

FORM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application No. _____
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

32/06 in O.A 228/04

Applicant(s) Subash Kr. Pattnaik

Respondent(s) ~~Ex-Officio. Posts~~
Sri S. P. Gaur

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

Advocate for the Respondent(s) S. C. Das,
Mr. G. Baisya, S. C. Das

Notes of the Registry Date Order of the Tribunal

This Contempt petition 24.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
has been filed by the Vice - Chairman.
Counsel for the petitioner
u/s 17 of the CAT Act, 1985
praying for initiation of
a Contempt proceeding against
the alleged Contemner on 27.11.2006
non-compliance of the order
dated 18.8.2005 passed
in O.A. 228/04 as well as
order dated 1.8.2006
passed in C.P. 35/05
in O.A 228/04.

Post on 27.11.2006.

Vice-Chairman

Heard Mr. M. Chanda, learned counsel
for the contempt petitioner.

When the matter came up for
consideration, Mr. Chanda has pointed out to
paragraphs 5 & 6 of the order dated 1.8.2006
passed in C.P. No.35/2005 which are
reproduced as under:-

Laid before the
Hon'ble Court for further
orders.

P. D. S.
for Section Officer

5. The UPSC has also recommended
filing of an appeal in consultation
with Ministry of Law and DOP&T in
terms of certain O.M. However, when
the matter came up for hearing, the
learned counsel for the respondents
submitted that in an identical matter
this court directed to furnish a copy
of the order to the UPSC and due
compliance may be ensured. The
learned counsel for the respondents

- 2 -

Contd.

27.11.2006

submitted that as far as the respondents are concerned they have already complied with the order on their part and what is left is with the UPSC.

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

This Court would like to know as to whether the respondents had issued any notice to the UPSC as directed, and if so, on what date and the acknowledgement thereof. For that purpose, issue notice to the respondent/alleged contemner. The respondents' counsel is directed to produce the copies of the notice sent by them to the UPSC and the acknowledgement thereof as directed in C.P.35/2005 for perusal of this Tribunal by the next date.

Post the matter on 11.1.2007.

Ati

Vice-Chairman

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/bb/

11.1.07.

The counsel for U.P.S.C. has submitted that he has filed reply to the affidavit to day. Counsel for the applicant would like to file rejoinder. Let it be done.

Post the matter on 6.2.07.

Vice-Chairman

lm

3-
C.P.32/07

6.2.07. Post the matter on 22.2.07.

Vice-Chairman

lm

Abidavit has been
billed.

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21.2.07.

22.02.2007 Mr.G.Baishya, learned Sr.C.G.S.C.
is granted further three weeks time to
get instruction in the matter.

Post on 16.03.2007.

Vice-Chairman

/bb/

16.3.07.

Post the matter on 4.4.07.

②

Member

Vice-Chairman

lm

Abidavit has been
billed.

3
23.5.07.

4.4.07. Post the matter on 24.05.07.

Vice-Chairman

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24.5.07. When the matter came up for hearing the learned counsel for the respondents has submitted that the matter is taken up before the Hon'ble Gauhati High Court in WPC No.1234 of 07. On 21.3.2007 the Writ Petition disposed of in the Gauhati High Court with direction to the respondents to hold the review D.P.C. within three months. Counsel for the respondents has submitted that the Respondents are taking a decision to convey the Review D.P.C as instructed by the UPSC.

Considering the submission made in the Contempt proceedings the C.P. stands hold good and therefore, C.P. is closed.

Vice-Chairman

lm

*24.5.07
Copy of the order
has been sent
to the applicant
by post.
B.R.*

1.06.07

গুৱাহাটী বিধুৰ্বীঠ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

CONTEMPT PETITION No. 32 /2006

In C.P. No. 35/2005

In O.A No. 228/2004

In the matter of:

Shri Subodh Kumar Pattnaik

... Petitioner.

-Versus-

Union of India & Ors.

-And-

In the matter of:

An application under Section 17 of the Central Administrative Tribunals Act, 1985, praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the order dated 18.08.2005 passed in O.A. No. 228/2004 as well as order dated 01.08.2006 passed in C.P. No. 35/2006 in O.A. No. 228/2004.

-And-

In the matter of:

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

Filed by the petitioner
through S. Nakul
Advocate
23/11/06

Geological Survey of India,
Shillong (Meghalaya).

.... Petitioner.

-Versus-

1. Sri S. P. Gaur,
Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi- 110011.

... Alleged contemnor/

Respondent.

The humble petitioner above named

Most respectfully sheweth:-

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

(Geology) and consider the case of the applicant in the light of the observations made hereinabove and pass appropriate orders in the matter within a period of three months from the date of receipt of the order."

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

(A Copy of the judgment and order dated 18.08.2005 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 1).

3. That the petitioner begs to state that due to non-compliance of the judgment and order dated 18.08.05 passed in O.A. No. 228/2004, he approached this Hon'ble Tribunal by filing a Contempt Petition No. 35/2005. However, the Hon'ble Tribunal vide it's order dated 01.08.2006 closed and dismissed the Contempt Petition No. 35/2005 with the direction as follows:

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

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

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

The Contempt Petition stands closed and dismissed.
No costs."

(A Copy of the order dated 01.08.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-II).

4. That petitioner begs to state that immediate after receipt of the order dated 01.08.06 passed in C.P. No. 35 of 2005 in O.A. No. 228/2004, he has approached the alleged contemner through a representation dated 09.08.2006 enclosing a copy of the order dated 01.08.06, praying for compliance of the direction of this Hon'ble Tribunal, but to no result.

(Copy of the representation dated 09.08.06 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- III).

5. That the humble petitioner begs to state that more than 3 (months) time have passed since the passing of the 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 order dated 01.08.2006.

6. That it is stated that the alleged contemnors deliberately and willfully did not initiate any action for implementation of the order dated 01.08.2006 passed in C.P. No. 35/2005 in O.A. No. 228/2004, 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 01.08.2006 passed in C.P. No. 35/2005 in O.A.

No. 228/2004 of this Hon'ble Tribunal and further be pleased to impose punishment upon the alleged contemnors in accordance with law.

7. That this application is made bonafide and for the cause of justice.

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 order dated 01.08.2006 passed in C.P. No. 35 of 2005 as well as order dated 18.08.2005 passed in O.A. No. 228/2004 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

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

AFFIDAVIT

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

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statements made in paragraph 1 to 5 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before this Hon'ble Tribunal, Guwahati Bench, Guwahati for non-compliance of the Hon'ble Tribunal's order dated 01.08.2006 in C.P. No. 35/2005 in O.A. No. 228/2004.

And I sign this Affidavit on this 21st day of November 2006.

Identified by

Dutta
Advocate.

Subodh Kumar Patnaik
Deponent.

The above named deponent solemnly affirmed this affidavit before me on 21st day of Nov'06, who is identified by Mrs. U. Dutta, Advocate.

Chaitanya
Advocate
21/11/06

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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 01.08.2006 passed in C.P. No. 35/2005 in O.A. No. 228/2004 and further to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 01.08.2006 passed in C.P. No. 35/2005 in O.A. No. 228/2004.

18/8/06

18/8/06

18/8/06

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.228 of 2004

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

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

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

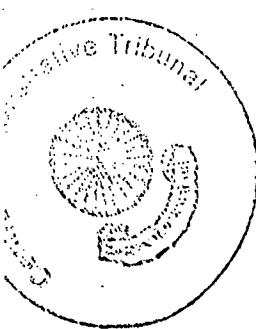
Sri Subodh Kumar Pattnaik,
Son of Late Bansidhar Pattnaik,
Geologist (Sr.), MGP Division,
O/o - The Dy. Director General, NER,
Geological Survey of India,
Shillong (Meghalaya)

... Applicant

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

- Versus -

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



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

... Respondents

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

ORDER

SIVARAJAN. J. (V.C.)

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

New Delhi.

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

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

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

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

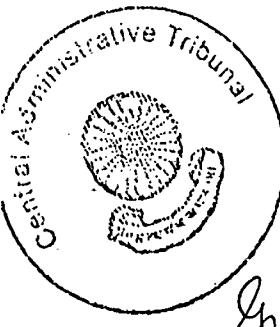
4. A written statement is filed on behalf of the respondents. Regarding an averment made by the applicant that though he was qualified and eligible for promotion to the post of Director (Geology) since 1990 onwards his name was not considered by the DPC, the respondents with details has shown that based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

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

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

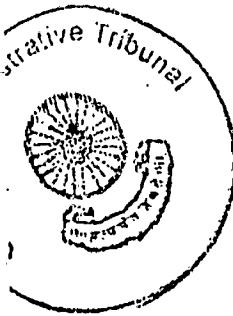
6. Heard Mr J.L. Sarkar assisted by Mr M. Chanda, learned counsel for the applicant, and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. An officer from New Delhi has brought the confidential records of the applicant and also the DPC proposal records maintained by the Government of India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



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

Shri/



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

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

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

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

Ans:

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

10. Now let us consider the vital issue involved in the case viz., whether the official respondents were justified in not selecting and promoting the applicant for the years 2003-2004 and 2004-2005.

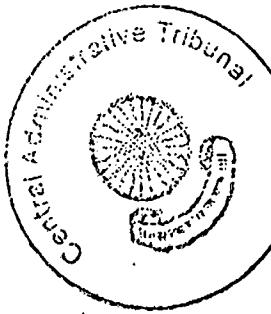
The respondents have clearly assigned the reasons for not selecting and promoting the applicant to the post of Director, Geology and unsatisfactory performance reflected in the confidential records. It is stated that as per the instructions of the Department of Personnel and Training dated 8.2.2002 the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

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

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

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

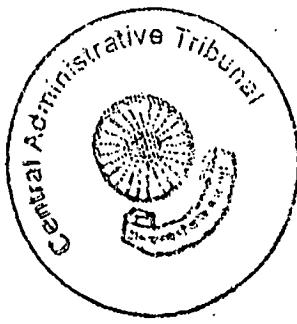


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From the above it is seen that the applicant's grading was 'Good' for the first half of 1996-97 and 'Very Good' for the second half. Similarly, for the first half of the Assessment Year 1997-98, though the Reviewing Authority had graded 'Very Good',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

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

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

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

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

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

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

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

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

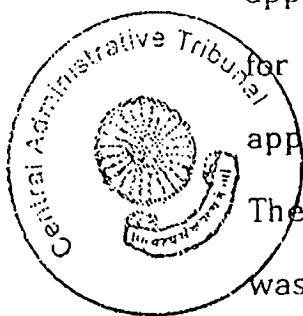
"2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same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

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

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

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



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

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

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

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

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

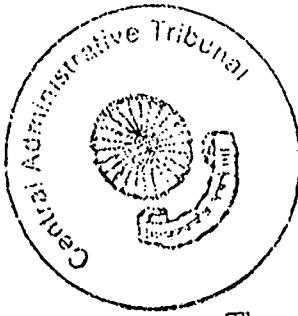
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declaration that the applicant is unfit will not stand in its legs and the impugned action is to be set aside."

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

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

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



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

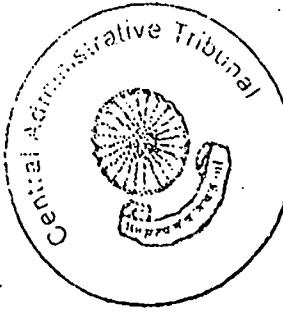
"We have also noticed that the grading 'Very Good' for the period 28.6.1989 to 31.3.1990, as given by the Reporting Officer and endorsed by the Reviewing Officer

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

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

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



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

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

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

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

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

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

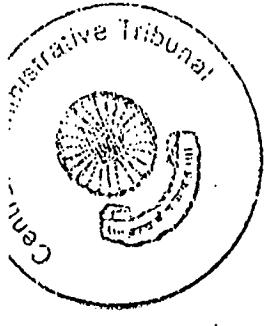
All reporting officers are requested to take note of the above mentioned position and ensure that CRs are completed strictly in accordance with these stipulations. Failure to do so, particularly by way of non-communication of adverse entries or the reasoned (speaking) orders for the retention of such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

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

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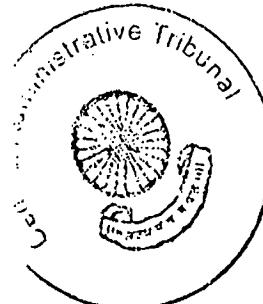
job in public interest to make a realistic assessment of the work and conduct of the employees working under them. The said authorities, in the circumstances, must read beforehand all the relevant instructions and guidelines on the subject issued by the Government from time to time to understand the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

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



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



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

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

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

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

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

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

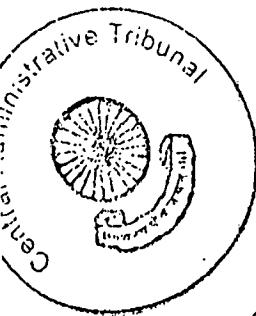
28. Now, reverting to the present case, the case of the applicant for promotion to the post of Director (Geology) in the scale of pay of Rs.12000-16,500/- was considered for the years 2003-04 and 2004-05. The ACRs, relevant for the assessment year 2003-04, according to the respondents are the years 1997-98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

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

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

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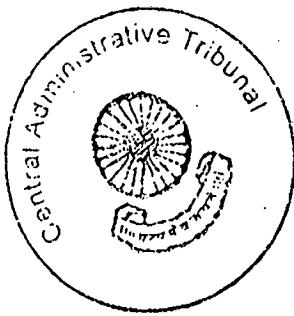
any reason and for two years had downgraded as 'Good' stating that the applicant 'is not a willing field worker'. In this context it is also relevant to note that the very same Accepting Authority who had assigned 'Good' for 1998-99 and first part of 1999-2000, had assigned 'Very Good' for the remaining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

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

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

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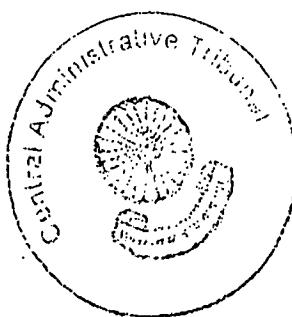
(ii) However, the most outstanding work of Shri Pattnaik was accomplished during 1993-2002 when he identified a new alkaline complex named by him as "Bhela-Rajna



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

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



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

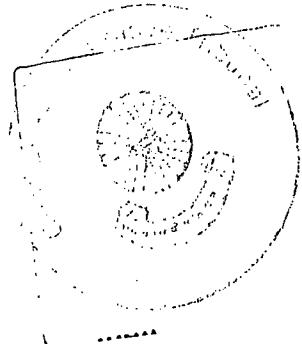
23. Though the applicant has relied on a large number of decisions of different Benches of the Central Administrative Tribunal and also decisions of the High Courts and the Supreme Court, in the light of the discussions made hereinabove, we do not think it necessary to deal with ^{my all} those decisions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

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

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

sd/ VICE CHAIRMAN

sd/ MEMBER (A)



Date of Application : 26.8.05
Date on which application filed : 31.8.05
Date on which copy received : 31.8.05

Certified to be true copy

W. S. SARKAR
Section (Fitter (I.D.D.I)
C. A. T. Guwahati Bench
Guwahati
31/8/05

Photo copy
Attested
Guwahati
07/9/05

(S. SARKAR)
Senior Geologist
Geological Survey of India
Govt. of India
SHILLONG

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure-II

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

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

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

The Hon'ble Shri G. Ray, Administrative Member

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

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

- versus -

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

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

.....Alleged Contemners/
Respondents

9/8/2006

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

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

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

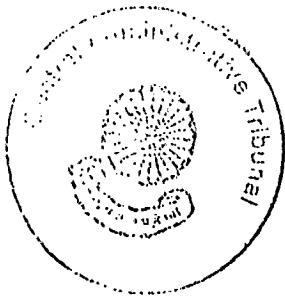
"The above undisputed (undisputed we said because the respondents did not deny the averments made in para 4.21 of the application in para 13 of their reply) fact situation would show that the applicant was a willing Field Worker, for about 20 years he had devoted in field work in difficult terrains and made great achievement. This would clearly demonstrate that the request of the applicant for excluding him from field work was made for good and valid reasons. It is about such a man the Accepting Authority said that the applicant is not a willing field worker. For the selection year 2003-2004 the records (CR) required are for the years 1997-98 to 2001-02. If the downgrading to 'Good' by the Accepting Authority for the year 1998-99 and first part of 1990-2000 on the ground of 'not a willing field worker' is eschewed the applicant even satisfies the Benchmark fixed in 2002.

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

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

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

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



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

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

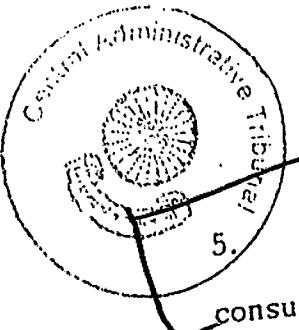
"Dear Shri Jadhav,

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

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

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

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



The UPSC had also recommended filing of an appeal in consultation with Ministry of Law and DOP&T in terms of certain O.M.

However, when the matter came up for hearing, the learned counsel for the respondents submitted that in an identical matter this court directed to furnish a copy of the order to the UPSC and due compliance may be ensured. The learned counsel for the respondents submitted that as far as the respondents are concerned they have already complied with the order on their part and what is left is with the UPSC.

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

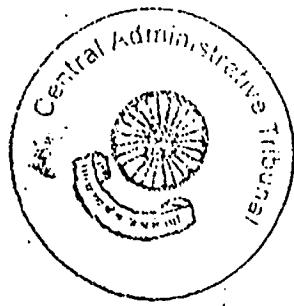
7. In the circumstances of the case we do not find any reason to hold this Contempt Petition on file and therefore the Contempt Petition is closed and dismissed on the ground that substantial compliance has been made by the respondents.

✓

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

The Contempt Petition stands closed and dismissed. No costs.

sd/ VICE CHAIRMAN
sd/ MEMBER (A)



AKH

Date of Application : 7/8/06
Date on which copy is received : 7/8/06
Date on which copy is received : 7/8/06
Certified to be : C 17

N. D. Sengupta
Section Officer (J. d.)
C. A. T. Guwahati Bench
Guwahati

M. H. Sengupta
7/8/06

GOVERNMENT OF INDIA

No. 028 /SKP/FCD/OPAMN//NER/2006

Dated, August 9th, 2006

From
S. K. Pattnaik,
Geologist (Sr) & I/C
T. C. Division, Op. AMN
Geological Survey of India,
Shillong 3

To
The Secretary
Ministry of Mines,
Govt. of India,
Shastri Bhavan,
New Delhi - 01

Sub : Order of the Hon'ble CAT, Guwahati dated, 01.08.2006 on Contempt Petition
No. 35 of 2005 (in original application no. 228 of 2004) - redg.

Sir,

Kindly find enclosed, herewith, an attested copy of the above order (5 pages) of Hon'ble
CAT, Guwahati, dated 01.08.2006 on contempt petition no. 35 of 2005 (in original application
no. 228 of 2004) for your kind information and necessary compliance.

Thanking you

Yours faithfully,

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

8/8/06
09.08.06

No. _____ / FCD/OPAMN//NER/2006

Dated, August 9th, 2006

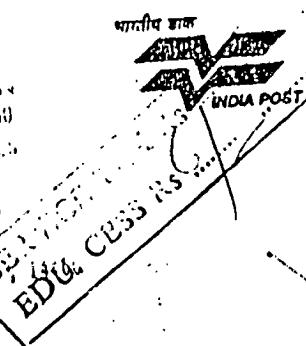
Copy for kind information and necessary compliance to

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi, along with a copy of the aforesaid order.
2. The Director General, Geological Survey of India, 29 J. L. Nehru Road, Kolkata 16, along with a copy of the aforesaid order

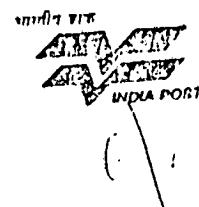
S. K. Pattnaik
(S. K. Pattnaik)
Geologist (Sr)

8/8/06
09.08.06

SHILLONG GPO (793001)
SP E.I. 1213/2006/1114
Counter No:1, OP Code:1010
To:THE SECY, MIN. OF MINES
NEW DELHI, PIN:1100
FROM: S. K. PATNAIK, SH
Wt:30grams,
Amt:50.00, 09/08/2006, 14.00
INSURE YOURSELF AT GPO



SHILLONG GPO (793001)
SP E.I. 1213/2006/1114
Counter No:1, OP Code:1010
To:THE SECY, MIN. OF MINES
NEW DELHI, PIN:1100
FROM: S. K. PATNAIK, SH
Wt:30grams,
Amt:50.00, 09/08/2006, 14.00
INSURE YOURSELF AT GPO



absentee via DPO
untraceable

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

CONTEMPT PETITION NO. 32 OF 2006

IN O.A No. 228 OF 2004

IN C.P. No. 35 of 2005

IN THE MATTER OF: -

C.P. NO. 32 OF 2006

Shri Subodh Kumar Patnaik ..Petitioner

Versus

Sri S.P. Gaur Respondent

AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT ABOVE NAMED AGAINST THE CONTEMPT PETITION FILED BY THE PETITIONER ABOVENAMED.

AFFIDAVIT OF THE RESPONDENT ABOVENAMED.

I, S. P. Gaur, son of Shri Radhey Shyam Gaur and posted as Secretary Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi, being the respondent in the instant petition and well acquainted and conversant with the facts and circumstances of the case, I do hereby solemnly affirm and beg to state and as follows.

1. That the Opposite Party above named has filed an O.A. being O.A. No. 228/2004 before the Hon'ble Tribunal by alleging that his due promotion was not given. In the said O.A., the answering respondent herein was not made a Party. The said Original

Signature

Contd...../-

55
Filed by
the respondents
through
Gaurav Radhey Shyam
11.1.07 Sr. Case

Application was heard and finally disposed of with an order directing the Respondent to convene a Review DPC for selection to the post of Director (Geology) and consider the case of the Applicant.

2. That it is respectfully submitted that the directions to the respondents by this Hon'ble Tribunal in the judgment dated 18.8.2005 to convene a Review DPC to consider the case of the applicant was based upon the observations and findings by this Hon'ble Tribunal that the Reporting/Reviewing/Accepting/Authorities while considering the case of the petitioner had not followed the Rules regarding maintaining of ACR, particularly in the matter of downgrading remarks. The said observation of this Hon'ble Tribunal was based on the finding that the applicant was awarded 'Very Good' by the Reporting Officer for the year 1996-97 while the Accepting Authority downgraded the same as 'Good' without giving any reason. Similarly, for the first half of the year 1997-98 the Reviewing Authority graded the applicant 'Very Good' but the Accepting Authority downgraded the same to 'Good'. Further, for the year 1998-99 and for the first part of 1999-2000 both the Reporting Authority and Reviewing Authority graded the applicant 'Very Good' but the Accepting Authority downgraded it to 'Good' by stating that the applicant was not a willing field worker and that the applicant avoids field works. However, for the second half of the year 1999-2000 the Accepting Authority graded the applicant 'Very Good'. For the year 2000-01 the Reporting and Reviewing Authority graded the applicant 'Very Good' but the Accepting Authority's remarks were not recorded.

8/Jan

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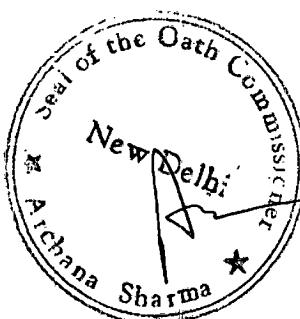
For the year 2001-02 all the Authorities graded the applicant as 'Very Good'; but for the years 2002-03 and 2003-04, the applicant was graded as 'Good' by all the Authorities.

3. That the answering respondent begs to state that Opposite Party filed a Contempt Petition being C.P. No. 35/2005 which was disposed by the Hon'ble Tribunal vide its Order dated 1/8/2006., thereby directing the Respondents to write to the present respondent, namely UPSC with a copy of the order with direction for convening a Review DPC as directed by the Hon'ble Tribunal in the Judgement dated 18/8/2005 and have the order complied as expeditiously as possible, at any rate within a period of 3 months from the date of receipt of the order.

4. That the answering respondent begs to state that UPSC is a constitutional body. In both the O.A. and the Contempt petition the UPSC was not a party and it is laid down by the Supreme Court that the Contempt is between the Court and the Contemnor, and the court cannot implead a private party to a Contempt Petition. That being the position your respondent decided to file a review application before the Hon'ble Tribunal. Your respondent not being a party to the O.A and Contempt Petition was not at all aware of the orders more specifically the order dated 1/8/2006 passed in CP No. 35/2005. The said order was received by your respondent only on 11/8/2006. Thereafter your respondent consulted the concerned advocate to take appropriate measure in the instant case.

8/Jan-

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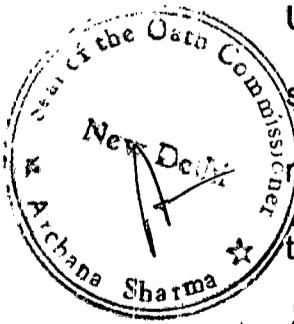


5. That the respondent herein begs to state that after consulting the counsel and after receiving his instruction on 17/11/2006, to file a review application before this Hon'ble Tribunal, your respondent took necessary steps to file the review application on 21/12/2006.

6. That the respondent begs to reiterate that the UPSC was neither a party to the O.A. No. 228 of 2004 nor was a party to C.P. No. 35 of 2005. Moreover, the applicant filed his representation before the Secretary, Ministry of Mines, Govt. of India and not before the answering respondent. The statement made in paragraph 4 of the contempt petition is highly misleading and the applicant deliberately made the said false statement before this Hon'ble Tribunal to mislead the Hon'ble Tribunal. The direction that were issued by the Hon'ble Tribunal against the other respondents but not against your respondent and therefore there is no willful violation whatsoever by your respondent.

7. That the respondent begs to state that as your respondent was not a party to the O.A. 228 of 2004 and C.P. No. 35 of 2005, the orders were passed in both the cases in absence of UPSC and UPSC was not represented before the Hon'ble Tribunal. Due to the said fact that the orders were passed behind the back of your respondent, your respondent could not avail the opportunity to place the facts of the case. Thus being without any other alternative your

8/Jan.



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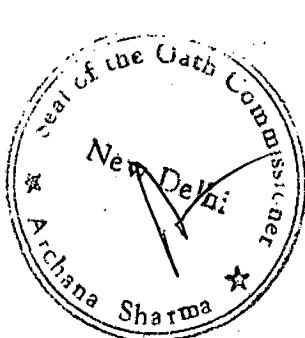
respondent filed the said review application being R.A. No. 1 of 2007 which is pending before this Hon'ble Tribunal.

8. That in view of the above the respondent have in no way circumvented the orders of the Hon'ble Tribunal. There is no willful violation or disrespect on the part of the alleged contemnor against the order and direction of this Hon'ble Tribunal.

9. That the instant affidavit of the respondent is made bonafide and in the interest of justice.

Therefore it is prayed before your Lordship that Your Lordships would graciously be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records may be pleased to dismiss the present contempt proceeding against the respondent contemnor by discharging the notice issued to the respondent.

10. That the statement of the fact made in paragraph 1 to 8 are true to my knowledge and rest are my humble submission before this Hon'ble Tribunal.

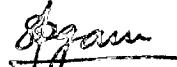


8/Jan.

Contd..../-

I herein to set my hand to this affidavit on this the 9th day of January, 2007.

Identified by


DEPONENT

(S. P. GAUR)
Secretary
U. P. S. C., New Delhi

ADVOCATE

I identify the deponent who
was signed in my presence

The Deponent above named solemnly affirm
before as who is identified by Shri.....
.....on this the.....day of January,
2007.



S P Gaur
S P Gaur
Secretary U.P.S.C.
9/1/07
I declare that I have read and explained the terms and conditions of the affidavit to the deponent and he has signed the same in my presence.
A
9 JAN 2007