

FROM No. 4.  
( S e Rule 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
... .. CONSTITUTIONAL BENCH:

ORDER SHEET

1. Original Application No. \_\_\_\_\_

2. Misc Petition No. \_\_\_\_\_

3. Contempt Petition No. \_\_\_\_\_ 10/06 in O.A 37/04

4. Review Application No. \_\_\_\_\_

Applicant(s) Ganesh Shankar Mittal

Respondants Anil Bajaj and ans,  
(U. O. I. J. S. )

Advocate for the Applicant(s) M. Chanda, S. Nath

Advocate for the Respondant(s) .....

Notes of the Registry	Date	Order of the Tribunal
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Contempt petition 23.3.2006  
has been filed by the  
counsel for the petitioner  
praying for initiation  
of a contempt proceeding  
against the alleged contemners  
for non-compliance of the  
order dated 7.10.2005  
passed by this Hon'ble  
Tribunal in O.A 37/04.  
I am before the  
Hon'ble Court for further  
order.

Mr. M. Chanda, learned counsel for  
the applicant is present.

Issue simple notice. post on  
28.4.2006.

Vice-Chairman

28.4.2006

Mr. G. Baishya, learned Sr. C.G.S.C.  
submits that he would like to submit  
reply affidavit. Let it be done.

post on 31.5.2006.

Vice-Chairman

31.5.2006

post the matter on 14.6.2006.

Vice-Chairman

Section Officer

Notice and order  
Sent to D/section  
for issuing to  
resp. nos. 1,2 by  
regd A/D post.

28/3/06. D/No-403,404  
Dt. 30/3/06.

14.6.2006

Mr.M.Chanda, learned counsel for  
the applicant is present. Mr.G.Baishya  
learned Sr.C.G.S.C. for the alleged  
contemners requests for two weeks time  
to file reply affidavit. Let it be  
done.

post on 4.7.2006.

Vice-Chairman

bb

Notice duly served 04.07.2006  
on resp. no-2.

Let the case be posted on  
18.07.2006.

25/4/06.

Vice-Chairman

Notice duly served  
on R.No-2, respondent  
No-1 awaited.

mb  
18.07.2006

When the matter came up for  
hearing, Mr M. Chanda, learned coun-  
sel for the applicant ~~introduced~~  
produced a copy of the order of the  
Hon'ble High Court dated 3.7.2006  
passed in W.P. (C) 3082/2005,  
whereby the appeal preferred by  
the respondents has been dismissed.  
Mr G. Baishya, learned Sr. C. G. S.  
for the respondents submitted that  
process are initiated for holding  
the Review D.P.C. and sought for  
time to comply with the order. Two  
weeks time is granted to the  
respondents. It is made clear that  
the order has not been complied and  
notice will ~~must~~ be sent to the  
alleged contemner.

Post on 21.08.2006.

Vice-Chairman

27.4.06

30-5-06  
No affidavit has  
been filed.

13-6-06  
No affidavit has  
been filed.

3-7-06  
No affidavit has  
been filed.

17.7-06  
No affidavit has  
been filed.

mb

19.07.06

19.7.06  
C.G.S.C.

21.8.06

Mr.G.Baishya, learned Sr.C.G.S.C. submits that he has taken steps for Review DPC and he wants some more time. This is the last chance for complying of the Tribunal's order. Otherwise show cause notice will be issued Post the matter on 21.9.06.

Vice-Chairman

21.9.2006

This Contempt Petition has been filed alleging non-compliance of the orders of the Tribunal dated 7.10.2005 passed in O.A. No.37 of 2004 and when the matter came up for the first time on 23.3.2006 at the request of counsel for the respondents simple notice was issued to the alleged contemnners/ respondents and the matter went upto 21.8.2006. When the matter has come again for consideration today, Mr.M.Chanda, learned counsel for the applicant submits that the in spite of the dismissal of W.P.(C) No.3082/2006 so filed by the contemnners/respondents by the Hon'ble Gauhati High Court upholding the orders of this Tribunal, the contemnners/respondents are still not complying with the order of this Tribunal. Mr.G.Baishya, learned Sr. C.G.S.C. submits that contemnners/ respondents would like to take up the matter before the Hon'ble Supreme Court.

Considering the entire aspects and the fact that High Court has already rejected the claim of the contemnners/respondents, I am of the view that contempt notice should be issued to the alleged contemnners. Accordingly, Registry is directed to issue contempt notice to Shri Anil Kumar, Secretary, Ministry of Urban Development and Poverty Alleviation, Nirman Bhawan, New Delhi (contemner No.1) and to Shri B. Hazumdar, the Director General of Works, C.P.W.D., 118-A, Nirman Bhawan, New Delhi (contemner No.2). I direct the contemnners to file

No affidavit has been  
filed

21  
20.9.06

Contd.

21.9.2006

affidavit within six weeks from today explaining as to why contempt proceeding under the Contempt of Court Act shall not be initiated against them on the basis of the facts stated in the petition and other materials.

Post the matter on 11.11.2006.

However, at the request of Mr. G. Baishya, learned Sr. C. G.S.C. the personal appearance of the alleged contemners are dispensed with for the time being.

Vice-Chairman

bb

10.11.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

When the matter came up for hearing Mr G. Baishya, learned Sr. C.G.S.C. for the Respondents submitted that Respondent No. 2 sworn an affidavit stating that against the order of the Tribunal, the Respondents filed a writ petition before the Hon'ble High Court, which was rejected by the High Court. Thereafter, they intend to file an SLP before the Hon'ble Supreme Court. Though this Court cannot wait for the stay order of the Hon'ble Supreme Court, as requested by Sr. .C.G.S.C. four weeks time is granted to produce the order of the Apex Court, if any.

Post on 12.12.2006.

Vice-Chairman

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

D/No-1014, 1015  
Df= 10/10/06.

Amul  
27.09.06

No affidavit has been filed.

9.11.06

14.11.06

An affidavit on behalf of Respondents has been filed.

Dr.

Affidavit has been filed.

11.12.06

12.12.06.

Post the matter on 16.1.07.

lm

Vice-Chairman

Abhidavit has been  
biled.

16.1.2007

Further time is granted to the  
Respondents to produce the Apex Court  
order, if any.

Post on 01.02.2007.

Abhidavit has  
been biled.

Vice-Chairman

/bb/

6.3.07 Counsel for the respondent has  
submitted that written statement is  
ready. He will file the same. Post the  
matter on 21.3.07. Interim order shall  
continue.

Vice-Chairman

lm

6.3.07 Counsel for the respondent has  
submitted that the SLP has been filed  
by the department in the Apex Court.  
Post the matter on 21.3.07. Liberty is  
given to the counsel for the respondents  
to file SLP number if, any.

Vice-Chairman

lm

21.3.07.

Counsel for the respondents has  
submitted that he has got some personal  
difficulty. post the matter on 29.3.07.

Member

Vice-Chairman

lm

Abhidavit has been  
biled.

28.3.07.

C. P- (10)

29.3.07. Counsel for the respondents prays for further time to take instructions to the decision of the Hon'ble Supreme Court. Post the matter on 27.4.07 finally.



Vice-Chairman

Affidavit filed by  
the respondents.

lm

24  
26.4.07,

27.4.2007 Present: The Hon'ble Mr.G.Shanthappa  
Member (J)

The Hon'ble Mr.G.Ray, Member (A).

Mr. G. Baishya, learned Sr. C.G.S.C. submitted that the Department has filed SLP before the Hon'ble Supreme Court and the said SLP is dismissed on 02.03.2007. Now, the Respondents are actively considering to comply with the orders of this Tribunal and hence he sought time to get instruction from the Respondents regarding compliance. Respondents are granted one months' time to file affidavit and report compliance.

Call the case on 01.06.2007.

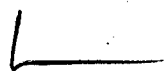
  
Member (A)

/bb/

  
Member (J)

1.6.2007 Mr.M.Chanda, learned counsel for the Applicant submitted that he will ascertain whether the alleged contemnors are holding same post within one week.

Post the case on 14.06.2007.



Vice-Chairman

/bb/

Affidavit has been  
filed.

24  
13.6.07,

14.6.2007

Mr.M.Chanda, learned counsel for the petitioner is directed to provide correct name and address of the alleged contemnors who are holding the present posts by way of a petition.

Post the case on 20.6.2007.

Vice-Chairman

Affidavit has been filed.

22.6.07.

/bb/

25.6.07.

Post the matter on 4.7.07.

Vice-Chairman

Affidavit has been filed.

2.7.07.

lm

3.7.2007

Post on 26.7.2007. In the meantime Respondents are directed to take further step and necessary action for compliance of the order, failing which natural course of action will follow.

Vice-Chairman

25.7.07

An amended petition filed by the Applicant.

/bb/

26.7.07

The counsel for the applicant has submitted that he has filed the correct name of the incumbent who is occupied the post at present. Since the counsel is appearing chance is given to file additional affidavit as to why orders of the Tribunal has not been complied.

Post on 28.8.07 for order.

Vice-Chairman

No addl Affidavit has been filed.

27-8-07

pg

28.8.07

29.8.07  
An affidavit  
on behalf of Respondents  
has been filed.  
Copy served.

*Ad.*

Affidavit has been  
filed.

*msu*  
27.9.07.

This is an application filed by the original applicant for non compliance of the order of this Tribunal in O.A.37/04. The order of the Tribunal is dated 7.10.05. Thereafter the matter was taken before the Hon'ble Gauhati High Court and Supreme Court where the SLP was rejected. The counsel for the respondents submitted that now they have taken steps to finally dispose of the matter and further six weeks time is sought for. However, Court cannot wait for such a long time. Considering the submission further four weeks time is granted to comply with the order. It is made clear no further time will be extended and notice will be issued on the next date.

Post on 28.9.07 for order

Vice-Chairman

pg

28.9.07.

Ms.U.Dutta, Advocate, is present on behalf of the Applicant.

Mr.G.Baishya, learned Senior Standing Counsel for the Central Government (appearing for the opposite parties) have placed before us a written instructions dated 26.09.07 (received by him from the opposite parties) and a copy of the letter No.8/7/2006-EC.I dated 26.9.07 of the Directorate General of Works, CPWD; which goes to show that a Review DPC was held on 14.09.2007 as per orders of this Tribunal to reconsider the case of the Applicant for promotion and the recommendation of the said Review DPC are being sent to →

Contd/-



28.9.07 Conto.

Administrative Ministry to obtain the approval of the Cabinet Committee on Appointments (ACC). It has been stated in the said communication dated 26.09.2007 that it may take two months time to obtain views from the ACC.

In the above said premises, call this matter on 14<sup>th</sup> December, 2007.

Atbidavit filed

13.12.07.

(Khushiram)  
Member(A)

(Manoranjan Mahanty)  
Vice-Chairman

Lin

14.12.07 Mr G.Baishya, learned Sr. Central Government Standing Counsel for the respondents states that approval from the ACC (through DOPT) has not yet been received on the recommendation of the DPC relating to the Applicant. He has placed before us a Directorate letter dated 6.12.07 under forwarding letter dated 13.12.07 and seeks adjournment in the matter.

Call this matter on 31.01.2008.

Atbidavit filed

31.3.08.

(G. Ray)  
Member(A)

(M. R. Mohanty)  
Vice-Chairman

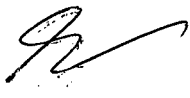
31.01.2008


On 14<sup>th</sup> December, 2007 this matter was adjourned till today (for 1½ months) expecting that the contemnors to act promptly to get approval from the ACC through DOPT. Mr. G. Baishya, learned Sr. Standing counsel appearing for the Union of India, who appears today for contemnors is not in a position to furnish details of the progress.

In the aforesaid premises, this matter again stands adjourned to 29<sup>th</sup> February, 2008 awaiting up-to-date instructions in the matter.

Send copies of this order to the Respondents of O.A No.37 of 2004 and free copies of this order be handed over to Mr.M.Chanda, learned counsel appearing for the Applicant and to Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India.

Call this matter on 29.2.2008.

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

Copy of order dt  
21.01.08 received  
in behalf of Mr. G. Baishya  
- 1 Bipsak Bar.  
Admral. lm  
5-2-08

29.02.2008  
Order dt. 31/01/08 send to  
D/Section for issuing to  
R- 1 to 11 by post.

4/2/08. D/No- 982 to 992  
dt - 7/2/08.

Abhidavit filed.

28.2.08

Mrs. U. Dutta, learned counsel appearing for the Applicant is present. Mr. G. Basihya, learned Sr. Standing Counsel appearing for the Respondents has placed a letter dated 25.02.2008 from the C.P.W.D addressed to Superintending Engineer, Assam Circle, Guwahati on record, stating that matter is being finalised and the delay is because inter departmental consultation is required in this case.

List the matter on 01.04.2008.

  
(Khushiram)


01.04.2008


Non compliance of this order dated 07.10.2005 of this Tribunal (rendered in O.A.No.37 of 2004) is the subject matter of this Contempt proceedings. It appears that the Respondents department un-successfully carried the matter to the Hon'ble High Court of Guwahati in W.P.(C) No.3082 of 2006 and to the Hon'ble Supreme Court of India in S.L.P.(CC 1836/2007).

On the prayer of Mr.G.Baishya, learned Sr.Standing Counsel appearing for the respondents department, this matter is adjourned to be taken up on 12<sup>th</sup> May, 2008; by which time the Respondents of O.A.No.37 of 2004 should come ready with the compliance of the order of this Tribunal; failing which they should appear in person for receiving contempt charges.


Send copies of this order to the Respondents of O.A.No.37 of 2004 and free copies of this order be supplied to Mr.G.Baishya, learned Sr.Standing Counsel appearing for the contemnners.


Call this matter on 12.05.2008.

  
(Khushiram)  
Member(A)

  
(M.R.Mohanty)  
Vice-Chairman

For the reasons recorded separately this Contempt Petition is dropped.

  
(Khushiram)  
Member (A)

  
(M.R.Mohanty)  
Vice-Chairman

pg


01.1.2008

P1. Send copies of this order to the Respondents of OA 37/04


Free copies of this order be supplied to Mr. G. Baishya, Sr. Case and the counsel appearing for the contemnners.

  
24/08



Copy of the order dt 1.4.08 received on behalf of Mr G. Baishya (S.C.S.C).

  
3.4.08

Order dt. 1/4/08 send to D/Section for issuing to im respondents of O.A.No-37/04, by post and another copy 12-05-08 handed over to Mr.Cr.Baishya, Sr.C.C.S.C, CAT, CMH.

 3/4/08. D/No-1645 to 1655  
Dt= 4/4/08.

Abhidavit filed.

  
17/4/08  
Abhidavit filed.  
  
9.05.08.

Received four copies  
of order dated 12/5/08  
on behalf of Contemners  
No. 1 to 4

13/5/08

(ER. NAND LAL CHAUHAN)

Executive Engineer (Admin)

CPWD, Baraminimaiden, GHY.

14.5.08

Copy of the order  
dt 12.5.08 sent to  
the office for entry  
in the file as well as to the  
advocate for the  
appeal.

Copy of the order  
dt 12.5.08 received  
on behalf of Mr G  
Bansing (S.C. & S.C.)  
Bapasta Das  
14.5.08

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Contempt Petition No.10 of 2006.

Date of Order : This the 12th Day of May, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Gauri Shankar Mittal,  
Superintending Engineer (Retd.)  
Central Public Works Department.

.....Petitioner

By Advocate Mr M. Chanda.

-Versus-

1. Shri Anil Baijal,  
Secretary,  
Ministry of Urban Development and Poverty Alleviation,  
Nirman Bhawan, New Delhi-110011.
2. Shri B.Mazumdar,  
The Director General of Works,  
Central Public Works Department,  
118-A Nirman Bhawan,  
New Delhi-110011.
3. Shri M. Ramachandran,  
Secretary,  
Ministry of Urban Development and  
Poverty Alleviation,  
Nirman Bhawan, New Delhi-110011.
4. Shri A. Chakraborty,  
The Director General of Works,  
Central Public Works Department,  
118-A Nirman Bhawan,  
New Delhi-110011.

.....Alleged contemners

ORDER (ORAL)

MANORANJAN MOHANTY, (V.C)

Non compliance of order dated 07.10.,2005 of this Tribunal  
(rendered in O.a.37/2004) is the subject matter of this contempt

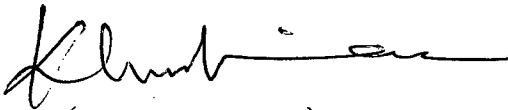
proceeding. It appears the Respondents department unsuccessfully carried the matter to the Hon'ble High Court, Guwahati in W.P.(C) No.3082 of 2006 and to the Hon'ble Supreme Court of India in S.L.P.(CC) 1836/2007. After disposal of the Writ Petition(C) and S.L.P the Respondents department has passed an order on 09.05.2008 granting promotion to the Applicant retrospectively i.e. from the date his junior received promotion. A copy of the Government order dated 09.05.2008 has been produced by learned Sr. Standing Counsel Mr G. Baishya in Court, after serving a copy thereof on Mr M.Chanda, learned counsel for the Applicant.

2. Since the order of this Tribunal has already been complied with, Mr M.Chanda, learned Counsel for the Applicant has expressed the intention of the Applicant not to press this Contempt Petition.

3. Accordingly, this Contempt Petition stands dropped.

4. While parting with this case, we hope that Respondents to act expeditiously to grant consequential benefits to the Applicant, preferably within a period of 90 days <sup>from</sup> now.

5. Send copies of this order to the Applicant and to all the Respondents of O.A.37/2004.

  
(KHUSHIRAM)  
ADMINISTRATIVE MEMBER

  
(MANORANJAN MOHANTY)  
VICE CHAIRMAN

25 JUL 2007  
गुवाहाटी न्यायपीठ  
Guwahati Bench

✓  
Filed by me petitioner  
S. N. M.  
Advocate  
25/7/2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

AMENDED PETITION

CONTEMPT PETITION No. 10/2006

In O.A No. 37/2004

In the matter of:

Shri Gauri Shankar Mittal.

... Petitioner.

-Versus-

Union of India & Ors.

... Respondents/  
Alleged contemnors.

-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 07.10.2005 passed in O. A. No. 37/2004.

-And-

In the matter of:

Shri Gauri Shankar Mittal,

Superintending Engineer (Reid.),

Central Public Works Department.

.... Petitioner.

-Versus-

1. **Shri Anil Baijal.**  
Secretary,  
Ministry of Urban Development and  
Poverty Alleviation,  
Nirman Bhawan, New Delhi-110011.
2. **Shri B. Mazumdar.**  
The Director General of Works,  
Central Public Works Department,  
118-A Nirman Bhawan,  
New Delhi- 110011.
3. **Shri M. Ramachandran,**  
Secretary,  
Ministry of Urban Development and  
Poverty Alleviation,  
Nirman Bhawan, New Delhi- 110011.
4. **Shri A. Chakraborty,**  
The Director General of Works,  
Central Public Works Department,  
118-A Nirman Bhawan,  
New Delhi- 110011.

... Alleged contemnors.

The humble petitioner above named

Most respectfully sheweth:-

1. That your petitioner being aggrieved with the impugned office order No. 30/29/2002-EC. I/E.W.1 dated 20.11.2003, whereby the persons junior to the applicant have been promoted to the post of Chief Engineer in the respondent department by superseding the applicant, approached this Hon'ble Tribunal through O. A. No. 37/2004, praying for a direction to the respondents to promote the applicant to the grade of Chief Engineer with effect from the date of promotion of his juniors with all consequential service benefits including arrear etc.



2. That this Hon'ble Tribunal after hearing the contention of the parties was pleased to dispose of the O.A. No. 37 of 2004 on 07.10.2005, directing the respondents as follows: -

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

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

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

(A Copy of the judgment and order dated 07.10.2005 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- I).

3. That the petitioner begs to state that immediately after receipt of the judgment and order dated 07.10.05 passed in O.A. No. 37/2004, the petitioner approached the alleged contemner No. 2, through a representation for implementation of the judgment and order dated 07.10.05, but finding no response the petitioner submitted another representation dated 18.01.2006, praying for compliance of the direction of this Hon'ble Tribunal.

(Copy of the representation dated 18.01.2006 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- II).

4. That the humble petitioner begs to state that more than 4 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 07.10.2005.
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 07.10.2005 passed in O.A. No. 37/2004, which amounts to contempt of Court. Therefore, the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order dated 07.10.2005 in O.A. No. 37/2004 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 07.10.2005 passed in O.A. No. 37/2004 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.

85

AFFIDAVIT

I, Shri Gauri Shankar Mittal, aged about 61 years, Superintending Engineer (Retd.), Central Public Works Department, 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 07.10.2005 passed in O.A. No. 37/2004.

And I sign this Affidavit on this \_\_\_\_\_ day of July 2007.

Identified by

G. S. MITTAL

Advocate.

29 6

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 07.10.2005 passed in O.A. No. 37/2004 and further to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 07.10.2005 passed in O.A. No. 37/2004.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.37 of 2004

Date of decision: This the 7<sup>th</sup> day of October 2005

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

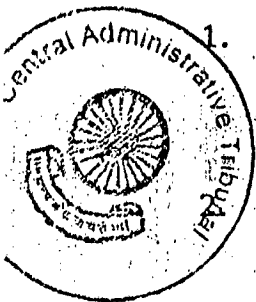
The Hon'ble Shri M.K. Misra, Administrative Member

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

.....Applicant

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

- versus -



1. The Union of India, represented by the  
Secretary, Ministry of Urban Development  
And Poverty Alleviation,  
Nirman Bhawan, New Delhi-110011.

The Director General, Works,  
Central Public Works Department,  
118-A Nirman Bhawan,  
New Delhi - 110011.

3. Shri N. Ravi,  
Chief Engineer (Valuation),  
Central Public Works Department,  
Chennai.
4. Shri G.C. Khatter,  
Chief Engineer (Civil),  
CPWD, Andaman,  
Portblair-744101.
5. Shri Lalit Mohan,  
Chief Engineer, IT Department,  
Kendriya Sadan,  
4<sup>th</sup> Floor, A Wing,  
17<sup>th</sup> Main, 2<sup>nd</sup> Block,  
Koramangala,  
Bangalore - 560 034.

6. Sri M.K. Goel,  
Chief Engineer, CPWD (Retd.),  
A-28, Surya Nagar,  
Gaziabad,  
U.P. - 201 011.
7. Shri Suresh Kumar,  
General Manager (Civil),  
Delhi Transco Ltd.,  
220 K.V Sub-statio, Lodhi Road,  
New Delhi - 110 002.
8. Shri P.C. Arora,  
Chief Engineer (NEZ),  
CPWD, Dhanketi,  
Shillong - 3,  
Meghalaya.
9. Shri K. Balakrishanan,  
Chief Engineer (SZI),  
CPWD, Iind Floor, G- Wing,  
Rajaji Bhawan,  
Basant Nagar,  
Chennai - 600 090.
10. Shri Virendra Sharma  
Chief Engineer (AA),  
IT Department,  
54/2 Rafi Ahmed Kidwai Road,  
Kolkata - 700 016.
11. Shri A.L. Garg,  
Chief Engineer, BFZ,  
CPWD, East Block No. I, Level - IV,  
R.K. Puram, New Delhi.

... Respondents

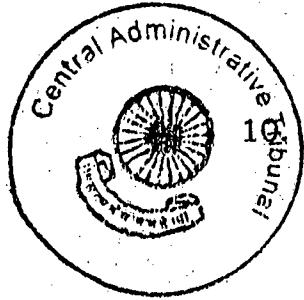
By Advocate Mr. A.K. Chaudhuri, Addl. C.G.S.C.

### ORDER

#### SIVARAJAN. J. (V.C.)

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

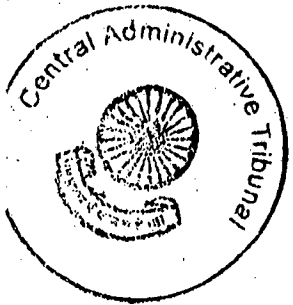
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Grade which he had completed in the year 1994. A Departmental Promotion Committee (DPC for short) meeting for selection of eligible officers for promotion to the post of Chief Engineer (Civil) in the CPWD for filling up the vacancies of the year 2003-2004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

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

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

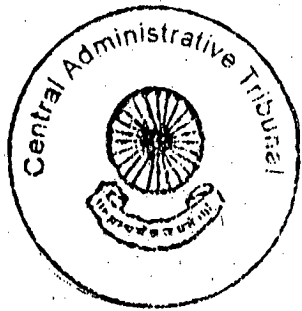


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3.

Mr Sarkar has raised the three main contentions -

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



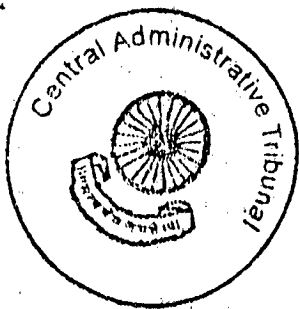
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said incentive offered by the Government of India. He referred us to Swamy's Compilation of FRSR (page 540).

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

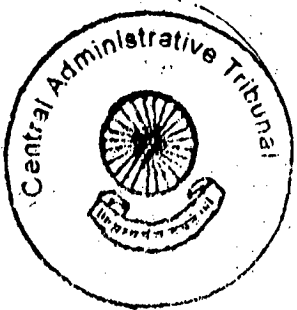
- i. The process for forwarding the proposal to the Union Public Service Commission (UPSC for short) for preparation of the panel of officers for promotion to the post of Chief Engineer (Civil) for the year 2003-2004 was initiated by the respondents in November 2002 but the proposal could be forwarded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



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

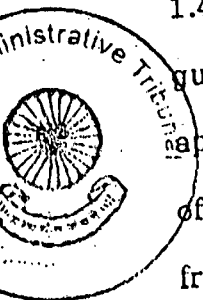
ii. Under the existing instructions of the Government on maintenance of ACRs, only adverse entries in the ACRs are required to be communicated. Any grading below the benchmark prescribed for promotion to the next higher grade in the ACR of the applicant is not an adverse entry and therefore, as per the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

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



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



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

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

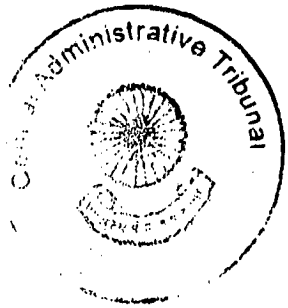
Year	Reporting Authority	Reviewing Officer	Accepting Authority	Remarks
01.04.1992 to 31.03.1993	Very Good	Very Good	NIL (Incomplete)	
01.04.1993 to 31.03.1994	Very Good	Very Good (Very sincere, Hard working and Polite)	NIL	
01.04.1994 to 30.06.2004	Very Good	Very Good	NIL	
01.07.1994 to 31.03.1995	Very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



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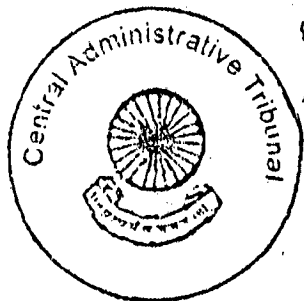
01.04.1998 to 31.03.1999	A good officer but not Very Good	A hard working and sincere officer	Accepted
01.04.1999 to 31.03.2000	Good +	A sincere officer, whose performance was good.	Not countersigned due to retirement
01.04.2000 to 31.03.2001	Very Good	Very Good	- Do -
14.05.2001 to 31.03.2002	Outstanding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

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



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



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

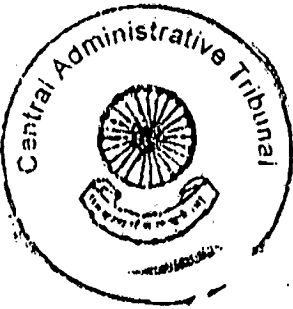
7. In the instant case the applicant has clearly stated that the respondents had never informed the applicant about any shortfall in the performance of his official duties and/or intimated any downgrading in the ACRs of the applicant at any point of time. The respondents, as already noted, has taken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



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8.

In the instant case, as already noted, the applicant was graded as 'Good' and 'Good+' in the ACRs for the years 1998-99 and 1999-2000, which in the ordinary sense cannot be treated as adverse entries, but if the benchmark for promotion to the next higher grade as per the norms is 'Very Good' then the grading of 'Good' is certainly adverse to the officer in that his promotional avenues are hit by such entry. The question whether such downgrading/entries, i.e. 'Good' when the benchmark fixed is 'Very Good', was adverse, was considered by the Hon'ble Supreme Court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363. Paras 2 and 3 of the said decision read thus:



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

"3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not

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permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

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

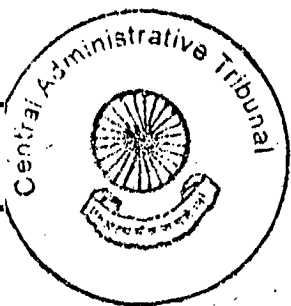
10. The Principal Bench referred to a Full Bench decision of the Delhi High Court in J.S. Garg Vs. Union of India and others, 2002 (65) Delhi Reported Judgments 607, which in turn has relied on the decision of the Supreme Court in Jal Nigam case (supra) and held that uncommunicated downgraded reports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



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

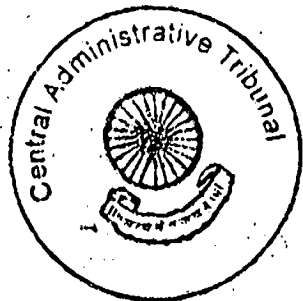
12. The Tribunal after perusing the ACRs of the applicant and the decisions bearing on the point observed thus:

"On going through the records submitted by the respondents and selection proceedings we find that the applicant has acquired grading as 'Good,' whereas the benchmark for such selection as per the circular and by the Selection Committee has been laid down as 'Very Good'. Then the question that comes is whether the ACR



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



13.

A Full Bench decision of the Ernakulam Bench of the Tribunal on 20.9.2001 in O.A.No.1304 of 2000 also dealt with the effect of non-communication of adverse remarks in the ACR of a Government servant. Referring to the decision of the Supreme Court in Gurdial Singh Fiji vs. State of Punjab and others [(1979) 2 SCC 368]

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it was observed that the position is that uncommunicated adverse remarks cannot be relied on by the DPC.

14. A Division Bench of this Tribunal to which one of us (Vice-Chairman) was a party had also occasion to consider this question in its order dated 18.8.2005 in O.A.No.228 of 2004. The Tribunal elaborately considered the decisions of the Supreme Court and the different Benches of the Tribunal and also the Circular No.DDG(P)/GSI/Conf/04 dated 26.2.2004 which deals with the procedure related to writing of confidential reports and communicating entries thereof issued by the Government of India, Geological Survey of India, Kolkata, which contains guidelines similar to the guidelines issued by the DOP&T dated 8.2.2002. The circular mentioned above referred to the observations of the Supreme Court in U.P. Jal Nigam case (supra) that, "Even a positive confidential entry can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true" and observed thus:

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

The Tribunal thereafter observed thus:

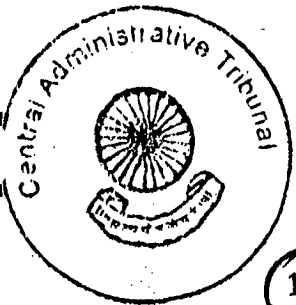
"From the circular dated 26.2.2004 issued by the 3<sup>rd</sup> respondent itself it is clear that if a downgrading of the ACR is made with reference to the previous years ACR or with reference to the grading awarded by the Reporting/Reviewing Authorities there is a duty cast on such authorities to communicate the same to the applicant treating the said downgrading as adverse. Similarly, when a benchmark is prescribed for the purpose of the officer's



next promotion and if the grading is below the benchmark then the same should be treated as adverse remark/rating and communicate it to the reported officer, that too within one month from the date of making such remarks."

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

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



16.

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

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

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

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

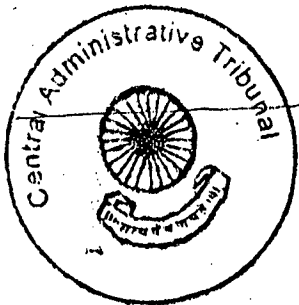
19. In the instant case the applicant is due to retire on 30.11.2005. Considering the above and the further fact that his track record for the preceding and succeeding years as per the ACRs are 'Very Good'/'Outstanding' and the services of the applicant during the years 1996-2000 were appreciated by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



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

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

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



Sd/VICE CHAIRMAN

Sd/NUMBER (A)

nkm

Date of Application : 7.12.05  
Date on which copy is ready : 7.12.05  
Date on which copy is delivered : 7.12.05  
Certified to be true copy

*[Signature]*  
7-10-05  
Section Officer (J II)  
C. A. T. Guwahati Bench  
Guwahati-5.

*[Signature]*  
7/10/05

From

**G. S. MITTAL**  
(Retd. Supd. Engg.)  
7-1-32/6/2, Leela Nagar  
Begumpet,  
Hyderabad - 500 016.

To

**THE DIRECTOR GENERAL OF WORKS**  
(CPWD)  
Nirmaan Bhavan,  
New Delhi

**Sub:** OA. No.37 of 2004, Hon'ble CAT GUWAHATI, Bench, Order  
Dt. 7<sup>th</sup> day of October 2005, G.S. Mittal VS VOI.

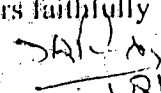
Sir,

The Hon'ble CAT has delivered judgement on the above case and same was forwarded by additional Central Government standing council, Guwahati vide letter dt. 8<sup>th</sup> October 2005. The Additional Central Government standing Council has given his opinion that it will be a fulfill exercise to file an WP in the High Court.

It is requested an early action to hold the DPC as per CAT Judgement be held as period of three months are expired.

Thanking you,

Yours faithfully

  
(G.S. Mittal)

18/11/06



ITEM NO.17

COURT NO.1

SECTION XIV

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2007 CC 1836/2007

(From the judgement and order dated 27/06/2006 in WP No. 3082/2006 of The  
HIGH COURT OF GUWAHATI, ASSAM)

UNION OF INDIA &amp; ORS.

Petitioner(s)

VERSUS

GAURI SHANKAR MITTAL

Respondent(s)

(With appln(s) for c/delay in filing SLP)

Date: 02/03/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

Mr.R.Mohan, ASG  
Miss Shweta Garg, Adv.  
Mr. V.K. Verma, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

Delay condoned.

The special leave petition is dismissed.

(G.V. Ramana)  
Court Master

(Veera Verma)  
Court Master

28

BY FAX/ SPEED POST  
COURT CASE

No.8/7/2006-EC.I  
GOVERNMENT OF INDIA  
DIRECTORATE GENERAL OF WORKS  
CENTRAL PUBLIC WORKS DEPARTMENT

Nirman Bhawan,  
New Delhi, dated the , 25-4-2007

To

Shri D.C. Goyal  
Superintending Engineer,  
Assam Central Circle-I,  
Central P.W.D,  
Bamuni Maidan,  
**GUWAHATI-781 021.**

Subject:- Contempt Petition No.10/06 in O.A.No.37/04 filed by  
Shri G.S. Mittal, SE(C) Retd Vs Anil Baijal, Secretary,  
M/o UD & Anr. -CAT, Guwahati Bench.

Sir,

I am directed to refer to your letter No. Misc. CAT/  
G.S.Mittal/ACC-I/EC/572 dated 05.03.2007 on the subject  
mentioned above and to inform that the SLP filed by the UOI has  
already been dismissed by the Hon'ble Supreme Court of  
India(copy enclosed). The Department is considering the  
matter in consultation with the Administrative Ministry/ DOPT  
regarding implementation of the Hon'ble CAT, Guwahati Bench  
order dated 07.10.2005 passed in OA No. 37/2004.

In view of above, you are requested to apprise the above  
position to the Govt. Counsel defending the contempt petition on  
behalf of UOI and ask him to seek more time of at least 3  
months from the Hon'ble Tribunal for implementation of the  
Tribunal's order, if the Contempt petition has not been  
dismissed by the Tribunal on the last date of hearing in view of  
the SLP filed. The outcome of the last hearing held on  
06.3.2007 and further development of the case may be  
informed to this office immediately.

Yours faithfully,

(T R. Prasad)  
Dy. Director (Admn.)

26/4/07

0361-2556170

③

## CIVIL APPELLATE SIDE.

五

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(2)  
[ 2 ]

IN THE MATTER OF:

Impugned order dated 7.10.05 of the  
Central Administrative Tribunal,  
Guwahati Bench passed in OA No.  
37/2004.

-AND-

IN THE MATTER OF:

1. Union of India, represented by  
the Secretary, Govt. of India,  
Ministry of Urban Development,  
New Delhi-110011.
2. Director General of Works,  
Central Public Works Department,  
Nirman Bhawan, New Delhi-110011.
3. The Superintending Engineer,  
Central Public Works Department,  
Assam Central Circle-I, Nirman  
Bhawan, Bamunimaidan, Guwahati-81.

....Petitioners%

-Versus-

Shri Sauri Shankar Mittal,  
Superintending Engineer (Retd),  
Central Public Works Department,  
Silchar Central Circle, Mela Road,  
Malugram, Silchar-788002, Assam.

...Respondents.

Contd..P/-

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(3)

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
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**WP (C) No.3082/06**

**P R E S E N T**

**HON'BLE THE CHIEF JUSTICE B.S.REDDY**  
**HON'BLE MR.JUSTICE T. NANDAKUMAR SINGH**

27.06.2006.

**Reddy, C.J: -**

The Union of India is the petitioner in this writ petition filed under Article 226 of the Constitution of India with a prayer to issue Writ of Certiorari and to quash the order dated 7.10.2005 passed by the Central Administrative Tribunal, Guwahati Bench.

The Tribunal after an elaborate consideration of the matter directed the writ petitioner herein to consider the case of the respondent/applicant for promotion to the post of Chief Engineer (Civil) on the basis of the ACRs of the applicant ignoring the uncommunicated downgrading in the ACRs for the years 1998-99 and 1999-2000 and to take appropriate decision in the matter as expeditiously as possible, at any rate, within a period of three months from the date of receipt of the order since the respondent/applicant was due to retire on 30<sup>th</sup> November, 2005.

The respondent/applicant's ACRs revealed to be 'Very Good'/'Outstanding' from 1992-03 to 2002-03 except for the years 1998-99 and 1999-2000. The facts

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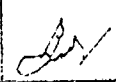
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remains that the downgrading entries for the years 1998-99 and 1999-2000 remained uncommunicated to the respondent/applicant.

Relying on the judgment of the Apex Court in UP Jal Nigam & Ors v. Prabhat Chandra Jain & Ors. 1996(2) SCC 363, the Tribunal came to the conclusion that the DPC could not have placed any reliance on the uncommunicated downgrading ACRs and accordingly directed to ignore the ACRs for the years 1998-99 and 1999-2000 and consider the case of the respondent/applicant for promotion as Chief Engineer (Civil) in accordance with law.

The learned Standing Counsel for the Union of India Mr. D. Baruah strenuously contended that downgrading ACRs for the relevant years in no manner amount to making an adverse entry and therefore, question of communicating of those ACRs as such would not arise. The contention urged by the learned Standing Counsel is that unless it is an adverse entry the same need not be communicated and the DPC did not commit any error in relying on the ACRs for the years 1998-99 and 1999-2000.

The judgment of the Apex Court in UP Jal Nigam (supra) itself is the complete answer to the contention urged by the learned Standing Counsel for the Union of India. The Apex Court having noted the rules of Nigam,



Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
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whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry, observed "but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidential in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated.... It may be emphasized that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. 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 Ja Nigan, we do find any difficulty in accepting the ultimate result arrived at by the High Court."

In the written statement filed before the Tribunal it is not stated by the writ petitioner that any reason as such has been recorded for the downgrading. As rightly

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

contended by the learned Standing Counsel it may not amount to an adverse entry but at the same time there has been entry to effect downgrading in the personal file of the respondent/application in response to which no information whatsoever has been furnished in the form of advice or otherwise. It is for that reason the Tribunal came to the conclusion that no reliance could have been placed by the DPC on those entries in the ACRs for the years 1998-99 and 1999-2000.

The view taken by the Tribunal, in our considered opinion, is in conformity in law as laid down by the Supreme Court in UP Jal Nigam (Supra) and it does not suffer from any error apparent on the face of the record requiring this Court's interference in exercise of its Certiorari jurisdiction.

Writ petition fails and shall accordingly stand dismissed.

Sd/- T. Naadakumar Singh

Judge

Sd/- B. S. Rastogi

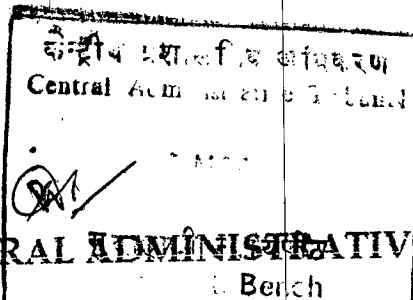
Chief Justice

P. NO. 56450  
24/4/2006

**CERTIFIED TO BE TRUE COPY**  
Date: 24/4/2006  
Superintendent (Copying Section)  
Cauhall High Court  
Enacted U/S 76, Act I, 1872

24/4/2006





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
Bench  
GUWAHATI BENCH: GUWAHATI

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

CONTEMPT PETITION No. 10/2006

In O.A No. 37/2004

In the matter of:

Shri Gauri Shankar Mittal.

... Petitioner.

-Versus-

Union of India & Ors.

... Respondents/  
Alleged contemnors.

-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 07.10.2005 passed in O. A. No. 37/2004.

-And-

In the matter of:

Shri Gauri Shankar Mittal,

Superintending Engineer (Retd.),

Central Public Works Department.

.... Petitioner.

-Versus-

29  
Filed by the petitioner  
S. Nath  
Advocate  
07.03.06

1. Shri Anil Baijal.

Secretary,  
Ministry of Urban Development and  
Poverty Alleviation,  
Nirman Bhawan, New Delhi-110011.

2. Shri B. Mazumdar.

The Director General of Works,  
Central Public Works Department,  
118-A Nirman Bhawan,  
New Delhi- 110011.

... Alleged contemnors.

The humble petitioner above named

Most respectfully sheweth:-

1. That your petitioner being aggrieved with the impugned office order No. 30/29/2002-EC. I/E.W.I dated 20.11.2003, whereby the persons junior to the applicant have been promoted to the post of Chief Engineer in the respondent department by superseding the applicant, approached this Hon'ble Tribunal through O. A. No. 37/2004, praying for a direction to the respondents to promote the applicant to the grade of Chief Engineer with effect from the date of promotion of his juniors with all consequential service benefits including arrear etc.
2. That this Hon'ble Tribunal after hearing the contention of the parties was pleased to dispose of the O.A. No. 37 of 2004 on 07.10.2005, directing the respondents as follows: -

"19. ----- We are of the view that the DPC can be directed to review the selection process and to consider the case of the applicant for promotion to the post of Chief Engineer (Civil) on the basis of the ACRs of the applicant ignoring the uncommunicated downgrading in the ACRs for the years

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

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

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

(A Copy of the judgment and order dated 07.10.2005 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- I).

3. That the petitioner begs to state that immediately after receipt of the judgment and order dated 07.10.05 passed in O.A. No. 37/2004, the petitioner approached the alleged contemner No. 2, through a representation for implementation of the judgment and order dated 07.10.05, but finding no response the petitioner submitted another representation dated 18.01.2006, praying for compliance of the direction of this Hon'ble Tribunal.

(Copy of the representation dated 18.01.2006 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- II).

4. That the humble petitioner begs to state that more than 4 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 07.10.2005.

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 07.10.2005 passed in O.A. No. 37/2004, which amounts to contempt of Court. Therefore, the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order dated 07.10.2005 in O.A. No. 37/2004 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 07.10.2005 passed in O.A. No. 37/2004 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.

### AFFIDAVIT

I, Shri Gauri Shankar Mittal, aged about 60 years, Superintending Engineer (Retd.), Central Public Works Department, 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 07.10.2005 passed in O.A. No. 37/2004.

And I sign this Affidavit on this 28<sup>th</sup> day of February 2006.

Identified by  
*Surajit Choudhury*  
Advocate.

*Shri Gauri Shankar Mittal*  
Deponent

The above named deponent -  
Solemnly affirmed this affidavit.  
before *Shri S. Nath*, on this  
the 28<sup>th</sup> day of February, 2006,  
who is identified by *Surajit Choudhury*  
Advocate.

*Sath*  
Advocate  
28/2/06.

\$2 6

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 07.10.2005 passed in O.A. No. 37/2004 and further to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 07.10.2005 passed in O.A. No. 37/2004.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.37 of 2004

Date of decision: This the 7<sup>th</sup> day of October 2005

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

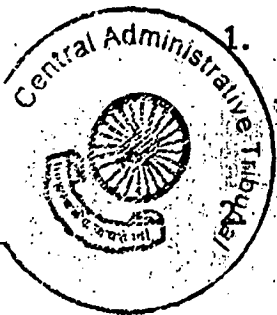
The Hon'ble Shri M.K. Misra, Administrative Member

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

.....Applicant

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

- versus -



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

*Attested  
by  
Advocate*

6. Sri M.K. Goel,  
Chief Engineer, CPWD (Retd.),  
A-28, Surya Nagar,  
Gaziabad,  
U.P. - 201 011.
7. Shri Suresh Kumar,  
General Manager (Civil),  
Delhi Transco Ltd.,  
220 K.V Sub-statio, Lodhi Road,  
New Delhi - 110 002.
8. Shri P.C. Arora,  
Chief Engineer (NEZ),  
CPWD, Dhanketi,  
Shillong - 3,  
Meghalaya.
9. Shri K. Balakrishanan,  
Chief Engineer (SZI),  
CPWD, Iind Floor, G- Wing,  
Rajaji Bhawan,  
Basant Nagar,  
Chennai - 600 090.
10. Shri Virendra Sharma  
Chief Engineer (AA),  
IT Department,  
54/2 Rafi Ahmed Kidwai Road,  
Kolkata - 700 016.
11. Shri A.L. Garg,  
Chief Engineer, BFZ,  
CPWD, East Block No. I, Level - IV,  
R.K. Puram, New Delhi.

... Respondents

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

ORDER

SIVARAJAN. J. (V.C.)

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

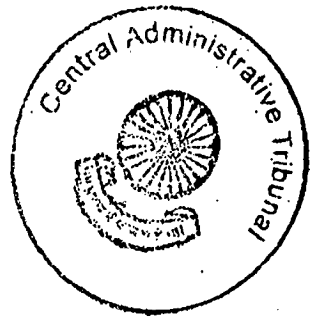
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Grade which he had completed in the year 1994. A Departmental Promotion Committee (DPC for short) meeting for selection of eligible officers for promotion to the post of Chief Engineer (Civil) in the CPWD for filling up the vacancies of the year 2003-2004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

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

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



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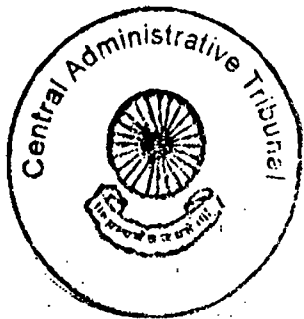
3.

Mr Sarkar has raised the three main contentions -

i. The DPC for the purpose of filling up the vacancies of Chief Engineer (Civil), CPWD for the year 2003-2004 had erroneously followed the norm for promotion issued by the DOPT with effect from 1.4.2003. This submission is made on the basis of the Government Orders/Office Memorandum, which provides that the select list for promotion to the vacancies of Chief Engineer (Civil) for the year 2003-2004 has to be prepared and finalised by 30.11.2002 in which case the norms as existed as on 31.3.2003 should have been applied by the DPC for selection. The DPC meeting was convened only on 27.6.2003 and the DPC has followed the norms for selection issued with effect from 1.4.2003.

ii. The respondents have downgraded the ACRs of the applicant for the relevant years. The downgrading, being below the Benchmark fixed by the DOPT, should have been communicated to the applicant before it is being used against the applicant. This has not been done and consequently the downgraded ACR has to be ignored by the DPC in view of the settled legal position. The counsel submitted that the applicant has got very good track record all through and the applicant had never been informed of any shortfall or any adverse reports in the ACRs, and

iii. The incentives offered to officers working in the North Eastern Region (Remote Areas) include promotion in cadre posts. The DPC did not consider the effect of the

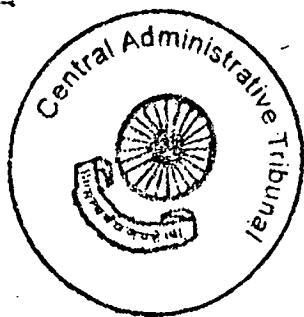


Sgt

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

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

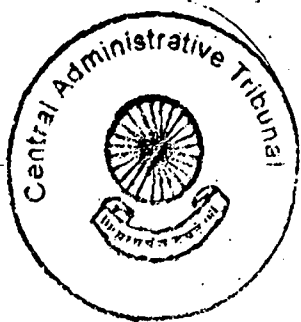
- i. The process for forwarding the proposal to the Union Public Service Commission (UPSC for short) for preparation of the panel of officers for promotion to the post of Chief Engineer (Civil) for the year 2003-2004 was initiated by the respondents in November 2002 but the proposal could be forwarded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



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

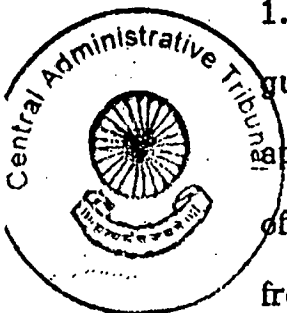
- ii. Under the existing instructions of the Government on maintenance of ACRs, only adverse entries in the ACRs are required to be communicated. Any grading below the benchmark prescribed for promotion to the next higher grade in the ACR of the applicant is not an adverse entry and therefore, as per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

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



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

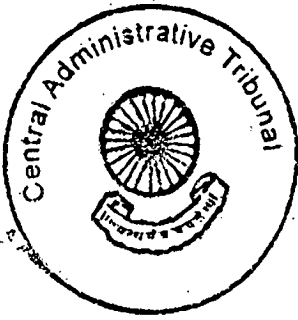


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contention of the counsel for the applicant that the DPC had followed the revised norms issued by the DOP&T with effect from 1.4.2003. Hence this point is found against the applicant.

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

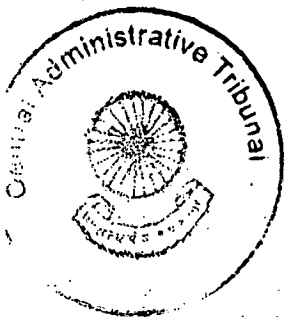
Year	Reporting Authority	Reviewing Officer	Accepting Authority	Remarks
01.04.1992 to 31.03.1993	Very Good	Very Good	NIL (Incomplete)	
01.04.1993 to 31.03.1994	Very Good	Very Good (Very sincere, Hard working and Polite)	NIL	
01.04.1994 to 30.06.2004	Very Good	Very Good	NIL	
01.07.1994 to 31.03.1995	Very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



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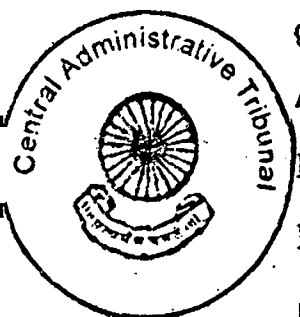
01.04.1998 to 31.03.1999	A good officer but not Very Good	A hard working and sincere officer	Accepted
01.04.1999 to 31.03.2000	Good +	A sincere officer, whose performance was good.	Not countersigned due to retirement
01.04.2000 to 31.03.2001	Very Good	Very Good	- Do -
14.05.2001 to 31.03.2002	Outstanding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

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



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

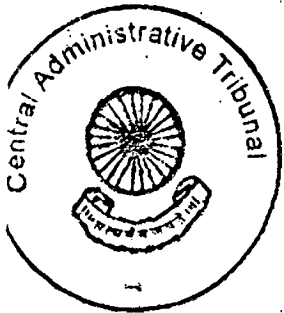


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proper application of mind by the Reviewing and Accepting Authorities so far as these two assessment years are concerned. That apart, both under the CPWD Manual (Clause 9 Volume 1) and under the General Law, the authorities who are entrusted with the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

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



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8. In the instant case, as already noted, the applicant was graded as 'Good' and 'Good+' in the ACRs for the years 1998-99 and 1999-2000, which in the ordinary sense cannot be treated as adverse entries, but if the benchmark for promotion to the next higher grade as per the norms is 'Very Good' then the grading of 'Good' is certainly adverse to the officer in that his promotional avenues are hit by such entry. The question whether such downgrading/entries, i.e. 'Good' when the benchmark fixed is 'Very Good', was adverse, was considered by the Hon'ble Supreme Court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363. Paras 2 and 3 of the said decision read thus:



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

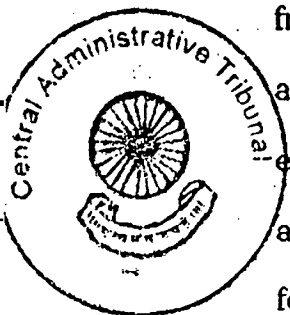
"3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. It the variation warranted be not

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permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

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

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



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

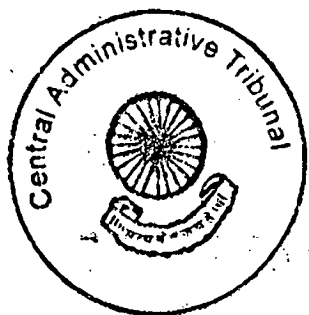
12. The Tribunal after perusing the ACRs of the applicant and the decisions bearing on the point observed thus:

"On going through the records submitted by the respondents and selection proceedings we find that the applicant has acquired grading as 'Good,' whereas the benchmark for such selection as per the circular and by the Selection Committee has been laid down as 'Very Good'. Then the question that comes is whether the ACR



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



13. A Full Bench decision of the Ernakulam Bench of the Tribunal on 20.9.2001 in O.A.No.1304 of 2000 also dealt with the effect of non-communication of adverse remarks in the ACR of a Government servant. Referring to the decision of the Supreme Court in Gurdial Singh Fiji vs. State of Punjab and others [(1979) 2 SCC 368]

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it was observed that the position is that uncommunicated adverse remarks cannot be relied on by the DPC.

14. A Division Bench of this Tribunal to which one of us (Vice-Chairman) was a party had also occasion to consider this question in its order dated 18.8.2005 in O.A.No.228 of 2004. The Tribunal elaborately considered the decisions of the Supreme Court and the different Benches of the Tribunal and also the Circular No.DDG(P)/GSI/Conf/04 dated 26.2.2004 which deals with the procedure related to writing of confidential reports and communicating entries thereof issued by the Government of India, Geological Survey of India, Kolkata, which contains guidelines similar to the guidelines issued by the DOP&T dated 8.2.2002. The circular mentioned above referred to the observations of the Supreme Court in U.P. Jal Nigam case (supra) that, "Even a positive confidential entry can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true" and observed thus:

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

The Tribunal thereafter observed thus:

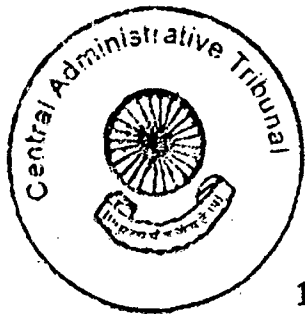
"From the circular dated 26.2.2004 issued by the 3<sup>rd</sup> respondent itself it is clear that if a downgrading of the ACR is made with reference to the previous years ACR or with reference to the grading awarded by the Reporting/Reviewing Authorities there is a duty cast on such authorities to communicate the same to the applicant treating the said downgrading as adverse. Similarly, when a benchmark is prescribed for the purpose of the officer's



next promotion and if the grading is below the benchmark then the same should be treated as adverse remark/rating and communicate it to the reported officer, that too within one month from the date of making such remarks."

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

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



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

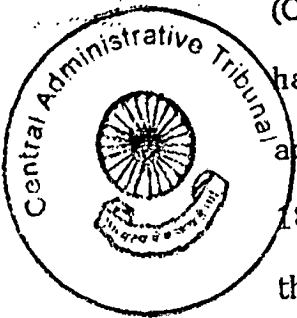
17. In the present case, as already noted, the applicant has been graded 'Very Good' from 1992-93 to 2002-03 except for the years 1998-99 and 1999-2000 for which periods the applicant was

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

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

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

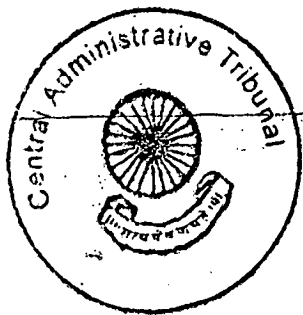




basis of the ACRs of the applicant ignoring the uncommunicated downgrading in the ACRs for the years 1998-99 and 1999-2000 in the light of the observations made in this order and to take a decision in the case of the applicant as expeditiously as possible, at any rate within a period of three months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

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

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



Sd/VICE CHAIRMAN

Sd/MEMBER (A)

nkmm

Date of Application : 7.12.05  
 Date on which copy is ready : 7.12.05  
 Date on which copy is delivered : 7.12.05  
 Certified to be true copy

Section Officer (J d1)  
 C. A. T. Guwahati Bench  
 Guwahati-5.

7/10/05

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From

G. S. MITTAL  
(Retd. Supd. Engg.)  
7-1-32/6/2, Leela Nagar  
Begumpet,  
Hyderabad - 500 016.

To

THE DIRECTOR GENERAL OF WORKS  
(CPWD)  
Nirmaan Bhavan,  
New Delhi

Sub: OA. No.37 of 2004, Hon'ble CAT GUWAHATI, Bench, Order  
Dt.7<sup>th</sup> day of October 2005, G.S. Mittal VS VOI.

Sir,

The Hon'ble CAT has delivered judgement on the above case and same was forwarded by additional Central Government standing council, Guwahati vide letter dt.8<sup>th</sup> October 2005. The Additional Central Government standing Council has given his opinion that it will be a fulfill exercise to file an WP in the High Court.

It is requested an early action to hold the DPC as per CAT Judgement be held as period of three months are expired.

Thanking you,

Yours faithfully

*[Signature]*  
(G.S. Mittal)

18/11/06

*Affected  
Law  
Advocate.*

13 NOV 2006

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
गुवाहाटी न्यायाधीश  
GUWAHATI BENCH, GUWAHATI Bench

C.P.(C) No.10/2006

IN

O.A.No.37/2004

Shri G.S. Mittal,

Applicant

Versus

Shri Anil Baijal & Anr.

Respondents

AN AFFIDAVIT ON BEHALF OF THE RESPONDENTS

MOST RESPECTFULLY SHOWETH:

I, A. Chakrabarti, working as Director General of Works, CPWD, under the Ministry of Urban Development, Nirman Bhawan, New Delhi do hereby solemnly affirm and state as under:

1) That Shri B.Majumdar who has been arrayed as Respondent No.2 in this petition has demitted office on 30.6.2006, and I have taken overcharge of the post of Director General of Works, CPWD and that I am fully acquainted with the facts of the above case in my official capacity and as such I am competent to swear this affidavit on behalf of both the Respondents.

2) That the answering Respondent has highest regard of this Hon'ble Tribunal and has not committed any willful & deliberate disobedience of the order of the Hon'ble Tribunal and is further willing to implement any direction/order, which this Hon'ble Tribunal may give. The Respondent also tenders unconditional

Filed by  
the respondents  
through G.P. Singh  
10.11.06  
S.C. Chakraborty

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apology for the delay, if any, committed in the implementation of the orders passed by this Hon'ble Tribunal in the present case.

3) That the Applicant filed OA No.37/2004 in this Hon'ble Tribunal for following main reliefs:-

(iv) That the impugned office order No.30/29/2002-EC.I/EW.I dated 20.11.2003 issued by the Respondents be quashed and set aside, to the extent juniors are promoted.

(v) That the Respondents be directed to promote the applicant to the grade of Chief Engineer with effect from the date of promotion of his juniors with all consequential service benefits including arrears etc.

(vi) Cost of the application etc.

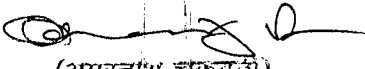
4) That the OA was allowed and disposed of by the Hon'ble Tribunal vide judgement and order dated 7.10.2005 (Annexure -I of CP ) with the following directions :-

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

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

- 5) That under the existing instructions of the Government issued vide Department of Personnel & Training OM No.28027/9/99-Estt.(A) dated 1.5.2000, the respondents were duty bound to consider for implementation of the judgement/order of the Hon'ble Tribunal in consultation with the Administrative Ministry, Department of Personnel & Training (DOP&T) and Ministry of Law, Department of Legal Affairs. Accordingly, to consider implementation of the order of the Hon'ble Tribunal, the matter was examined in the office of the respondents in consultation with the Ministries /Departments concerned. That it was observed that in terms of the existing instructions of the Government, issued by DOPT on the subject of maintenance of annual confidential reports (ACRs) only adverse entries in the ACRs

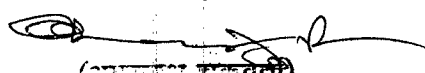
  
 (अमरनाथ चक्रवर्ती)  
 (A. CHAKRABARTI)  
 निर्माण महानिदेशक  
 Director General (Works)  
 रो.सो.नि.वि., निर्माण भवन, नई दिल्ली  
 C.P.W.D., Nirman Bhawan, New Delhi

of the officers are required to be communicated. There are no instructions of Government for communication of ACRs where the grading is below benchmark or where there is a down grading of the ACRs. That further the judgement of the Hon'ble Supreme Court in the case of UP Jal Nigam Case referred to by this Hon'ble Tribunal was only in the context of the system of writing ACRs in the UP Jal Nigam and appeal in a number of cases was pending in the Hon'ble Supreme Court in this regard. It was therefore, decided to file an appeal in the Hon'ble Guwahati High Court against the order of the Hon'ble Tribunal. Accordingly, CWP No.3082/2006 was filed but the same has been dismissed by the Hon'ble Guwahati High Court vide their judgement dated 27.6.2006.

- 6) The judgement dated 27.6.2006 passed by Hon'ble High Court has been examined by the Administrative Ministry in consultation with DOPT and M/o Law & Justice, Department of Legal Affairs. It was observed that the Hon'ble Supreme Court in the case of Union of India vs. Major Bahadur Singh (2006) 1 SCC 368, has held that judgement in UP Jal Nigam's case (1996(2) SCC 363) has no universal application and is applicable to employees of UP Jal Nigam only. The Ministry of Law & Justice, Department of Legal Affairs in consultation with Learned Additional Solicitor

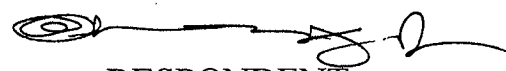
General of India have after going through the papers including the pleadings in the OA, impugned order and judgement of Hon'ble High Court have opined that this is a fit case for filing Special Leave Petition in the Hon'ble Supreme Court under Article 136 of the Constitution of India. Accordingly, necessary action is being taken and the SLP is likely to be filed very soon in the Hon'ble Supreme Court of India.

- 7) That it is respectfully submitted that the respondents hold the orders/directions of this Hon'ble Tribunal with great esteem and have not willfully or intentionally disobeyed the orders of this Hon'ble Tribunal. That the respondents are Govt. servants and under existing instructions of the Government are required to consult the DOP&T which is the nodal Ministry of the Government in Service Matters and the Ministry of Law before taking a final decision to carry out the implementation of the orders/directions of the Hon'ble Tribunal.
- 8) That the respondents tender unconditional apology for any delay or action which might have been committed by them due to inadvertence in compliance of the orders of this Hon'ble Tribunal. It is reaffirmed that the respondents have highest regards for the orders of this Hon'ble Tribunal and have no intention to disobey/disregard the same.

  
 (A. CHAKRABARTI)  
 निर्माण सहायिदेवायक  
 Director General (Works)  
 के.लो.नि.वि., निर्माण भवन, नई दिल्ली  
 S.A.W.D., Nirman Bhawan, New Delhi

- 9) The respondents sincerely regret for the delay in taking a final decision on the judgement of the Hon'ble Tribunal which as submitted, was required to be examined in consultation with the concerned Ministries of the Govt. of India. It is most respectfully prayed that in view of the submission made above, the present contempt petition against the respondents be dropped and the notice issued may be discharged.

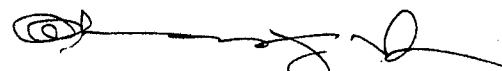
It is respectfully prayed accordingly.

  
RESPONDENT  
(अमरनाथ चक्रवर्ती)  
(A. CHAKRABARTI)  
निर्माण महानिदेशक  
Director General (Works)  
के.लो.नि.वि., निर्माण भवन, नई दिल्ली  
C.P.W.D., Nirman Bhawan, New Delhi

I, A. Chakrabarti, Director General(Works), CPWD, do hereby verify that the contents of this affidavit are stated on the basis of information derived from the records of the case and I believe the same to be true. Nothing has been concealed.

Verified at New Delhi on this 14 day of November, 2006.

Identified by me  
6/11/06  
Sr Case

  
RESPONDENT  
(अमरनाथ चक्रवर्ती)  
(A. CHAKRABARTI)  
निर्माण महानिदेशक  
Director General (Works)  
के.लो.नि.वि., निर्माण भवन, नई दिल्ली  
C.P.W.D., Nirman Bhawan, New Delhi



केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
29 AUG 2007  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
गुवाहाटी न्यायपीठ  
GUWAHATI BENCH, GUWAHATI

C.P.(C) No.10/2006

IN

O.A.No.37/2004

Shri G.S. Mittal

Applicant

Versus

Shri Anil Baijal & Anr.


Respondents

AN AFFIDAVIT ON BEHALF OF THE RESPONDENTS

MOST RESPECTFULLY SHOWETH:

I, A. Chakrabarti, working as Director General of Works, CPWD, under the Ministry of Urban Development, Nirman Bhawan, New Delhi do hereby solemnly affirm and state as under:

- 1) That Shri B.Majumdar who has been arrayed as Respondent No.2 in this petition has demitted office on 30.6.2006, and I have taken over charge of the post of Director General of Works, CPWD and that I am fully acquainted with the facts of the above case in my official capacity and as such I am competent to swear this affidavit on behalf of both the Respondents.
- 2) That the answering Respondent has highest regard of this Hon'ble Tribunal and has not committed any willful & deliberate disobedience of the order of the Hon'ble Tribunal and is further

  
(अभ्यन्तर्गत चक्रवर्ती)  
(A. CHAKRABARTI)  
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Director General (Works)  
केन्द्रीय निर्माण भवन, नई दिल्ली  
C.P.W.D., Nirman Bhawan, New Delhi

DD  
F. L. L. L. L.  
the respondent  
through G. S. Mittal  
28.8.07 S. C. S. C.

willing to implement any direction/order, which this Hon'ble Tribunal may give. The Respondent also tenders unconditional apology for the delay, if any, committed in the implementation of the orders passed by this Hon'ble Tribunal in the present case.

3) That the Applicant filed OA No.37/2004 in this Hon'ble Tribunal for following main reliefs:-

(iv) That the impugned office order No.30/29/2002-EC.I/EW.I dated 20.11.2003 issued by the Respondents be quashed and set aside, to the extent juniors are promoted.

(v) That the Respondents be directed to promote the applicant to the grade of Chief Engineer with effect from the date of promotion of his juniors with all consequential service benefits including arrears etc.

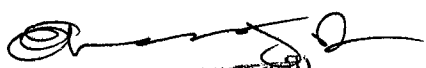
(vi) Cost of the application etc.

4) That the OA was allowed and disposed of by the Hon'ble Tribunal vide judgement and order dated 7.10.2005. The official Respondents examined the orders passed by this Hon'ble Tribunal in consultation with DOPT and M/o Law & Justice, Department of Legal Affairs. It was decided to file an appeal in the Hon'ble Guwahati High Court against the order dated 7.10.2005 of this Hon'ble Tribunal. Accordingly, CWP No.3082/2006 was filed but the same was dismissed by

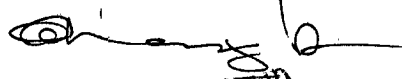
this Hon'ble Guwahati High Court vide their judgement dated 27.6.2006.

5) The judgement dated 27.6.2006 passed by Hon'ble High Court was examined by the Administrative Ministry in consultation with DOPT and M/o Law & Justice, Department of Legal Affairs. It was observed that the Hon'ble Supreme Court in the case of Union of India vs. Major Bahadur Singh (2006) 1 SCC 368, had held that judgement in UP Jal Nigam's case (1996(2) SCC 363) has no universal application and is applicable to employees of UP Jal Nigam only. The Ministry of Law & Justice, Department of Legal Affairs in consultation with Learned Additional Solicitor General of India after going through the papers including the pleadings in the OA, impugned order and judgement of Hon'ble High Court opined that this is a fit case for filing Special Leave Petition in the Hon'ble Supreme Court under Article 136 of the Constitution of India. Accordingly, the SLP was filed in the Hon'ble Supreme Court of India and the same was dismissed by the Apex Court by its order dated 2.3.2007.

6) That the order dated 2.3.2007 passed by the Hon'ble Supreme Court of India was received on 12.4.2007. The same was

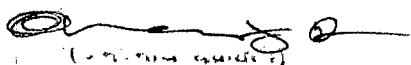
  
(अनन्ताथ चक्रवर्ती)  
(A. CHAKRABARTI)  
निर्माण महानिदेशक  
Director General (Works)  
केन्द्रीय निर्माण भवन, नई दिल्ली  
P.O. Central Board of Secondary Education, New Delhi

examined and put up for perusal of the Administrative Ministry and DOPT. The Administrative Ministry on 27.4.2007 referred the case file to DOPT which was returned on 10.5.2007 with the directions to take appropriate action in consultation with Department of Legal Affairs. The official respondents after careful consideration of the implications of order of Hon'ble Supreme Court referred the file on 23.5.2007 to M/o Law & Justice, Deptt. of Legal Affairs for their advice and final view in the matter. The Deptt. of Legal Affairs considered the feasibility of filing a Review Petition asked the Department to take a chance if there are justification in getting the delay condoned since the filing of Review Petition has become time barred. It was otherwise advised by them that there is no other option except to implement the Hon'ble Tribunal's order dated 7.10.2005. The advice of the Department of Legal Affairs was examined by the Department in consultation with the M/o UD and it was decided to implement the order of this Hon'ble Tribunal dated 7.10.2005. Accordingly, it was ordered by the competent authority on 25.6.2007 to process the case for review DPC. After completing the necessary formalities, the case has been referred to UPSC on 23.7.2007 for Review DPC in the grade

  
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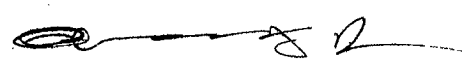
of Chief Engineer(Civil) for the year 2003-2004 as per the directions of this Hon'ble Tribunal.

- 7) That it is respectfully submitted that the respondents hold the orders/directions of this Hon'ble Tribunal with great esteem and have not willfully or intentionally disobeyed the orders of this Hon'ble Tribunal. That the respondents are Govt. servants and under existing instructions consultation with DOP&T which is the nodal Ministry of the Government in Service Matters and the Ministry of Law is mandatory before taking a final decision on the implementation of the orders/directions of the Hon'ble Tribunal.
- 8) That the respondents tender unconditional apology for any delay or action which might have been committed by them due to inadvertence in compliance of the orders of this Hon'ble Tribunal. It is reaffirmed that the respondents have highest regards for the orders of this Hon'ble Tribunal and have no intention to disobey/disregard the same.
- 9) The respondents sincerely regret for the delay in taking a final decision on the judgement of the Hon'ble Tribunal which was due to the procedural requirements prescribed for considering such cases as narrated in the preceding

  
(Name of the respondent)  
(Designation)  
(Date)  
(Place)

paragraphs. It is most respectfully prayed that in view of the submission made above, the present contempt petition against the respondents be dropped and the notice issued may be discharged.

It is respectfully prayed accordingly.



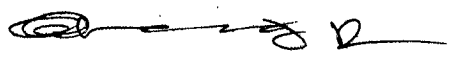
RESPONDENT

(A. CHAKRABARTI)  
निर्माण महानिदेशक  
Director General (Works)  
रे.लो.नि.वि., निर्माण भवन, नई दिल्ली  
CPWD, Bhawan Bhawan, New Delhi

VERIFICATION:

I, A. Chakrabarti, Director General(Works), CPWD, do hereby verify that the contents of this affidavit are stated on the basis of information derived from the records of the case and I believe the same to be true. Nothing has been concealed.

Verified at New Delhi on this                      day of August, 2007.



RESPONDENT

(A. CHAKRABARTI)  
निर्माण महानिदेशक  
Director General (Works)  
रे.लो.नि.वि., निर्माण भवन, नई दिल्ली  
CPWD, Bhawan Bhawan, New Delhi