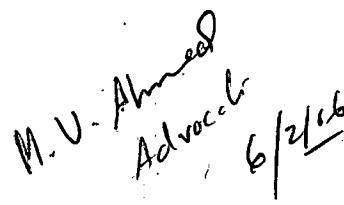
Advocate

Solemnly affirmed before me by the deponent Shri A.K.D. Jadhav, who is

identified by Elsha Das.

Advocate at Gulby on the day of

6/2/2006.


M.V. Ahmed
Advocate
6/2/06

Atten!- A.K. Bora

- 5 -

Fax/speed post

No. 10/89/2004-M.II
 Government of India
 Ministry of Mines

New Delhi, the 18th January 2006

To

The Secretary,
 Union Public Service Commission,
 Dholpur House,
 Shahjahan Road,

New Delhi

Sub: Review DPC- promotion to the post of Director (Geology) In Geological Survey of India

Sir,

I am directed to refer to UPSC's letter No. 1/63(17)/2005-AP-4 dated 6th December 2005 on above subject and to say that the Department of Personnel & Training and D/o Legal Affairs have been consulted, in view of DOPT's OM dated 1.5.2000, for implementation of the Hon'ble CAT Guwahati bench order dated 18.8.2005 passed in the OA No. 228/2004 filed by Shri SK Pattnaik vs UOI and others.

2. The DOPT had advised to take further course of action in consultation with D/o Legal Affairs. The D/o Legal Affairs have gone through details and also the advice of DOPT and opined that the Hon'ble High Court would not like to interfere with the CAT, Guwahati bench order dated 18.8.2005.

3. UPSC is therefore requested to convey the decision of the Review DPC at the earliest, taking into account this fact that the time limit for implementation of Hon'ble CAT order has already expired on 30th November 2005 and that the applicant has initiated the contempt proceeding.

Yours faithfully,

(Prem Prakash)
 By Secretary to the Govt of India

Notice

56

Date - 6/2/06.

From,

Usha Das,
Advocate

To,

Mrs. M. Chander

Mr. S. Nath

Advocates

Sub: C.P.No 35/05 In O.A.No. 228/04

Sir,

Please find herewith a copy
of a reply filed against the
C.P. by the Respondent No. 1.
Kindly acknowledge the receipt
thereof.

Thanking You.

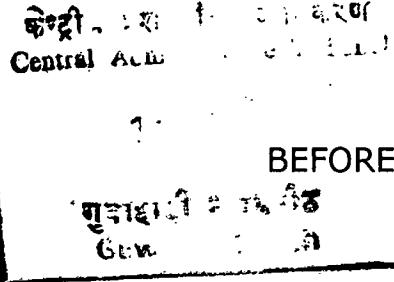
Sincerely Yours,
Usha Das.
Advocate

Received

Advocate

I undertake to serve
a copy on Mr. S. Nath,
Advocate as and
when he will be
available

Usha Das.
Advocate



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

CP. No. 35/2005
IN OA No. 228/2004

SHRI SUBODH KUMAR PATTNAIK

PETITIONER

VERSUS

SHRI A.K.D. JADHAV,
Secretary, Ministry of Mines,
New Delhi

RESPONDENT No. 1

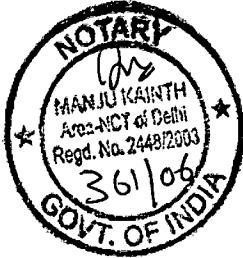
IN THE MATTER OF

An additional affidavit filed by the respondent No. 1

I, A.K.D. Jadhav, son of Shri Daulatrao Gulaji Jadhav, aged about 59 years, at present working as Secretary, Government of India, Ministry of Mines, New Delhi, do hereby solemnly affirm and state as follows:

1. That on 4.4.2006 when the above-mentioned Contempt Petition came up for hearing the Hon'ble Tribunal was pleased to grant time to implement the judgment and order dated 18.8.2005 passed in OA No. 228/2004 till 18.5.2006. The Union Public Service Commission (UPSC), New Delhi has once again been requested for holding Review DPC as early as possible but UPSC have not given any date for the same till date.
2. Respondents have taken all steps towards implementation of the judgment dated 18.8.2005 of the Hon'ble Tribunal and has requested UPSC. Since UPSC is the Competent Authority to hold the Review DPC as the post pertains to the Group 'A' cadre, so the matter is not in the hands of the respondent. Thus the Hon'ble Tribunal may not be pleased to punish the respondent as the respondent has already taken action as per the directions of Hon'ble CAT order.

52
Filed by
the Respondent
No. 1
Tharang
Subodh Das
A.K.D. JADHAV
Secretary
Ministry of Mines
Government of India
New Delhi
Shri Subodh Kumar PATTNAIK
Petitioner
Date: 10/07/2006



-2-

58

3. That the respondent immediately after receipt of the judgment sent a proposal to UPSC for holding Review DPC and till date UPSC has not fixed a date for the same. Hence the respondent is again requesting UPSC to hold the Review DPC without delay and Hon'ble CAT may also be pleased to issue suitable orders to UPSC to speed up the matter.
4. That the respondent begs to submit that the respondent has taken all steps and hence there is no willful and deliberate violation of the judgment and order passed by this Hon'ble Tribunal. That it is stated that respondent has the highest respect for the orders of the Hon'ble Central Administrative Tribunal, Guwahati bench. The respondent therefore prays that in the circumstances of the case mentioned above, the Hon'ble Central Administrative Tribunal, Guwahati bench may be pleased to exempt the respondent from the contempt proceedings.
5. That this affidavit has been filed bonafide and to secure ends of justice.



Notary signature *Reg. ent. No 361/06*

Solemnly affirmed before me read over & explained to the deponent

[Signature]
Notary Public, Delhi

[Signature]
(Deponent)

ए.के.डी.जाधव/A.K.D.JADHAV
सचिव/Secretary
योग मंत्रालय/Ministry of Mines
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

16 MAY 2006

3
S.R.P. 28(EP)
No. 10/89/2004-M.II
Government of India
Ministry of Mines

Most immediate
Court case

New Delhi, the 28th April 2006

To

The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi

[Attn: Shri PC Barnwal, Joint Secretary]

Sub: Review DPC for promotion to the post of Director (Geology) in Geological Survey of India

Sir,

I am directed to refer to your letter No. 1/63(17)/2005-AP-4 dated 17th March 2006 on above subject and to say that the matter as advised at para 4 therein is being considered in consultation with DOPT and M/o Law, which is likely to take some time. The present position in this regard is that the applicant of the OA No. 228/2004 Shri SK Pattnaik has filed a contempt petition No. 35/2005, which is to come up for hearing on 18.5.2006. The Id counsel has opined that the review DPC should be held without delay preferably within 18.5.2006. The Id counsel has observed that though the Hon'ble Tribunal has observed that the respondents were not justified in finding the applicant unfit based on the confidential records of the applicant for the years 2003-2004 and 2004-2005 but those adverse remarks are not set aside by the Hon'ble Tribunal. The direction of the Hon'ble Tribunal is only to hold a Review DPC and the Review DPC will take a decision considering the observation made in the judgment. If any observation made by the tribunal goes against the instructions of the DOPT, then that is to be mentioned /considered while taking a decision by the Review DPC. The copy of the legal opinion of the Id counsel is enclosed which is self explanatory. It may also be mentioned here that earlier in accordance with UPSC's communication No. 1/63(17)/2005-AP-4 dated 8th November 2006, the matter was referred to D/o Legal Affairs for their advice who opined on the basis of DOPT's comments and Hon'ble CAT, Guwahati bench order dated 18.8.2005 passed on the OA that the Hon'ble High Court would not like to interfere with the CAT, Guwahati Order dated 18.8.2005.

2. In view of above legal opinion, UPSC is requested to convene the Review DPC meeting before 18.5.2006 and convey the decision of the Review DPC at the earliest so as to avoid the contempt proceedings.

Yours faithfully,


(Vinod Kumar)
Director

Attaled
Gulha Das
Advocate

Encl: As above.

Shri. BICP Fax - 23070630 (B19
60)

COURT DIRECTIONS
MOST IMMEDIATE
TIME BOUND

No. 1/63(17)/2005-AP-4
UNION PUBLIC SERVICE COMMISSION
Dholpur House, Shahjahan Road
New Delhi.

Dated the 9th May, 2006

To

The Secretary to the Govt. of India
Ministry of Mines
New Delhi - 110001.

[Attention : Shri Vinod Kumar, Director]

Subject :- Review DPC - Promotion to the post of Director (Geology) in Geological Survey of India.

Sir,

I am directed to refer to your letter No. 10/89/2004-M.II dated 28.04.2006 on the subject mentioned above and to say that the matter has been re-examined in the Commission.

2. The Commission's views on the subject communicated to the Ministry, vide this office letter of even number dated 17.03.2006 (copy enclosed), are reiterated:

Yours faithfully,

(P.K. De)
Deputy Secretary
Tel.: 23384290

Attested
Abha Dan
Advocate

Encl No 93
12/07/06 V.K.
M
6/1/06

14/5/06 M.2

- 5 -
L. NO. 24 (R)

61
285

**COURT DIRECTIONS
MOST IMMEDIATE
TIME BOUND**

No.1/63(17)/2005-AP-4

**UNION PUBLIC SERVICE COMMISSION
Dholpur House, Shahjahan Road
New Delhi.**

Dated the 17th March, 2006

To

The Secretary to the Govt. of India
Ministry of Mines
New Delhi – 110001.

[Attention : Shri Vinod Kumar, Director]

Subject :- Review DPC – Promotion to the post of Director (Geology) in Geological Survey of India.

Sir,

I am directed to refer to your letter No.10/89/2004-M.II dated 18.01.2006 on the subject mentioned above and to say that the matter has been re-examined in the Commission. It is seen that the Hon'ble Tribunal have observed as follows :-

".....the Benchmark of 'Very Good' for promotion by selection for the post of Director (Geology) in the scale of pay of Rs.12000-16500/- was introduced for the first time only by the order of the DOP&T dated 08.02.2002. In other words, the Benchmark for earlier period was only 'Good' prior to 08.02.2002 or the selection method was different. In the circumstances, so far as the years 1997-98 to 2001-02 are concerned, it cannot be said that the grading given to the applicant was below the benchmark, namely, Good....."

2. As per DOP&T O.M. dated 10.04.1989 regarding consolidated instructions on DPCs, in respect of posts which are in the level of Rs.3700-5000 (pre-revised) and above, the Bench-mark grade should be 'Very Good'. Thus, the bench-mark for promotion was 'Very Good' from 10.04.1989 onwards.

3. The observation of the Hon'ble Tribunal as cited in Para 1 above are not in keeping with the instructions issued by DOP&T regarding the applicable benchmark in the instant case. In view of this, since the orders of the Hon'ble Tribunal are against Govt. of India instructions on service matter, consultation with Ministry of Law and DOP&T on the question of filing appeal before implementation of the court orders in terms of O.M. No.2002/9/99-Estt.(A) dated 1st May, 2000. (copy enclosed) has become all the more necessary.

4. The Ministry of Mines is again requested to consult the DOP&T and the Ministry of Law and bring it to their notice that the observations of the Hon'ble CAT as cited in Para-1 above are against the Govt. of India instructions on service matters.

Alka Ds
Yours faithfully,
Alka Ds
Advocate (P.C. Barnwal)
JOINT SECRETARY
Tel.: 23385374

S. P. V.
D. P. D.
R. L. M. A. S. P. M.
2/12
2/12

Filed in Court

16/6/06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP No. 35/2005
IN OA No. 228/2004

PETITIONER

Filed by the petitioner
through
Adv. Chetan
16/6/06

62
Shri A.K.D.JADHAV
Secretary, Ministry of Mines
Government of India
New Delhi
Date: 16/6/06
Signature of A.K.D.JADHAV

16 JUN 2006
SHRI SUBODH KUMAR PATTNAIK
Guwahati Bench
SHRI A.K.D. JADHAV,
SECRETARY, MINISTRY OF MINES,
NEW DELHI.

Vs

RESPONDENT No. 1

IN THE MATTER OF

An additional affidavit filed by the Respondent No. 1

I, A.K.D. Jadhav, son of Shri Daulatrao Gulaji Jadhav, aged about 59 years, at present working as Secretary, Government of India, Ministry of Mines, New Delhi, do hereby solemnly affirm and state as follows:

1. That the deponent begs to submit that after receipt of the judgment and order passed by the Hon'ble Tribunal, the respondents sent the proposal for Review DPC to Union Public Service Commission (UPSC) but even after repeated requests UPSC has not agreed to hold the review DPC. On 1.6.2006 the deponent has once again requested the UPSC to hold the review DPC. A copy of the letter dated 01.06.2006 to UPSC is annexed herewith and marked as Annexure-R-1.

2. That the humble deponent begs to state that since the UPSC is a Constitutional Body under Articles 315 to 323, part XIV, Chapter II of the Constitution of India, and discharges its functions and duties under Article 320 and other relevant Articles of the Constitution of India, the deponent can not direct them to hold review DPC. The deponent can only request the UPSC to hold review DPC.

That the humble deponent begs to submit that pursuant to Hon'ble Tribunal judgment dated 18.08.2005, a proposal was initially sent to UPSC on 17.10.2005 and subsequently UPSC was reminded to hold the review DPC for compliance of Hon'ble Tribunal order vide letters dated 11.11.2005 18.01.2006, 28.04.2006. After receipt of the order passed by the Hon'ble Tribunal on 18.05.2006, the deponent sent another proposal to UPSC for holding a Review DPC vide letter dated 01.06.2006.

4. That UPSC has sent a reply to the deponent's letter dated 1.6.2006. A copy of UPSC letter dated 09.06.2006 is annexed herewith and marked as Annexure-R-2.



5. That the humble deponent begs to submit that since there is no lapse on the part of the deponent, the matter being beyond his authority, the Hon'ble Tribunal may not be pleased to initiate contempt proceedings against him. The deponent has fully complied with the judgment and order passed by the Hon'ble Tribunal and there is no willful and deliberate violation on the part of the deponent. The deponent has highest regard for the judgment and order passed by the Hon'ble Tribunal and never violated any order of the Hon'ble Tribunal.

6. That considering the facts and circumstances narrated above the Hon'ble Tribunal may be pleased to close the Contempt Petition by passing appropriate order.

7. That this affidavit has been filed bonafide and to secure ends of justice.



(Deponent)

ए.के.डी.जाधव/A.K.D.JADHAV
सचिव/Secretary
साधन मंत्रालय/Ministry of Mines
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Notary Signature

I identify the Executant/Deponent
who has signed in my presence.



15 JUN 2006

ATTESTED
Notary, NCT Delhi (India)



मीमांसा
SECRETARY

A.K.D. JADHAV

File No - 37(CD)

ANNEXURE-R-1

भारत सरकार

GOVERNMENT OF INDIA

खान संत्रालय

MINISTRY OF MINES

शास्त्री भवन, डॉ राजेन्द्र प्रसाद रोड,

SHASTRI BHAVAN, DR. RAJENDRA PRASAD ROAD,

नई दिल्ली-110 001

NEW DELHI-110 001

TEL. NO. : 23385173

FAX NO. : 23384682

3 -

DO No. 10/69/2004-M.II

June 01, 2006

Dear Shri *hawre*,

Please refer to the UPSC's letters No. 1/63(17)/2005-AP-4 dated 17th March 2006 and 9th May 2006 regarding review DPC for the post of Director (Geology) in Geological Survey of India, on the basis of the order dated 18.8.2005 passed by the Hon'ble CAT, Guwahati bench in the OA No. 228/2004 filed by Shri SK Pattnaik, Geologist (Sr), GSI.

2. The observations made by the UPSC in their aforesaid letters were placed before the Id. tribunal on 18.5.2006 during the proceedings relating to the contempt petition No. 35/2005 filed by Shri SK Pattnaik. The Id. tribunal has, vide its order dated 18.5.2006, granted four weeks' time to both the parties to improve their pleadings, if any. The contempt case is next listed for hearing on 16.6.2006.

3. It would be recalled that the Id. tribunal had, while passing the order dated 18.8.2005, made a detailed year-wise analysis of the remarks made by the reporting authority, the reviewing authority and the accepting authority in the ACRs of Shri Pattnaik. A summary thereof is as under:

Year	Remarks of Reporting authority	Remarks of Reviewing authority	Remarks of authority	Accepting
1997-98 (1-4-97 to 30-9-97)	Good	Very Good	Good (No reason stated)	
(1-10-97 to 31-3-98)	Good	Good	Good	
1998-99	Very Good	Very Good	Good (Not a willing field worker)	
1999-2000 (1-4-99 to 1-11-99)	Very Good	Very Good	Good (Avoids field work)	
(1-11-99 to 31-3-2000)	Very Good	Very Good	Very Good	
2000-2001	Very Good	Very Good	Blank	
2001-2002	Very Good	Very Good	Very Good	

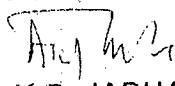
...contd.

4. The Id. tribunal has, in para 29 of its order dated 18.8.2005, observed that for all the years from 1997-98 to 2001-02, except for a fraction of the year 1997-98, the reviewing authority had assigned "Very Good", but the accepting authority had downgraded it as "Good" for one year without assigning any reason, and for two years stating that the applicant was not a willing field worker. The Id. tribunal has also noted that the same accepting authority had assigned the "Very Good" grading for the remaining part of 1999-2000. Seen in the context of the fact that the applicant had sought his exclusion from the fieldwork on medical grounds, the reasons for downgrading him for the year 1998-99 and first half of 1999-2000 do not seem to be justified.

5. In para 31 of its order dated 18.8.2005, the Id. tribunal has observed that if the downgrading to "Good" by the accepting authority for the year 1998-99 and first part of 1999-2000 on the ground of the applicant being not a willing field worker, is eschewed, the applicant satisfies the benchmark of "Very Good" for the selection year 2003-04, since his ACRs for the years 2000-01 and 2001-02 were already graded as "Very Good". The Id. tribunal has, therefore, expressed its view in quite categorical terms that the respondents were not justified in finding the applicant unfit based on his confidential records.

6. Having regard to all aspects of the matter including the directions dated 18.8.2005 and 18.5.2006 (in the contempt petition No. 35/2005) of the Id. tribunal, we feel that the case may be reconsidered and a review DPC may be convened as per the Id. tribunal's directions. As the contempt petition filed by Shri Pattnaik is next listed for hearing on 16.6.2006, the decision of UPSC in this regard may be communicated to this Ministry on the most urgent basis so that the Id. tribunal could be apprised of the position in this regard well in time.

Yours sincerely,


(A.K.D. JADHAV)

Shri S.P. Gaur,
Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.


16/6

S. P. Gaur

5



सचिव

SECRETARY

संघ लोक सेवा आयोग

UNION PUBLIC SERVICE COMMISSION

धौलपुर हाउस, शाहजहां रोड,
Dholpur House, Shahjahan Road,नई दिल्ली-110069
D.O.No.1/63(M)/2005-AP-4
New Delhi-110069

Eno 4841/SR.

Dear Shri Jadhav,

Please refer to your letter No.10/69/2004-M.II dated 01.06.2006 regarding Review DPC for the post of Director (Geology) in Geological Survey of India on the basis of the order dated 18.08.2005 passed by the Hon'ble CAT, Guwahati Bench in O.A. No.228/2004 filed by Shri S.K. Pattnaik, Geologist (Sr.), GSI.

PM

The main crux of the problem is that the Hon'ble CAT had presumed that in this case bench mark of Very Good was not applicable prior to 08.02.2002. This is not correct as the Bench Mark system was introduced by the Government w.e.f. 10th April, 1989 onwards. As such the observation of the Hon'ble Tribunal are not in keeping with the instructions issued by DOP&T regarding the applicable bench-mark in the instant case.

What is the

latest position

in this

matter?

11. put up on

by 12/6/06

without fail.

AM

9/6/06

As per M/

3. As regards Para 31 of the order dated 18.08.2005, the DPCs are held strictly in accordance with the statutory Recruitment Rules and the relevant guidelines/instructions issued by the Govt. of India in the DOP&T vide their O.M. No.22011/5/85-Estt.(D) dated 10.04.1989 which stipulates that at present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the ACRs and based on the strict and rigorous selection process. There are no such instructions from DOP&T according to which DPC can eschew the downgrading of ACRs/remarks given by the Reviewing and Accepting authority etc. In view of this, since the orders of the Hon'ble Tribunal are not in conformity with Govt. of India instructions on service matter, consultation with Ministry of Law and DOP&T on the question of filing appeal before implementation of the court orders in terms of O.M.No.20027/9/99-Estt.(A) dated 1st May, 2000 (copy enclosed) has become all the more necessary.

With regards,

File - today

Yours sincerely,

(S.P. Gaur)

Shri A.K.D. Jadhav
Secretary
Ministry of Mines
Shastri Bhavan
New Delhi.

operational efficiency and priority, for transfer should be given for officials having longest period of postings.

2. In respect of Senior Group 'A' officers, the following guidelines is to be followed:—

(i) The transfers should be linked with performance of the concerned officers and requirements of the posts to be filled up.

(ii) Officers who have put in four years' service in a particular post or at a particular station should be invariably rotated, especially so if the post occupied by them is sensitive in nature.

3. Heads of Circles/Regional Offices, etc., are requested to take immediate action in the matter accordingly.

291

G.I., Dept. of Posts, Lr. No. 108-56/97-SB. III, dated 28-4-2000

No revision of rate of interest on NSS — 87 Accounts

Consequent upon reduction of interest rate payable on various Small Savings Scheme of the Government of India effective from 15-1-2000, some of the Circles have made references to the Directorate regarding rate of interest on deposits made under NSS-87 Accounts. The Ministry of Finance (DEA) has clarified that the National Savings Scheme, 1987 has already been discontinued with effect from 1-10-1992 and no revision of rate of interest payable to depositors on the earlier deposits has been made. The present rate of interest is 11% and the depositors shall be entitled to same rate of interest on the deposits made prior to the discontinuance of the scheme.

2. It is requested that this clarification should brought to the notice of all concerned for necessary action. Receipt of the letter may be acknowledged.

292

G.I., Dept. of Per. & Trg., O.M. No. 28027/9/99-Estt. (A), dated 1-5-2000

Ministry of Law and DoP & T to be consulted before implementing Court orders

The undersigned is directed to say that it has come to the notice of this department that in cases where the Courts have passed orders against the Government of India instructions, the administrative Ministry/Department has not consulted the Law Ministry on the question of filing appeal against such orders, before implementation of such orders.

2. The matter has been considered in this Department and it has been decided that whenever there is any Court order against the Government of India instructions on service matters, the administrative Ministry/Department/Office shall consult the Department of Legal Affairs and the

Department of Personnel and Training on the question of filing appeal against such an order, as far as possible, well in time, that is before the time limit, if any, prescribed in such order or before the time limit for filing appeal. No such orders shall be implemented by the concerned Departments/Ministries without first referring the matter to the Department of Legal Affairs for advice and to Department of Personnel and Training.

3. The Ministries/Departments are requested to note the above instructions for strict compliance.

4. These instructions are issued in consultation with the C & AG, in regard to its applicability to Indian Audit and Accounts Department.

293

G.I., Dept. of Posts, Lr. No. 107/16/2000-SB, dated 4-5-2000

Report to Income Tax Authorities about the authorized agents claiming commission of Rs. 5,000 and above

I am directed to invite attention to D.G., P & T letter No. 3-9/75-SS, dated 14-4-1976 on the subject mentioned above. It has been brought to the notice of the Directorate that the list of agents drawing commission of Rs. 5,000 and above is not being sent to the concerned Income Tax Authorities as prescribed on time. It is reiterated that the Head Postmaster should send a list of authorized agents drawing a commission of Rs. 5,000 and above during a financial year to the concerned Income Tax Commissioner as soon as possible after the close of the year.

2. It is requested that necessary instructions may be issued accordingly to all concerned.

294

G.I., Dept. of Post, Lr. No. 107-16/2000-SB-III, dated 5-5-2000

No change in the existing procedure for supply of Receipt Books to SAS Agents

Consequent to introduction of the new procedure for payment of commission to various categories of agents at sources, some of the circles have raised a question regarding supply of Receipt Books to the SAS Agents. In this connection, it is clarified that there is no change in the existing procedure for supply of Receipt Books to the authorized agents.

2. The liability of delivering certificate/passbook is of the agent. If any complaint from investor about non-receipt of certificate/passbook is received, this should be brought to the notice of the concerned Regional Director, National Savings for taking appropriate action against the authorized agent.

3. The question regarding disposal of the counterfoil of the Receipt Book which was being attached by the agent to his commission bill is being separately examined in consultation with Ministry of Finance and National Savings Commissioner. A decision in this regard will be communicated in

6 MAR 2007

गुवाहाटी न. अधिकारी

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI

MP No. /2006

IN CP No. 35/2005

IN OA NO. 228/2004

Filed by
the Petitioners
through
Adv. Dinesh
Chandra
Gupta
Adv. Chhota
Babu
Date 6/3/07
File No. 68
Case No. 68
Date 06/03/07

SHRI S.K.PATTNAIK

...APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS

...RESPONDENTS

IN THE MATTER OF

Compliance Report submitted by the respondents

Bhupal Nanda,
Deputy Secretary, Ministry of Mines
Shastri Bhawan
New Delhi

ON BEHALF OF

SHRI A.K.D. JADHAV
Secretary (Retired), Ministry of Mines
Shastri Bhawan
New Delhi

....Petitioner

- Versus -

Shri S.K. Pattnaik

....Respondent

The petition on behalf of the petitioner above named

MOST RESPECTFULLY SHEWETH

- 1) That the applicant of the OA No. 228/2004, alleging non-compliance of the order dated 18.08.2005 passed by the Hon'ble Tribunal in the said OA, has filed the above mentioned Contempt Petition. The then Secretary, Ministry of Mines, Shri AKD Jadhav, who was arrayed as Respondent No. 1 in the contempt petition, immediately after receipt of the order of the Hon'ble Tribunal sent all service records of the applicant to the UPSC to



hold review DPC. Since the UPSC is the authority that will fix a date and hold review DPC, the then Secretary, Ministry of Mines has got no role in the same. The Hon'ble Tribunal while hearing the Contempt Petition was pleased to hold that the respondents have complied with the order and further pleased to direct the then Secretary, Ministry of Mines to write to the UPSC once again along with the copy of the order dated 01.08.2006.

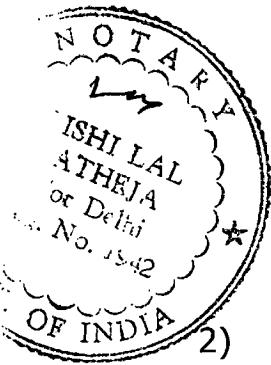
A copy of the order-dated 01.08.2006 passed in CP No. 35/2005 is annexed herewith and marked as Annexure-M 1.

That it is most respectfully submitted that immediately after receipt of the copy of the Hon'ble Tribunal order dated 01.08.2006 in the contempt petition No. 35/2005 the then Secretary, Ministry of Mines in the Contempt Petition wrote a letter dated 24.08.2006 to the UPSC along with the order dated 01.08.2006 passed by the Hon'ble Tribunal requesting for necessary action in the matter.

A copy of the letter-dated 24.08.2006 is annexed herewith and marked as Annexure-M2.

- 3) That the present petitioner begs to submit that the directions given by the Hon'ble Tribunal in OA No. 228/2004 and CP No.35/2005 have been complied with and the present petitioner prays that the Hon'ble Tribunal may be pleased to pass necessary and appropriate order/orders considering the submission made above.
- 4) That this has been filed bonafide and to secure ends of justice.

In the premises it is most respectfully prayed that Your Lordships would graciously be pleased to pass necessary and appropriate order/orders, as Your Lordships deem fit and proper.





AFFIDAVIT

I, Bhupal Nanda, working as Deputy Secretary at Ministry of Mines, New Delhi, am taking steps in the matter of the contempt petition No. 35/2005 on behalf of Shri AKD Jadhav, contemnor, who has since retired from the post of Secretary (Mines). I am well aware of the case and pray for allowing me to sign this Affidavit.

I do hereby solemnly affirm and state that the statements made in paragraph

3, 4

are true

to my knowledge and belief, those made in paragraph
1, 2 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this affidavit on this 02 th day of March, 2007 at New Delhi.

DEPONENT

Solemnly affirm and state by the deponent who is submitted

Advocate on thisth day of March, 2007 at



ATTESTED

msm
NOTARY

02 MAR 2007

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Contempt Petition No.35 of 2005
(In Original Application No.228 of 2004)

Date of Order: This the 1st day of August 2006.

The Hon'ble Shri K.V. Sachidanandan, Vice-Chairman
The Hon'ble Shri G. Ray, Administrative Member

Shri Subodh Kumar Pattnaik,
S/o Late Bansdilal Pattnaik,
Geologist (Sr.), M.G.P. Division,
O/o The Dy Director General, NER,
Geological Survey of India,
Shillong, Meghalaya

.....Petitioner

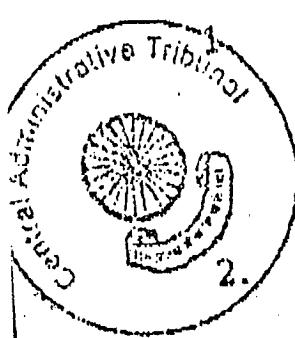
By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Nath.

- versus -

Shri A.K.D. Jadhav,
Secretary, Ministry of Mines,
Shastri Bhawan,
2 Rajendra Prasad Marg,
New Delhi - 110001.

.....Alleged Contemners/
Respondents

Shri M.K. Mukhopadhyaya,
Director General (Acting),
Geological Survey of India,
27, J.L.N. Road, Kolkata.



ORDER (ORAL)

K.V. SACHIN ANANDAN (V.C.)

Heard Mr M. Chanda, learned counsel for the applicants and Ms U. Das, learned counsel for the respondents.

2. The UPSC were not parties to the O.A. wherein this court vide order dated 18.08.2005 has given a direction as follows:

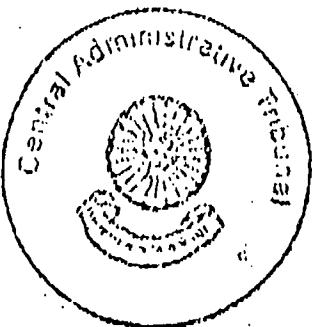
"The above undisputed (undisputed we said because the respondents did not deny the averments made in para 4.24 of the application, in para 13 of their reply) fact situation would show that the applicant was a willing Field Worker, for about 20 years he had devoted in field work in difficult terrains and made great achievement. This would clearly demonstrate that the request of the applicant for excluding him from field work was made for good and valid reasons. It is about such a man the Accepting Authority said that the applicant is not a willing field worker. For the selection year 2003-2004 the records (CR) required are for the years 1997-98 to 2001-02. If the downgrading to 'Good' by the Accepting Authority for the year 1998-99 and first part of 1990-2000 on the ground of 'not a willing field worker' is eschewed the applicant even satisfies the Benchmark fixed in 2002.

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

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

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

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



3. The specific direction of the court was to convene a Review DPC for selection to the post of Director (Geology) and consider the case of the applicant in the light of the observations made in the order and pass appropriate orders in the matter within a period of three months from the date of receipt of the order. The order was dated 18.08.2005. When the matter was not complied with the applicant has filed this Contempt Petition for non-compliance of the order of this Tribunal.

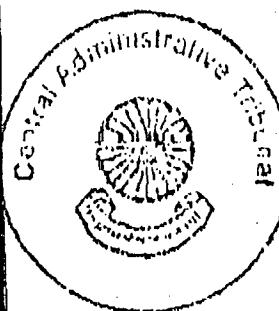
4. The learned counsel for the respondents, has filed a detailed written statement wherein it is stated that on receipt of the order of the Tribunal dated 18.08.2006, a proposal was sent to the UPSC for holding a Review DPC. The UPSC in turn has given a letter to the respondents, which is reproduced as under:

"Dear Shri Jadhav,

Please refer to your letter No.10/69/2004-M II dated 03.06.2006 regarding Review DPC for the post of Director (Geology) in Geological Survey of India on the basis of the order dated 18.08.2005 passed by the Hon'ble CAT, Guwahati Bench in O.A.No.228/2004 filed by Shri S.K. Purnail, Geologist (Sr.), GSI.

The main crux of the problem is that the Hon'ble CAT had presumed that in this case bench-mark of Very Good was not applicable prior to 08.02.2002. This is not correct as the Bench-Mark system was introduced by the Government w.e.f. 10th April, 1989 onwards. As such the observations of the Hon'ble Tribunal are not in keeping with the instructions issued by DOP&T regarding the applicable bench-mark in the instant case.

As regards Para 31 of the order dated 18.08.2005, the DPCs are held strictly in accordance with the statutory Recruitment Rules and the relevant guidelines/instructions issued by the Govt. of India in the DOP&T vide their O.M. No.22011/5/85-Estt (D) dated 10.04.1989 which stipulates that at present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. While merit has to be



Central Administrative Service
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recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the ACRs and based on the strict and rigorous selection process. There are no such instructions from DOP&T according to which DPC can eschew the downgrading of ACRs/remarks given by the Reviewing and Accepting authority etc. In view of this, since the orders of the Hon'ble Tribunal are not in conformity with Govt. of India instructions on service matter, consultation with Ministry of Law and DOP&T on the question of filing appeal before implementation of the court orders in terms of O.M.No.20027/9/99-Estt(A) dated 1st May, 2000 (copy enclosed) has become all the more necessary."

5. The UPSC had also recommended filing of an appeal in consultation with Ministry of Law and DOP&T in terms of certain O.M. However, when the matter came up for hearing, the learned counsel for the respondents submitted that in an identical matter this court directed to furnish a copy of the order to the UPSC and due compliance may be ensured. The learned counsel for the respondents submitted that as far as the respondents are concerned they have already complied with the order on their part and what is left is with the UPSC.

6. In view of the above we direct the respondents to write to the UPSC with a copy of this order with direction for convening a Review DPC as directed by this Tribunal and finalise compliance of this order as expeditiously as possible at any rate within a period of three months from the date of receipt of this order.

7. In the circumstances of the case we do not find any reason to hold this Contempt Petition on file and therefore the Contempt Petition is closed and dismissed on the ground that substantial compliance has been made by the respondents.

8. The applicant is also given liberty to approach the appropriate Inqrry, if the applicant has got any further grievance.

The Contempt Petition stands closed and dismissed. No costs.

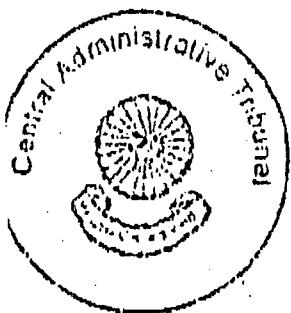
SD/VICE CHAIRMAN
SD/MEMBER (A)

TRUE COPY.

RECORDED

RECORDED (P.C. 8/10/06)
Section 142 (2) (b) (i) (ii)
Central Administrative Tribunals
Gujarat & Jharkhand
11. W. 2006
RECORDED 11. W. 2006

RECORDED (P.C. 8/10/06)



A.K.D. JADHAV



SECRETARY

राजीव

भारत सरकार
GOVERNMENT OF INDIA

खान मंत्रालय

MINISTRY OF MINES

शास्त्री भवन, डॉ राजेन्द्र प्रसाद रोड,

SHASTRI BHAVAN, DR. RAJENDRA PRASAD ROAD,

नई दिल्ली-110 001

NEW DELHI-110 001

TEL. NO. : 23385173

FAX NO. : 23384682

DO No. 10/89/2004-M.II

August 24, 2006

Dear Shri Gaur,

Please find **enclosed** a copy of Hon'ble CAT, Guwahati bench's judgement dated 1.8.2006 received on 22.8.06 passed in the contempt petition No.35/2005 (in the OA No.228/2004) filed by Shri S.K. Patnaik, Geologist (Sr.) in Geological Survey of India.

2. The Hon'ble CAT, Guwahati bench in para 6 of its judgement dated 1.8.2006 has directed as under:

|| "...In view of the above we direct the respondents to write to the UPSC with a copy of this order with direction for convening a review DPC as directed by this Tribunal and finalize compliance of this order as expeditiously as possible at any rate within a period of three months from the date of receipt of this order..."

3. Accordingly, the UPSC is requested to take necessary action in the matter as directed by Hon'ble Tribunal.

With regards,

Yours sincerely,

(A.K.D. Jadhav)

27/8

Shri S.P. Gaur
Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi

Encl : As above.