

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

ORDER SHEET

1. Original Application No. _____
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____ 1/2007 in C.P. 35/2005 in O.A 228/04

Applicant(S) Subodh ^{Kumar} ~~Kumar~~ Pattnaik VS Union of India & Ors

Advocate for the Applicant(S) Mr. G. C. Barishya, Sr. case.

Advocate for the Respondant(S) M. Chandra, S. Nain, G. N. Chakraborty

Notes of the Registry	Date	Order of the Tribunal
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This Review Petition

15.2.07

Judgment delivered in open Court.

Kept in separate sheets. Application is dismissed with cost Rs.5000/-.

Vice-Chairman

lm

has been filed by the
W.O.P. u/s 22(3) (F) of
Administrative Tribunal
Act, 1985 for review of
the judgement dated 1.8.06
in C.P. 35/2005 and the
Judgement dated 18.8.05
passed in O.A 228/04.

The Review petition
first placed before the
Honble V.C., for allow the
same for circulation.

Laid before the
Honble V.C. for favour
of order.

For

Section officer

Honble V.C.

15.2.07
sd/-

22.2.07

Copy of the bidet
has been sent to the
Office for issue
in time to the
applicant by post.
H.P.

27.2.07
Second vide
D/O CAT/947/520/
232/D.O. 27.2.07

H.P.
Certified copy
of the bidet has
been collected
by the Sr. C.S.C.
on 12.3.07.

H.P.

As directed on the non
depositing the cost of Rs. 5000/-
a letter apt the ALPSC has
been prepared & submitted for
approval with a copy to Sr. C.S.C.

H.O. O/SO (S) 4.6.07

on
4.6.07
CO

Registered
4/6

Today a letter dated 16.8.2007
has been received from Shri G. Bairappa Adwani
intimating that Guwahati High Court vide
its order dated 21.3.2007 ~~has~~ passed in W.P.(C)
1234/07 has modified the CAT order. A copy
of the High Court order has also been filed.
Since now CAT order do not survive in view of
High Court order, nothing more is required to be
done by this Tribunal in this case.
Submitted pl.

17/8/2007

17/8/2007

17/8/2007

AND

IN THE MATTER OF:


Review Application No.1 of 2007

Union Public Service Commission

... Review Applicant /
Petitioner.

-Versus-
Subodh Kumar Pattnaik

..... Respondent /
Opposite Party


(G. G. SHABONG)
Union Public Service Commission
New Delhi/New Delhi

-AND-

IN THE MATTER OF:

Union Public Service Commission,
Represented by the Secretary,
Dholpur House, SHahjahan Road,
New Delhi.

..... Petitioner

-Versus-

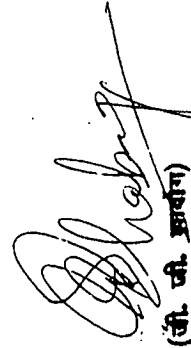
1. Shri Subodh Kumar Pattnaik,
Son of Late Bansidhar Pattnaik,
Geologist (Sr.) MGP Division,
Office of the Deputy Director General,
North East Region,
Geological Survey of India,
Shillong, (Meghalaya).

..... Respondent

2. The Secretary,
Ministry of Coal and Mines,
Government of India,
Shastri Bhawan,
New Delhi.

3. The Director General,
Eastern Region,
Geological Survey of India,
27, JLN Road, Kolkatta - 700016.

4. The Deputy Director General,
Geological Survey of India,
North Eastern Region,
'ZOREM' MONGRIM HILLS,
Shillong - 793003.


(श्री. जी. शबॉंग)
(G. G. SHABONG)
उप सचिव/Deputy Secretary
राज्य सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

5. The Director,
Geological Survey of India,
Operation, Arunachal Pradesh,
Itanagar,
Arunachal Pradesh - 791111.
6. The Director (SG),
MAP & CARTOGRAPHY DIVISION,
Operation Orissa,
Geological Survey of India,
Unit - 8, Nayapally,
Bhubneswar, Orissa - 751012.
7. Sri B.K. Mohanty,
The Director (SG),
MAP & CARTOGRAPHY DIVISION,
Operation Orissa,
Geological Survey of India,
Unit - 8, Nayapally,
Bhubneswar, Orissa - 751012.
8. Dr. Vimal Kumar,
Director, Geological Survey of India,
North Eastern Region,
Shillong - 793003, Meghalaya.
9. Shri Amitava Sen,
Director, Marine Geology,
Eastern Region, Bhubijnan Bhawan,
Karunamayee, Salt Lake City,
Kolkata - 700091.
10. Shri Gautam Sarkar,
Director, Geological Survey of India,
North Eastern Region,
Shillong - 793003, Meghalaya.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p><u>WP(C) No.1234/2007.</u></p> <p>BEFORE THE HON'BLR MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTG.) THE HON'BLE MR JUSTICE B.P.KATAKEY 21.3.2007.</p> <p>katakey, J.</p> <p>This writ petition is directed against the order dated 15.2.2007 passed by the learned Central Administrative Tribunal, Guwahati Bench, Guwahati rejecting the Review Application No.1/2007 filed by the writ petitioner seeking review of the order dated 18.8.2005 passed in OA No.228/2004 whereby and where under the respondents therein were 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 therein, as well as the order dated 1.8.06 passed in Contempt Petition No.35/05.</p> <p>2. Heard Mr Jayant Nath, learned senior counsel for the writ petitioner and also Mr BC Das, learned senior counsel for the caveator-respondent No.1.</p> <p>3. Mr Nath, learned senior counsel for the writ petitioner has raised only one ground challenging the order impugned in the</p>

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Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>present writ petition, to the effect that the finding recorded by the learned Tribunal in the order dated 18.8.2005 that the bench mark for consideration for promotion to the post of Director (Geology) is only 'good' though the Government Circular dated 10.4.89 provides that the bench mark should be 'very good'. It has been contended by the learned senior counsel that the UPSC has no objection in holding the Review DPC, as directed by the learned Tribunal by the order dated 18.8.2005, and while holding such DPC the UPSC is bound to take into consideration the circulars issued by the Government from time to time fixing the bench mark for the purpose of promotion to the higher posts. It has further been submitted that the observation made in para-29 of the order dated 18.8.2005, to that effect, is contrary to the Govt. circular dated 10.4.89 culminating in filing the Review Application No.35/05 which was dismissed by the learned Tribunal.</p> <p>4. On the other hand, Mr BC Das, learned senior counsel for the respondent-applicant has contended that the learned Tribunal, in para-29, has observed that even if the Circular dated 10.4.89 is taken into account then also the original applicant-respondent No.1 having assigned 'very good' for the year</p>

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

1997-98 to 2001-2002 except for a fraction of the year 1997-98 where the reviewing authority had assigned 'Very good', but accepting authority for one year down-graded as 'good' and for two years had also down-graded as 'good' without assigning any justifiable reasons and also without communicating the same. According to Mr Das, such part of the ACRs cannot be taken into consideration by the DPC. Therefore, Mr Das submits that even if the bench mark is 'very good' then also the respondent No.1-original applicant has satisfied the bench mark, as observed by the learned Tribunal in para-29 of the order dated 18.8.05.

5. The grievance of the petitioner in the present writ petition as well as in the review petition filed before the learned Tribunal is within a narrow compass, as discussed above. The learned Tribunal, while disposing of the O.A. vide order dated 18.8.2005, has observed as follows:

"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

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Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>have satisfied the said norms also the reason that for all the years from 1997-98 to 2001-02 except for a fraction of the year 1997-98 the Reviewing Authority had assigned 'Very Good', but the Accepting Authority for one year had downgraded as 'Good' without assigning any reason and for two years had downgraded as 'Good' stating that the applicant 'is not 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 correspondents 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-Raina alkaline complex' (BRAC) in Nuapara district of Orissa."</p> <p>6. It is also evident that the Government of India, Department of Personnel & Training issued the Office Memorandum dated 10.4.89 relating to the departmental promotional committee and related matters which provides the benchmark as 'very good'.</p> <p>7. That being the position, the UPSC, while conducting the review DPC, shall take into consideration the relevant circulars prevailing at the relevant point of time for the purpose of promotion to the post of Director(Geology), G.S.I. as well as the observations/findings recorded by the learned</p>

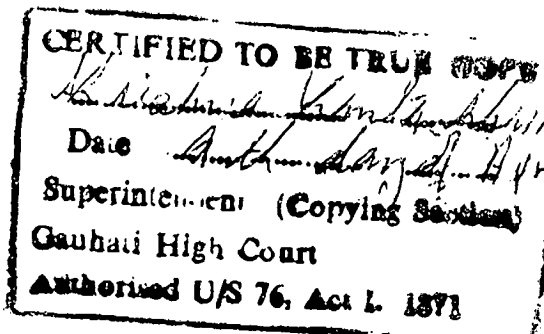
Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			Tribunal In the order dated 18.8.05, more particularly in para-29 thereof.
	8		The whole exercise shall be completed within a period of three months from today.
	9		This disposes of this writ petition.
	10.		No costs.

Sd/- B. P. Katarkey
Judge

Sd/- D. Biswas
Chief Justice (Acting)

P/W- 73256

Dt: 9-4-07



bm
 - 9/4/07 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

R.A. No.1 of 2007 (in C.P.35/05 & O.A.228/04)

DATE OF DECISION: 15.02.2007

UPSC

.....Applicant/s

Mr.G.Baishya, Sr.C.G.S.C

..... Advocate for the
Applicant/s

- Versus -

S.K.Pattnaik

.....Respondent/s

Mr.M.Chanda


..... Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR.G.RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/~~No~~
2. Whether to be referred to the Reporter or not? Yes/~~No~~
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches? Yes/~~No~~
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/~~No~~


Member(A)/Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.1 of 2007
In
Contempt Petition No.35/2005
And
Original Application No. 228/2004

Date of Order: This, the 15th day of February, 2007

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

Union Public Service Commission
Dholpur House, Sahjahan Road
New Delhi - 110 011.

..... Review Applicant/petitioner

By Mr.G.Baishya, Sr. C.G.S.C.

- Versus -

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

.....Respondent/Opposite Party

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

ORDER

SACHIDANANDAN, K.V.(V.C.):

This Review Petition has been filed by the Review
Applicant i.e. Union Public Service Commission (UPSC in short) under

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Section 22 (3) (f) of the Administrative Tribunals Act, 1985 for review of the judgment/decision dated 01.08.2006 passed by this Tribunal in C.P. No. 35/2005 (O.A. No.228/2004) and the judgment and order dated 18.08.2005 in O.A. No. 228/2004 as well.

2. The order dated 01.08.2005 in C.P. No.35/2005 was passed by the Division Bench consisting of Hon'ble Vice-Chairman and Hon'ble Administrative Member. The Hon'ble Administrative Member is functioning in Bangalore Bench, and therefore, the Review Application is considered by circulating the same and disposed of by the same Bench as per rules.

3. Before going into the merits of the case it will be profitable to consider the scope of filing review application as per Section 22 (3) (f) of the Administrative Tribunals Act, 1985. As far as the legal position is concerned regarding review, the said section confers on an Administrative Tribunal discharging its function under the act, the same powers vested on a Civil Court under the Code of Civil Procedure while trying a suit in respect, inter alia, of reviewing its decisions. Section 22 (3) (f) is reproduced below:-

"Section 22(3) (f)

A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code

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of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,-

- (a) to (e)
- (f) reviewing its decisions;
- (g) to (i)

A civil court's power to review its own decisions under the Code of Civil Procedure is contained in Order 47 Rule 1. Order 47 Rule 1 provides as follows:-

"Order 47 Rule 1:

Application for review of judgment.

(1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or


(c) by a decision on a reference from a court of Small Causes, and who, from the discovery of new and important matter or evidence which after the due diligence was not with his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply a review of judgment to the Court which passed the decree or made the order.

(2) xxx"

4. The power of review granted to an Administrative Tribunal is similar to the power given to a civil court under Order 47 Rule 1 of

the Code of Civil procedure. Any person who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1 (1) (a). This position is settled by Apex Court in the case of Gopinath Biswal vs. Krishna Chandra Mohanty & Others reported in 1998 SCC (L&S) 1147. The Apex in another case of Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma reported in AIR 1979 SC 1047 has observed as under:-

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab; there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."




5. Admittedly, the Review Applicant was not party to the proceeding. Even assuming an aggrieved person/party not in a party array can file a review application, the condition is that the power of review should be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when the order was passed.

6. The present application is filed by the Review Applicant not in the prescribed format nor the required persons were made party in the petition. The main reliefs sought by the Review Applicant is as follows:-

- (i) review the order dated 1.8.2006 passed in contempt petition No.35/2005 in O.A. No.228/2004 and the Judgement dated 18.8.2005 passed in O.A. No.228/2004.
- (ii) stay the operation of the direction passed in the order dated 1.8.2006 passed in contempt petition No.35/2005 in O.A. No. 228/2004 during pendency of the present application."

7. Obviously the Review Applicant is seeking to review two orders of this Court i.e. order dated 1.8.2006 in C.P. No.35/2005 and also the original order dated 18.8.2005 in O.A. No.228/2004. The undersigned Judges were not party to the said order in O.A. No.228/2004 and the Review Applicant is seeking multiple reliefs in



setting aside of two different orders of this Tribunal which is bad in law and as such will not stand on its legs. Moreover, the delay petition filed pertains only to the order passed in the contempt petition.

8. Going to the merits of the case, after elaborate discussion on various points and rule positions this Court had passed considered order after hearing the parties in O.A.228/2004 on 18.08.2006 directing the Respondents to hold a Review DPC for the selection to the post of Director, Geological Survey of India and consider the case of the Applicant therein in the light of the observations made therein. The original Respondents had informed the UPSC i.e. this Review Applicant accordingly for holding a Review DPC. The Review Applicant, in turn, had observed that the rule positions that have been canvassed by this Tribunal are "*not in conformity with the Government of India instructions on service matters.*" and directed the original Respondents to file appeal. Instead of filing appeal as directed by the Review Applicant, the original Respondents further delayed the matter and thereafter contempt petition No.35/2005 was filed by the original Applicant. This Court, on 01.08.2006, has passed order, sought to be reviewed, dismissing the aforesaid contempt petition on the ground of substantial compliance made by the original Respondents granting liberty to the original Applicant to approach appropriate forum for



redressal of further grievance, if any. Thereafter, the original Applicant has filed another contempt petition No.32/2006 making Sri S.P.Gaur, Secretary, UPSC, party, which is pending disposal and without making any whisper of the said contempt petition, the Review Applicant has filed this Review Application to stall the said proceeding without any bonafides.

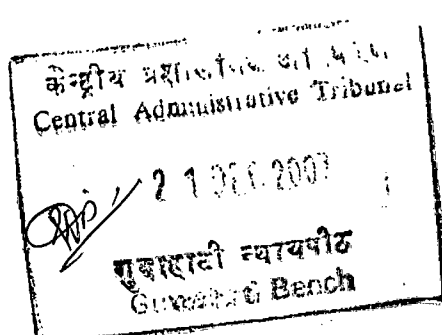
9. In the premises, this Review Application is frivolous, misconceived and meritless and the same stands rejected. The Review Applicant is saddled with costs of Rs. 5,000/- to be deposited to the Registry to this Bench of the Tribunal within a period of 3 months from the date of receipt of copy of this order. The amount of costs so deposited to be sent to the State Legal Service Authority, Guwahati for pursuing their legal activities. The Deputy Registrar of this Bench shall keep a track of the same.


(GAUTAM RAY)

ADMINISTRATIVE MEMBER


(K.V.SACHIDANANDAN)
VICE CHAIRMAN

/BB/



CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

REVIEW APPLICATION NO. 1 /20057

IN

CONTEMPT PETITION NO. 35/2005

(IN ORIGINAL APPLICATION NO. 228/2004)

IN THE MATTER OF:

SHRI SUBODH KANT PATTNAIK

PETITIONER

VERSUS

SHRI A.K.D. JADHAV & ORS.

RESPONDENTS

APPLICATION ON BEHALF OF THE APPLICANT UNION PUBLIC SERVICE COMMISSION UNDER SECTION 22 (3) (f) OF ADMINISTRATIVE TRIBUNALS ACT, 1985 FOR REVIEW OF THE JUDGMENT/DECISION DATED 1.8.2006 IN CONTEMPT PETITION NO.35 OF 2005 IN O.A. NO.228/2004. AND THE JUDGEMENT DATED 18.8.2005 PASSED IN O.A. NO. 228/2004.

MOST RESPECTFULLY SHOWETH:

1. That the petitioner Sh. S.K. Pattnaik had filed an Original Application being O.A. No. 228/2004 before this Hon'ble Tribunal being allegedly aggrieved that he was not promoted to the post of Director (Geology) despite working in cadre of Geologist (Senior) for 19 years. The applicant herein UPSC was not made a party to the O.A. In this context, it is submitted that a DPC was held on 10th & 11th August, 2004 whereby the name of the petitioner was considered for

Contd...../-

(Signature)
(Smt. PATTNAIK)
Union Public Service Commission
New Delhi

Filed by
the applicant
Through Grantam Binay
21.12.06
Sr. Case

promotion to the post of Director (Geology) for the year 2003-04 and 2004-05 along with the other Geologists (Senior). However, the petitioner was not recommended by the DPC as he did not meet the Benchmark of "Very Good".

2. That the aforesaid O.A. 228/2004 came up for consideration on 18th August, 2005 when this Hon'ble Tribunal passed an order directing the respondents 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 by the Hon'ble Tribunal therein and also directed the respondent to pass appropriate orders in the matter within a period of 3 months from the date of the receipt of the said order.
3. 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 petitioner 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 petitioner was awarded 'Very Good' by the Reporting Officer for the year 1996-97 while the Accepting Authority downgraded the same as 'Good' without

Contd..../-

giving any reason. Similarly, for the first half of the year 1997-98 the Reviewing Authority graded the petitioner '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 petitioner 'Very Good' but the Accepting Authority downgraded it to 'Good' by stating that the petitioner was not a willing field worker and that the petitioner avoids field works. However, for the second half of the year 1999-2000 the Accepting Authority graded the petitioner 'Very Good'. For the year 2000-01 the Reporting and Reviewing Authority graded the petitioner 'Very Good' but the Accepting Authority's remarks were not recorded. For the year 2001-02 all the Authorities graded the petitioner as 'Very Good' but for the year 2002-03 and 2003-04, the petitioner was graded as 'Good' by all the Authorities.

4. That it is submitted that while reaching at the aforesaid finding this Hon'ble Tribunal observed in para 27 of the judgment dated 18.8.2005 as under:-

"....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. 12000-16500/= and above the benchmark shall be 'Very Good'. The role of

Contd..../-

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 order of their inter se seniority in the feeder grade."

5. That it is submitted that this Hon'ble Tribunal further observed that the benchmark of 'Very Good' for the promotion by selection to the post of Director (Geology) was introduced for the first time by the order of DOP&T dated 8.2.2002. Prior to this, only 'Good' was the benchmark. It was in these circumstances that the Hon'ble Tribunal observed that it cannot be said that the grading to the petitioner was below the benchmark of 'Good' and hence directions were given to convene a Review DPC to consider the case of the petitioner.
6. That thereafter the petitioner filed the aforesaid Contempt Petition being C.P. No. 35/2005 which was disposed of by this Hon'ble Tribunal vide order dated 1.8.2006 thereby directing the respondent to write to the present applicant, namely, UPSC with a copy of the order with directions for convening a Review DPC as directed by this Hon'ble Tribunal in the judgment dated 18.8.2005 and have the order complied as expeditiously as possible at any rate within a period of 3 month from the date of receipt of the order.

Contd..../-

7. That the applicant UPSC is a constitutional body. The applicant has highest regard for the orders passed by this Hon'ble Tribunal including the order dated 18.8.2005 and the order dated 1.8.2006 passed in the Contempt Petition. It is however respectfully submitted that the directions passed by this Hon'ble Tribunal in the order dated 1.8.2006 in the Contempt Petition to the applicant is erroneous in so far as the applicant was not a party to the proceedings. It is respectfully submitted that as the applicant was not a party to the proceedings, the directions to the applicant as contained in the order dated 1.8.2006 are not maintainable. It is settled law that new directions can not be issued in contempt proceedings against a new party. In this context, it is submitted that the Hon'ble Supreme Court in the case of B.K. Savithri Vs. B.V.S Anand (2005) 10 SCC 207 held that the Contempt is between the Court and the Contemnor and the Court cannot implead a private party to a contempt petition. Admittedly, the applicant was not a Contemnor before this Hon'ble Tribunal in the Contempt Petition. Neither the applicant was a party to the Original Application filed by the petitioner. Hence, the applicant admittedly being a third party, the direction given in the order dated 1.8.2006 would be contrary to settled position of law.

Contd..../-

(Smt. SANITA ARORA)
(Smt. SANITA ARORA)
Under Secretary
Union Public Service Commission
New Delhi

8. That without prejudice to the submissions made herein above, it is further respectfully submitted that the observation recorded by this Hon'ble Tribunal in the order dated 18.8.2005 that the grading of 'Good' was applicable for selection to the post of Director (Geology) prior to year 2002 is factually incorrect and wrong. In this context, it is submitted that as per the DOP&T Office Memorandum dated 10.4.1989 regarding consolidated instructions on DPCs, in respect of posts which are in the scale of Rs. 3700-5000 (pre-revised) and above, the benchmark grade should be 'Very Good'. It is therefore, follows that the benchmark for promotion to the post of Director (Geology) has been 'Very Good' from 10.4.1989 onward. The relevant extract of DOP&T's O.M. dated 10.4.1989 which is annexed herewith as Annexure-A is reproduced as under:-

"in respect of all posts which are in the level of Rs. 3700-5000 and above, the bench-mark grade should be 'Very Good'. However, officers who are graded as "Outstanding" would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly up to the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post".

Clearly, the petitioner having the grade of 'Good' did not qualify for the post as the bench-mark was 'Very Good'.

Contd..../-

Hence, the observations of this Hon'ble Tribunal that the benchmark of 'Very Good' for promotion by selection to the post of Director (Geology) was introduced for the first time only by the order of DOP&T dated 8.2.2002 is factually incorrect. It is submitted that the DPC duly considered the name of the petitioner for the post of Director (Geology) against the vacancies for the year 2003-04 and 2004-05 alongwith other Geologists (Senior) for promotion to the said posts. However, the DPC did not recommend the name of the petitioner for promotion to the post of Director (Geology) as he did not meet the benchmark of 'Very Good'. It is therefore the respectful submission of the applicant that the rejection of the name of the petitioner for promotion to the said post by the DPC was justified because admittedly the petitioner did not meet the benchmark of 'Very Good' for the post of Director (Geology) as per the DOP&T's O.M. dated 10.4.1989. It was in these circumstances that the applicant had advised the respondents to take appropriate action against order passed by this Hon'ble Tribunal on 18.8.2005.

9. That it is the further respectful submission of the applicant that the observations of this Hon'ble Tribunal in the order dated 18.8.2005, particularly in para 27 regarding the functioning of DPC, are contrary to settled law. It is respectfully submitted that it is not the function of a Court to hear an appeal over the decision of the Selection Committees and scrutinise its

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(Signature)
(Smt. SAMITA ARORA)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

decision. In this context, it is submitted that the Hon'ble Supreme Court in the case of Dalpat Solanki Vs. B.S. Mahajan (AIR 1990 SC 434) has held that it is not the function of the Court to hear appeal over the decision of the Selection Committees and scrutinise its decision. The decisions of the Selection Committee can be interfered with in limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection or proved malafides, vitiating the selection. It is respectfully submitted that there was no illegality or patent material irregularity in the Constitution of the DPC which considered the case of the petitioner. Further, the procedure of the said DPC is neither vitiated nor is there any proved malafides, vitiating the selection. Hence, it is the respectful submission of the applicant that the findings of this Hon'ble Tribunal & consequent directions in the judgment dated 18.8.2005 are contrary to settled law. The whole problem has arisen due to the factually wrong assertion of the petitioner that the benchmark of "Very Good" for the selection was introduced for the first time on 8.2.2002.

10. That in view of the submissions made herein above, it is respectfully submitted that the direction passed by this Hon'ble Tribunal in the order dated 1.8.2006 to the applicant is liable to be reviewed and modified. In view of the fact that the assumptions on the basis of which order dated 18.8.2005

Contd..../-

(Signature) साविता अरोड़ा
(Signature) SAVITA ARORA,
अवर सचिव/Under Secretary,
संघ लोक सेवा आयोग,
Union Public Service Commission,
नई दिल्ली/ New Delhi.

was passed is factually incorrect and wrong. The said order also needs to be reviewed. Therefore, it is respectfully submitted that the direction to the applicant in the order dated 1.8.2006 for compliance of the order dated 18.8.2005 is liable to be reviewed.

11. That it is the respectful submission of the applicant that there are errors apparent on the face of record. Both the orders dated 18.8.2005 and 1.8.2006 are based on an incorrect factual assertion of the petitioner that the Bench mark was changed to 'very good' for DPC in the year 2002. The said order is also based on legal error on the face of the record. The applicant is approaching before this Hon'ble Tribunal in the interest of justice. There is a delay in approaching in the Hon'ble Tribunal on account of the fact that the applicant was not a party to the ongoing proceedings. It is, however, necessary to approach this Hon'ble Tribunal in view of the directions given to the applicant vide order dated 1.8.2006 passed by this Hon'ble Tribunal.
12. That the present application has been filed by the applicant bonafide and in the interest of justice. It is submitted that the applicant would suffer grave and irreparable loss and injury if the present application is not allowed.

Contd..../-

(समिति समेत जस्टिस)
 SAMITA ARORA
 Joint Secretary
 संयोजक सचिव
 Union Public Service Commission
 नई दिल्ली/ New Delhi

13. In the light of the facts and circumstances mentioned hereinabove, it is most humbly and respectfully submitted that this Hon'ble Tribunal may graciously be pleased to :

- (i) review the order dated 1.8.2006 passed in contempt petition No. 35/2005 in O.A. No. 228/2004 and the Judgement dated 18.8.2005 passed in O.A. No. 228/2004.
- (ii) stay the operation of the direction passed in the order dated 1.8.2006 passed in contempt petition No. 35/2005 in O.A. No. 228/2004 during pendency of the present application.
- (iii) pass such further order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case after hearing the applicant UPSC on the matter.



APPLICANT

(श्रीमती समिता अरोड़ा)

(Smt. SAMITA ARORA)

अवर सचिव/Under Secretary

संघ लोक सेवा आयोग

Union Public Service Commission

नई दिल्ली/New Delhi

THROUGH

ADVOCATE

Settled By :
Mr. Jayant Nath
Sr. Advocate

Contd..../-

VERIFICATION

I, Samita Arora, working as Under Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi – 110069 do hereby verify that the contents of the reply are true based on the records of the case. No part of it is false and nothing material has been concealed.

Verified at New Delhi on this 13th day of December, 2006.

**APPLICANT**

(श्रीमती समिता अरोड़ा)
(Smt. SAMITA ARORA)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

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No. 22011/5/86-Estt.(D)Government of India
Ministry of Personnel, Public Grievances
and Pensions
Department of Personnel and Training

*** **

New Delhi, dated the 10th April, 1989

OFFICE MEMORANDUMSubject : Departmental Promotion Committees and related
matters - Consolidated instructions on -

...

The undersigned is directed to say that instructions on the constitution and functioning of Departmental Promotion Committees and the procedure to be followed in processing and implementing the recommendations of D.P.Cs. were issued in a consolidated form, vide this Department's OM No. 22011/6/75-Estt.(D), dated 30th December, 1976. Instructions have also been issued subsequently clarifying/modifying certain aspects of the procedure. The various instructions have been updated and consolidated in the form of "Guide Lines on Departmental Promotion Committees", a copy of which is forwarded herewith.

on 8202

(Signature)
(S.K. PARTHASARATHY)
JOINT SECRETARY TO THE GOVT.
OF INDIA

To

All the Ministries/Departments of the Govt. of India.

/TS/

attached
B. Srinivas
Sr. Case

-13-

GUIDELINES
ON
DEPARTMENTAL PROMOTION COMMITTEES

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GUIDELINES ON DEPARTMENTAL PROMOTION COMMITTEES

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GUIDELINES ON DEPARTMENTAL PROMOTION COMMITTEES

P A R T - I

FUNCTIONS AND COMPOSITION OF DEPARTMENTAL PROMOTION COMMITTEES

Functions
of DPCs

A post is filled by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner. For this purpose, Departmental Promotion Committee should be formed in each Ministry/Department/Office whenever an occasion arises for making promotions/confirmations etc. The DPCs so constituted shall judge the suitability of officers for :-

- (a) promotions to 'selection' as well as 'non-selection' posts;
- (b) confirmation in their respective grades/posts;
- (c) assessment of the work and conduct of probationers for the purpose of determining their suitability for retention in service or their discharge from it or extending their probation; and
- (d) consideration of cases of Government servants for crossing the Efficiency Bar.

Composition
of DPCs

2.1 Members included in DPCs for Group A & B posts should be officers who are at least one step above the posts in which promotion/confirmation is to be made as indicated below:-

Pay scale (revised) of the post in which confirmation or to which promotion is to be considered by the DPC	Minimum status of officers who should be members of the DPC
1. Rs.2200-4000 or equivalent Rs.3000-4500 or equivalent	Officers of the rank of Deputy Secretary to the Government of India or above.
2. Rs.3000-5000 or equivalent	Officers of the rank of Director or above.
3. Rs.3700-5000 or equivalent Rs.4100-5300 or equivalent Rs.4500-5700 or equivalent	Officers of the rank of Joint Secretary to the Govt. of India or above. In such case the Secretary/Additional Secy. of the Department/Ministry should invariably be one of the members of the DPCs.
4. Rs.5100-5700 or equivalent Rs.5900-6700 or equivalent	Secretary/Additional Secy. to the Govt. of India

2.2 The Union Public Service Commission (UPSC) should be associated with DPCs in respect of all Central Civil Service posts belonging to Group A where promotion is based on the principles of selection unless it has been decided by the Government not to associate the UPSC with a Group A DPC. The UPSC need not be associated in respect of posts belonging to Group A, if the promotion is based not on the principles of selection but on seniority-cum-fitness.

2.3 The Commission need not be associated with a DPC constituted for considering the cases of confirmation of officers. The proceedings of the DPC which considered the confirmation of Group A officers should, however, be sent to the Commission for their approval. While doing so, the cases of officers not considered fit for confirmation along with their records should be specifically referred to the Commission for their approval.

2.4 Whenever the UPSC is associated with a DPC, the Chairman or a Member of the Commission will preside at the meeting of the DPC.

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

2.6 Endeavour should also be made to nominate an SC/ST officer on the DPC constituted for various posts/services particularly where a DPC has to make bulk selection for a large number of vacancies, say 30 or more at a time. Where an outside member has to be associated with the DPC for Group C or Group D posts, there would be no objection to nominate on such a DPC, a SC/ST officer from such other Ministry/Department in the event of such officer not being available in the Ministry/Department itself.

2.7 In Group A and Group B Services/posts if none of the officers included in the DPC as per the composition given in the recruitment rules is a SC or ST officer, it would be in order to coopt a member belonging to the SC or ST if available within the Ministry/Department. If no such officer is available within the Ministry/Department, he may be taken from another Ministry/Department.

2.8 The composition of the DPC for considering the cases of Government servants for crossing the EB in a time scale of pay should be the same as the DPC constituted for the purpose of considering the cases of confirmation of the Government servants concerned with the only change that the UPSC need not be associated for considering EB cases.

P A R T - II

FREQUENCY OF DEPARTMENTAL PROMOTION COMMITTEE MEETINGS

Frequency at which DPC should meet

L e.g.,

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

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

P A R T - III

PREPARATORY ACTION FOR HOLDING DEPARTMENTAL PROMOTION COMMITTEES

Determina-
tion of
regular
vacancies

4.1 It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year-wise separately.

Papers to
be put up
for con-
sideration
by DPCs.

4.2.1. In the case of promotions, the proposals should be placed before the DPC in the proforma given in Annexure-I. As regards cases of confirmation, the proposals should be put up before the DPC in the proforma given in Annexure-II. These proforma should be completed and submitted to the DPC, whether the UPSC is associated with the DPC or not.

4.2.2. Where a member of the UPSC has to attend a meeting of a DPC, the necessary documents should be sent to the Commission along with the references requesting the Commission to nominate one of their Members to preside over the DPC. The papers should be complete as per the Check List given in Annexure-III and should be sent in good time before the meeting.

4.2.3. No proposal for holding a DPC or Selection Committee should be sent to UPSC until and unless all the ACRs complete and upto date are available. In certain cases involving collection of large number of ACRs, the proposal can be sent only if at least 90% of the ACRs (uptodate and complete) are available. Every effort should be made to keep the ACRs dossiers upto date, lest this aspect is advanced as the reason for not holding DPCs in time. The officer referred in para 3.1 should also be responsible for monitoring the completion of the ACR dossiers.

4.2.4. The ACR folder should be checked to verify whether the ACRs for the individual years are available. For this purpose, the proforma enclosed (Annexure-IV) should be filled in and sent to UPSC. If the ACR for a particular year is not available and for valid/justifiable reasons it cannot be made available, a certificate should be recorded to that effect and placed in the ACR folder.

4.2.5. The integrity certificate on the lines indicated below should be furnished to the DPCs constituted to consider cases for promotion or confirmation:

"The records of service of the following officers who are to be considered for promotion/confirmation in the grade have been carefully scrutinised and it is certified that there is no doubt about their integrity".

If there are names of persons, in the list of eligible candidates, whose integrity is suspect or has been held in doubt at one stage or other, this fact should also be specifically recorded by the Ministry/Department/office concerned and brought to the notice of the DPC.

4.2.6. Where the UPSC is associated with the DPC the certificate will be recorded by an officer not below the rank of a Deputy Secretary to the Government. Where UPSC is not associated the officer-in-charge of the Administration section in the Ministry/Department/Office concerned who processes and submits names and particulars of eligible officers to the DPC should himself record the certificate.

4.2.7. It should be ensured that the information furnished to the UPSC/DPC is factually correct and complete in all respects. Cases where incorrect information has been furnished should be investigated and suitable action taken against the person responsible for it.

Consideration
of officers
on deputation

4.3.1. The names of the officers who are on deputation, either on their own volition or in public interest (including foreign service), should also be included in the list submitted to the DPC for consideration for promotion in case they come within the field of choice for promotion and fulfil the prescribed eligibility conditions. Similarly, the names of the officers on deputation should also be included in the list of names to be considered by the DPC for confirmation, in case they are eligible for confirmation and come within the range of seniority.

4.3.2. Very often a certain number of years of service in the lower grade is prescribed as a condition for becoming eligible for consideration for promotion to a higher post/grade. In such cases, the period of service rendered by an officer on deputation/foreign service, should be treated as comparable service in his parent department for purposes of promotion

as well as confirmation. This is subject to the condition that the deputation/foreign service, is with the approval of the competent authority and it is certified by the competent authority that but for deputation/foreign service, the officer would have continued to hold the relevant post in his parent department. Such a certificate would not be necessary if he was holding the departmental post in a substantive capacity.

Consideration
of officers on
Study Leave

4.4. An officer proceeding on study leave should be treated on the same basis as an officer proceeding on deputation if the study leave was duly sanctioned by the competent authority and the competent authority certified that he would have continued to officiate but for his proceeding on study leave. Such a certificate would not be necessary if he was holding the said departmental post substantively. These instructions would also apply in the cases of Government servants who are granted special leave for training abroad under the various training schemes.

Consideration
of Direct
Recruits

4.5 It may happen that a Government servant who is recommended for appointment to a post as a direct recruit may also be among those eligible for consideration for promotion to the same post. An officer does not lose his right of consideration for such promotion merely because he has been recommended for appointment against the direct recruitment quota. Therefore, such officers, if they are within the field of eligibility, should be included in the list of officers for consideration by the DPC, excepting where an officer was holding the lower post in a temporary capacity and has been appointed to the higher post as a direct recruit before the date of the meeting of the DPC.

Reservation
for SCs/STs

4.6 Instructions have been issued from time to time by the Department of Personnel and Training regarding reservations and concessions to SCs and STs in the matter of promotions and confirmations. These instructions should be duly taken into account by the appointing authorities while formulating proposals for promotion/confirmation for consideration of the DPC.

P A R T - IV

PROCEDURE TO BE OBSERVED BY
DEPARTMENTAL PROMOTION COMMITTEES

5. Each departmental Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. No interviews should be held unless it has been specifically provided for in the recruitment rules for the post/service. Whenever promotions are to be made by the method of 'Selection' by DPC and the administrative ministry desires that an interview should form part of the selection process, necessary provision should be made in the recruitment rules.

Selection Method

6.1.1 Where promotions are to be made by selection method as prescribed in the recruitment rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade(s), restrict the field of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year;

<u>No. of vacancies</u>	<u>No. of officers to be considered</u>
1	5
2	8
3	10
4	3 times the number of vacancies

*Pl. see latest
Circular*

Guidelines for DPCs

6.1.2. 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. In order to ensure greater selectivity in matters of promotions and for having uniform procedures for assessment by DPCs, fresh guidelines are being prescribed. The matter has been examined and the following broad guidelines are laid down to regulate the assessment of suitability of candidates by DPCs.

6.1.3. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process.

6.1.4. Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion.

Confiden- tial Reports

6.2.1. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence -

- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.

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- (b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year).
 - (c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.
 - (d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.
 - (e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.
 - (f) If the Reviewing authority or the Accepting authority as the case may be has over-ruled the Reporting Officer or the Reviewing authority as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing authority and Accepting authority are complementary to each other and one does not have the effect of over-ruling the other, then the remarks should be read together and the final assessment made by the DPC.

Assessment provided it is apparent from the

6.2.2. In the case of each officer an overall grading should be given. The grading shall be one among (i) Outstanding (ii) Very Good (iii) Good (iv) Average (v) Unfit.

6.2.3. Before making the overall grading after considering the CRs for the relevant years, the DPC should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the ACRs. The DPC should also have regard to the remarks against the column on integrity.

✓ 6.3.1. The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:

- (i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group 'C', Group 'B' and Group 'A' posts upto (and excluding) the level of Rs.3700-5000 excepting promotions for induction to Group 'A' posts or Services from lower groups, the bench mark would be 'Good'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'Good'.

Wherever promotions are made for induction to Group 'A' posts or Services from lower groups, the bench mark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank en bloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post.

- (ii) In respect of all posts which are in the level of Rs.3700-5000 and above, the benchmark grade should be 'Very Good'. However, officers who are graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post.

- (iii) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.
- (iv) Where sufficient number of officers with the required benchmark grade are not available within the zone of consideration, officers with the required benchmark will be placed on the panel and for the unfilled vacancies, the appointing authority should hold a fresh D.P.C. by considering the required number of officers beyond the original zone of consideration.

6.3.2.(i) In promotions by selections to posts/services within Group 'A' which carry an ultimate salary of Rs.5700/- p.m. in the revised scale, the SCs/STs officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would notwithstanding the prescription of 'benchmark' be included in that list provided they are not considered unfit for promotion.

(ii) In promotion by selection to posts/services in Group 'B' within Group 'B' and from Group 'B' to the lowest rung in Group 'A', selection against vacancies reserved for SCs and STs will be made only from those SCs/STs officers, who are within normal zone of consideration prescribed vide the Department of Personnel and A.R. O.M. No. 22011/3/76-Estt.(D) dated 24th December, 1980. Where adequate number of SCs/STs candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the SCs/STs candidates coming within the extended field of choice should also be considered against the vacancies reserved for them. If candidates from SCs/STs obtain on the basis of merit with due regard to seniority, on the same basis as others, lesser number of vacancies than the number reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration, irrespective of merit and 'bench mark' but who are considered fit for promotion.

(iii) As regards promotions made by selection in Group 'C' and Group 'D' posts/services, Select Lists of SCs/STs officers should be drawn up separately in addition to the general select list, to fill up the reserved vacancies. SCs/STs officers who are within the normal zone of consideration, should be considered for promotion alongwith and adjudged on the same basis as others and those SCs and STs amongst them, who are selected on that basis may be included in the general Select List in addition to their being considered for inclusion in the separate Select Lists for SCs and STs respectively. In the separate Select Lists drawn up respectively for SCs and STs, officers belonging to the SCs and STs will be adjudged separately amongst themselves and not alongwith others and, if selected, they should be included in the concerned separate list,

irrespective of their merit as compared to other officers and the 'bench mark' determined by the cadre authorities. If candidates from SCs/STs obtain on the basis of their position in the aforesaid general list, lesser number of vacancies than are reserved for them, the difference should be made up by selected candidates of these communities in the separate Select Lists for SCs and STs respectively.

Preparation of Yearwise panels by DPC where they have not met for a number of years

6.4.1. Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on;

6.4.2. Where a DPC has already been held in a year further vacancies arise during the same year due to death, resignation, voluntary retirement etc. or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:-

- (i) Vacancies due to death, voluntary retirement, new creations, etc., clearly belonging to the category which could not be foreseen at the time of placing facts and material before the DPC. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If, for any reason, the DPC cannot meet for the second time, the procedure of drawing up of year-wise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent year(s).
- (ii) In the second type of cases of non-reporting of vacancies due to error or omission (i.e. though the vacancies were there at the time of holding of DPC meeting they were not reported to it) results in injustice to the officers concerned by artificially restricting the zone of consideration. The wrong done cannot be rectified by holding a second DPC or preparing an year-wise panel. In all such cases, a review DPC should be held keeping in mind the total vacancies of the year.

6.4.3. For the purpose of evaluating the merit of the officers while preparing year-wise panels, the scrutiny of the record of service of the officers should be limited to the records that would have been available had the DPC met at the appropriate time. For instance for preparing a panel relating to the vacancies of 1978 the latest available records of service of the officers either upto December 1977 or the period ending March, 1978 as the case may be, should be taken into account and not the subsequent ones. However, if on the date of the meeting of the DPC, departmental proceedings are in progress and under the existing instructions sealed cover procedure is to be followed, such procedure should be observed even if departmental proceedings were not in existence in the year to which the vacancy related. The officer's name should be kept in the sealed cover till the proceedings are finalised.

6.4.4. While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).

7. Non- Selection Method:

Where the promotions are to be made on 'non-selection' basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorise the officers as 'fit' or 'not yet fit' for promotion on the basis of assessment of their record of service. While considering an officer 'fit', guidelines in para 6.1.4. should be borne in mind. The officers categorised as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made.

8. Confirmation :

In the case of confirmation, the DPC should not determine the relative merit of officers but it should assess the officers as 'Fit' or 'Not yet fit' for confirmation in their turn on the basis of their performance in the post as assessed with reference to their record of service.

9. Probation :

In the case of probation, the DPC should not determine the relative grading of officers but only decide whether they should be declared to have completed the probation satisfactorily. If the performance of any probationer is not satisfactory, the DPG may advise whether the period of probation should be extended or whether he should be discharged from service.

10. Efficiency Bar :

The DPC constituted for considering cases of Government servants for crossing the EB need not sit in a meeting but may consider such cases by circulation of papers. The DPC may consider such cases on the basis of up-to-date records of performance, results of a written test and/or trade test, if any, prescribed by the administrative Ministry. The DPC may recommend whether the officer concerned is 'Fit' or 'Not yet fit' to cross the Efficiency Bar. The review of the case of a Government servant who has been held up at the EB stage on the due date should also be done in accordance with the same procedure by the DPC.

Procedure to be followed by DPC in respect of Government servants under cloud

11.1 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution; and
- (iv) Government servants against whom an investigation or serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise.

11.2 The D.P.C. shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidate without taking into consideration the disciplinary case/criminal prosecution, pending or contemplated, against them or the investigation in progress. The assessment of the DPC, including "Unfit for Promotion", and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of _____ in respect of Shri _____ (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri _____'. The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover". The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

11.3 The same procedure outlined in para 11.2 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution pending or contemplated against the Government servant concerned is concluded.

Adverse
remarks
in a C.R.

12.1 Where adverse remarks in the Confidential Report of the officer concerned have not been communicated to him, this fact should be taken note of by the DPC while assessing the suitability of the officer for promotion/confirmation.

12.2 In a case where a decision on the representation of an officer against adverse remarks has not been taken or the time allowed for submission of representation is not over, the DPC may in their discretion defer the consideration of the case until a decision on the representation.

13. An officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to the higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the DPC as and when occasions arise for such assessment. In assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty

and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. However, even where the DPC considers that despite the penalty the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty.

14. The DPC should record in their minutes a certificate that the Department/Ministry/Office concerned has rendered the requisite integrity certificate in respect of those recommended by the DPC for promotion/confirmation.

Validity of the proceedings of DPCs when one member is absent

15. The proceedings of the Departmental Promotion Committee shall be legally valid and can be acted upon notwithstanding the absence of any of its members other than the Chairman provided that the member was duly invited but he absented himself for one reason or the other and there was no deliberate attempt to exclude him from the deliberation of the DPC and provided further that the majority of the members constituting the Departmental Promotion Committee are present in the meeting.

P A R T - V

PROCESSING AND IMPLEMENTATION OF THE RECOMMENDATIONS OF DEPARTMENTAL PROMOTION COMMITTEE

Processing of recommendations of D.P.C.

16.1 The recommendations of the DPC are advisory in nature and should be duly approved by the appointing authority. Before the recommendations are so approved the appointing authority shall consult all concerned as indicated below, without undue delay.

Consultation with U.P.S.C.

16.2 The recommendations of the DPC whether it included a Member of the UPSC or not should be referred to the Commission for approval, if -

- (i) Consultation with the Commission is mandatory under Article 320(3) of the Constitution, read with UPSC (Exemption from Consultation) Regulations, 1958. However, a reference may be made to the Regulations, as and when necessary.
- (ii) The Member of the Commission who presides over the DPC specifically desires that the Commission should be consulted.

Approval of ACC

16.3 Where the posts fall within the purview of the Appointments Committee of the Cabinet, the approval of ACC should also be obtained.

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Procedure to be followed when the Appointing Authority does not agree with Recommendations of DPC

16.4.1. There may be certain occasions when the appointing authority may find it necessary to disagree with the recommendations of the DPC. The procedure to be followed in such cases is indicated below.

16.4.2. Where UPSC is associated with the DPC the recommendations of the DPC should be treated as recommendations of UPSC. If it is so considered necessary by the appointing authority to vary or disagree with the recommendations of the DPC the prescribed procedure for over-ruling the recommendations of UPSC (not incorporated in these guidelines) should be followed.

16.4.3. The recommendations of the DPC on which UPSC is not represented should be dealt with as under:-

(a) Where the appointing authority, being lower than the President of India, does not agree with the recommendations of the DPC, such appointing authority should indicate the reasons for disagreeing and refer the entire matter to the DPC for reconsideration of its earlier recommendations. In case the DPC reiterates its earlier recommendations, giving also reasons in support thereof, the appointing authority may accept the recommendations, if the reasons adduced by the DPC are convincing; if that authority does not accept the recommendations of the DPC it shall submit the papers to the next higher authority with its own recommendations. The decision of the next higher authority shall be final.

(b) Where the appointing authority is the President of India, the recommendations of the DPC should be submitted to the Minister in Charge of the Department concerned for acceptance or otherwise of the recommendations. In case the circumstances do necessitate, the Minister may refer the matter again to the DPC for reconsideration of its earlier recommendations. If the DPC reiterates its earlier recommendations giving also reasons in support thereof, the matter should be placed before the Minister for his decision. The decision taken by the Minister either to accept or to vary the recommendations of the DPC shall be final.

Appointing Authority to take decision within 3 months.

16.5.1. In cases excepting those which require the approval of the Appointments Committee of the Cabinet the appointing authority should take a decision either to accept or disagree with the recommendations of the DPC within a time-limit of three months (from the date of the DPC meeting or the date of communication of the UPSC's approval to the panel, where such approval is required). Where the appointing authority proposes to disagree with the recommendations, the relevant papers should be submitted by the appointing authority to the next higher authority with its own recommendations/cases in which the UPSC is associated with the DPC and the appointing authority proposes to disagree with the recommendations of the DPC, the case should be forwarded

by the expiry of the period of three months. In those

to the Establishment Officer in the Department of Personnel and Training for placing the matter before the Appointments Committee of the Cabinet as soon as possible and, in any case, not later than three months from the date on which the validity of the panel commences.

16.5.2. In cases where the panel prepared by the DPC requires the approval of the A.C.C, proposals therefor along with the recommendations of the Minister-in-Charge should be sent to the Establishment Officer before expiry of the same time-limit of three months.

Implementation of the recommendations of DPC - Vigilance Clearance

17.1 A clearance from the Vigilance Section of the Office/ Department should also be obtained before making actual promotion or confirmation of officer approved by DPC to ensure that no disciplinary proceedings are pending against the officer concerned.

Order in which promotions to be made

17.2 Promotion of whatever duration should as far as possible be made in the order in which the names of the officers appear in the panel. Exception to this rule may be necessary where a large number of vacancies are to be filled within a comparatively short period or it is convenient and desirable to make postings with due regard to the location and experience of the officers concerned or where short term vacancies have to be filled on local and ad-hoc basis.

Where eligible by direct recruitment and promotion

17.3 If a person's name is included in the panel for promotion to the higher post (to which appointment can be made by promotion as well as by direct recruitment) and also in the panel for direct recruitment to the said higher post, he should be appointed as a direct recruit or as a promotee, having regard to the fact whether his turn for appointment comes earlier from the direct recruitment list or from the promotion list, as the case may be.

Promotion of officers on deputation

17.4.1. If the panel contains the name of a person who has gone on deputation or on foreign service in the public interest including a person who has gone on study leave, provision should be made for his regaining the temporarily lost seniority in the higher grade on his return to the cadre. Therefore, such an officer need not be reconsidered by a fresh DPC, if any, subsequently held, while he continues to be on deputation/foreign service/study leave so long as any officer junior to him in the panel is not required to be so considered by a fresh DPC irrespective of the fact whether he might or might not have got the benefit of proforma promotion under the NBR. The same treatment will be given to an officer included in the panel who could have been promoted within the currency of the panel but for his being away on deputation.

17.4.2. In case the officer is serving on an ex-cadre post on his own volition by applying in response to an advertisement, he should be required to revert to his parent cadre immediately when due for promotion, failing which his name shall be removed from the panel. On his reverting to the parent cadre after a period of two years he will have no claim for promotion to the higher grade on the basis of that panel. He should be considered in the normal course along with other eligible officers when the next panel is prepared and he should be promoted to the higher grade according to his position in the fresh panel. His seniority, in that event, shall be determined on the basis of the position assigned to him in the fresh panel with reference to which he is promoted to the higher grade. (If the panel contains the name of an officer on study leave, he should be promoted to the higher post on return from the study leave. He should also be given seniority according to his position in the panel and not on the basis of the date of promotion).

EB cases

17.5 The recommendations of the DFC in the case of Government servants for crossing the EB have to be considered by the authority competent to pass an order under FR 25. Where a Government servant who has been held up at the EB stage on the due date on account of unfitness to cross the EB is allowed to cross the EB at a later date, as a result of subsequent review of his case by the DPC, the increment next above the EB shall be allowed to him from the date of such order to cross EB. Where it is proposed to fix his pay at a higher stage taking into account the length of service from the due date for crossing the EB, the case should be referred to the next higher authority for a decision. Instructions regarding overruling of recommendation of DPC for promotion/confirmation would apply in this case also.

Sealed cover cases - Action after completion of disciplinary/criminal prosecution

17.6.1. If the proceedings of a DPC for promotion contain findings in a sealed cover, on the conclusion of the disciplinary case/ criminal prosecution, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion.

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Procedure for
ad-hoc
promotion

17.8.1. In spite of the six monthly review referred to in para 17.7.1. above, there may be some cases where the disciplinary case/criminal prosecution against the Government servant are not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is no likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

17.8.2. In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the D.P.C. should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

17.6.2. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

Six mont hly
Review of
sealed cover
cases

17.7.1. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. The appointing authorities concerned should review comprehensively the case of a Government servant whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first DPC which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently, also every six months. The review, should, inter-alia, cover the following aspects:

- i) The progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.
- ii) Scrutiny of the material/evidence collected in the investigations to take a decision as to whether there is a prima-facie case for initiating disciplinary action or sanctioning prosecution against the officer.

If, as a result of the review, the appointing authority comes to a conclusion in respect of cases covered by item (ii) above that there is no case for taking action against the Government servant concerned, the sealed cover may be opened and he may be given his due promotion with reference to the position assigned to him by the DPC.

Sealed cover
procedure for
confirmation

17.7.2. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension etc.

17.8.3. After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel at any time the ad-hoc promotion and revert the Government servant to the post from which he was promoted.

17.8.4. If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of this ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 17.6.1. above.

17.8.5. If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not fully exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

Sealed cover procedure applicable to officers coming under cloud before promotion

17.9 A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 11.1 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this part will be applicable in his case also.

Date from which promotions are to be treated as Regular

17.10 The general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later.

17.11 In cases where the recommendations for promotion are made by the DPC presided over by a Member of the UPSC and such recommendations do not require to be approved by the Commission, the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officers, whichever is later, should be reckoned as the date of regular promotion of the officer. In cases where the Commission's approval is also required the date of UPSC's letter communicating its approval or the date of actual promotion of the officer whichever is later will be relevant date. In all other cases the date on which promotion will be effective will be the date on which the officer was actually promoted or the date of the meeting of the DPC whichever is later. Where the meeting of the DPC extends over more than one day the last date on which the DPC met shall be recorded as the date of meeting of the DPC.

the

Appointments to posts falling within the purview of ACC can, however, be treated as regular only from the date of approval of ACC or actual promotion whichever is later except in particular cases where the ACC approves appointments from some other date.

Refusal of Promotion

17.12 When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad-hoc promotions against short term vacancies are refused.

Validity
of a panel

17.13.1 The panel for promotion drawn up by DPC for 'selection' posts would normally be valid for one year. It should cease to be in force on the expiry of a period of one year and six months or when a fresh panel is prepared, whichever is earlier.

17.13.2 The date of commencement of the validity of panel will be the date on which the DPC meets. In case the DPC meets on more than one day, the last date of the meeting would be the date of commencement of the validity of the panel. In case the panel requires, partially or wholly, the approval of the Commission, the date of validity of panel would be the date (of Commission's letter) communicating their approval to the panel. It is important to ensure that the Commission's approval to the panel is obtained, where necessary, with the least possible delay.

Review of
Panels

17.14 The 'select list' should be periodically reviewed. The names of those officers who have already been promoted (otherwise than on a local or purely temporary basis) and continue to officiate should be removed from the list and rest of the names, if they are still within the consideration zone, alongwith others who may now be included in the field of choice should be considered for the 'select list' for the subsequent period.

P A R T - VI

REVIEW D.P.C.s

When Review
DPCs may be
held

18.1 The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, e.g.

- a) where eligible persons were omitted to be considered; or
- b) where ineligible persons were considered by mistake; or
- c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or

- d) Where some procedural irregularity was committed by a DPC; or
- e) Where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer.

These instances are not exhaustive but only illustrative.

Scope and
procedure

18.2 A Review DPC should consider only those persons who were eligible as on the date of meeting of original DPC. That is, persons who became eligible on a subsequent date should not be considered. Such cases will, of course, come up for consideration by a subsequent regular DPC. Further the review DPC should restrict its scrutiny to the CRs for the period relevant to the first DPC. the CRs written for subsequent periods should not be considered. If any adverse remarks relating to the relevant period, were toned down or expunged, the modified CRs should be considered as if the original adverse remarks did not exist at all.

18.3 A Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which should be recorded) nor change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently.

Cases where
adverse re-
marks have
been expunged
or toned down

18.4.1. In cases where the adverse remarks were toned down or expunged subsequent to consideration by the DPC, the procedure set out herein may be followed. The appointing authority should scrutinise the case with a view to decide whether or not a review by the DPC is justified, taking into account the nature of the adverse remarks toned down or expunged. In cases where the UPSC have been associated with the DPC, approval of the Commission would be necessary for a review of the case by the DPC.

18.4.2. While considering a deferred case, or review of the case of a superseded officer, if the DPC finds the officer fit for promotion/confirmation, it would place him at the appropriate place in the relevant select list/list of officers considered fit for confirmation or promotion after taking into account the toned down remarks or expunged remarks and his promotion and confirmation will be regulated in the manner indicated below.

18.4.3. If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under F.R. 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade.

18.4.4. In the case of confirmation, if the officer concerned is recommended for confirmation on the basis of review by the DPC, he should be confirmed and the seniority already allotted to him on the basis of review should not be disturbed by the delay in confirmation.

Proforma for referring proposals for promotion to
Union Public Service Commission.

1. Name of Ministry/Department/
Office.

2. Names and designation of members of the Departmental Promotion
Committee (copy of the orders constituting the DPC to be
attached).

Name	Designation	Office	Tele No.
1.	2.	3.	4.

3. Grade or post to which promotion is to be made.

Designation	Classification	Scale of Pay	No. of posts in the grade filled/unfilled
1w	2.	3.	4.

Total No. of posts filled on ad-hoc basis		No. of regular vacancies falling in promotion quota		Total
Pmt.	Temp.	Existing	Anticipated for current year panel only)	
5.		6.		7.

4. Yearwise break up of the number of regular vacancies indicated in column 7 of item 3.

Year	General	SC	ST	Total
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5. Recruitment Rules for the grade/post:

(a) Date on which the Recruitment Rules were notified in the Gazette of India and UPSC reference under which they were approved.

(b) Method of recruitment prescribed:

- | | |
|-------|-----------------------|
| (i) | % direct recruitment |
| (ii) | % Promotion |
| (iii) | % deputation/transfer |

(c) Whether an upto date copy of the recruitment rules has been enclosed. (This should invariably be sent for reference). If any changes in the recruitment rules have been agreed to by the Commission after they were notified, details should be attached.

If, after the approval of the recruitment rules any other post has been created which should normally be included in the field of promotion, give details.

6. Grade or posts from which promotion is to be made.

Designation	Classification	Scale of Pay	Service prescribed for eligibility for promotion.
1.	2.	3.	4.

-
7. UPSC reference No. under which promotion to the grade/post was last considered.

.....

8. Seniority List

- (a) Whether the seniority list as in the prescribed proforma (attached) has been enclosed. If there are more than one feeder grade, enclose separate seniority lists for each grade together with combined Seniority List.
- (b) Whether all eligible officers including those belonging to SC/ST and those on deputation etc. are included and whether those belonging to SC/ST and those who are on deputation are clearly indicated in the seniority list.
- (c) Whether the list, before finalisation was circulated to all concerned.
- (d) Whether there are any officers whose seniority has not been finalised. If so, give details.
- (e) Whether the seniority list has been duly authenticated by an officer not below the rank of Under Secretary to the Govt. of India
- (f) Whether the list has undergone any changes since it was last placed before the DPC. If so, give details (in the proforma attached).
9. An eligibility list showing separately officers who are eligible for different years for which the Select List is to be prepared should be drawn up and enclosed. The eligibility list for past years should be drawn up as on the 31st December of the year for which the panel is drawn. In cases where there are more than one feeder grade for which no specific quotas have been earmarked, a common eligibility list should be forwarded.
10. Character Rolls
Complete and up to date character rolls of all the eligible officers are required.

- (a) Whether a list (in duplicate) has been attached showing the names of officers whose character rolls are enclosed with this reference ?
- (b) Are the character rolls complete and upto date? (Character rolls should be sent only after they have been completed).

11. Integrity Certificate:

- (a) Whether an integrity certificate in terms of the instructions contained in DP&T OM No. 1/9/71-Estt(D), dated 22.1.1972 has been enclosed.
- (b) Whether there are any officers against whom Vigilance proceedings are either pending or contemplated, if so please indicate their names.
(If the space is insufficient please attached separate sheet).

12. Self Contained note for the DPC.

Whether a self-contained note for the DPC explaining the proposals for promotion, has been enclosed.

13. Check List

Whether a check list in terms of the DP&T OM No. 22011/6/86-Estt(D), dated 30.5.1986 has been enclosed.

Signature _____

Designation _____

Date _____

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Particulars of changes in the seniority list

Vide Item 8(f) of the DPC Proforma

(I)

Names of the Officers which were included in the last seniority list but have been deleted in the present seniority list.	Reasons for deletion
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1.	2.
---------	---------

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

(II)

Names of officers added in the present seniority list.

1.

2.

3.

4.

5.

6.

Seniority list of officers in the grade of _____

as on _____

Vide Item 8(a) of the DPC Proforma

Sl. No.	Name of the Officer	Whether belongs to S/C or S/T If not, say neither	Date of birth	Date of regular appointment to the grade
---------	---------------------	--	---------------	--

1.	2.	3.	4.	5.

UPSC reference
in which recommended/
approved

Post held
substantively

Remarks

6.	7.	8.

* Signature of authenticating
Officer

Designation _____

Date _____

* To be signed by an officer of or above the
rank of Under Secretary.

PROFORMA FOR REFERRING PROPOSALS FOR CONFIRMATION

1. Name of Ministry/Department/Office:

2. Names and designations of Members of the Departmental Promotion Committee:-

<u>Name</u>	<u>Designation</u>	<u>Office Telephone No.</u>
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(Note:- Copy of orders constituting the DPC to be attached)

3. Grade or post in which confirmation is to be made

- (a) Designation
- (b) Classification
- (c) Scale of pay
- (d) Total number of permanent posts in the grade.
- (e) (i) Total number of vacancies available for confirmation and the dates on which available
- *(ii) Number of vacancies falling in the direct recruitment quota with dates on which they occurred
- * (iii) Number of vacancies falling in the promotion quota with dates on which they occurred.
- * (iv) Number of vacancies available for being filled by transfer with dates on which they occurred.
- (v) Whether appropriate reservation for SC/ST in service/posts has been made ?
- (vi) Details of vacancies reserved for Scheduled Castes/Tribes.

*- (To be furnished only in cases of posts/services where specific quotas have been prescribed for substantive appointment of promotees/direct recruits/departamental examination candidates etc.)

Contd..... 33/

4. UPSC reference number under which confirmation to the post/grade ~~from which~~ last considered.

5. Recruitment Rules for the grade/post

(a) Date on which the Recruitment rules were notified in the Gazette of India and UPSC reference number under which they were approved.

(b) Method of recruitment prescribed:-

- | | |
|-------|-----------------------|
| (i) | % direct recruitment |
| (ii) | % promotion |
| (iii) | % deputation/transfer |

(c) Whether an up-to-date copy of the Recruitment Rules has been enclosed ? (This should invariably be sent for reference). If any changes in the Recruitment Rules have been agreed to by the Commission after they were notified, details should be attached.

6. Seniority List:

(a) Whether a seniority list as in the prescribed proforma has been enclosed ?

(b) Whether all eligible officers, including those on deputation and those holding the higher posts on a local or purely ad-hoc or temporary basis are included in the list ?

(c) Whether to the list before finalization was circulated to all concerned ?

(d) Whether there are any officers whose seniority has not been finalised ? If so, give details.

(e) Whether the seniority list has been duly authenticated by the officer not below the rank of an Under Secretary to the Government of India ?

(f) Whether the list has undergone any changes since it was last placed before the DPC? If so, give necessary details (in the prescribed proforma)

- (g) In cases of confirmation of officers appointed by different methods, e.g., promotion, direct recruitment or transfer, please enclose separate seniority lists also in addition to combined list.

7. Character Rolls:-

Complete and up-to-date character rolls of all the officers assessed as 'Not Yet Fit' are required.

- (a) Whether a list (in duplicate) has been attached, showing the names of officers whose character rolls are enclosed with this reference ?
- (b) Are the character rolls complete and up-to-date? (Character rolls should be sent only after they have been completed).
- (c) Names of officers, if any, in whose cases adverse remarks in their character rolls were communicated to them and the time allowed for submission of a representation is not yet over.
- (d) Names of officers, if any, who have submitted representations against adverse entries in their character rolls, but decisions on the representations have not yet been taken.

8. Probation:-

Whether the officers have completed satisfactorily the period of probation? The date of regular appointment and the date of completion of probation should also be given.

9. Integrity Certificate:-

Whether integrity certificate in terms of M.H.A.No.1/9/71-Estt(D) dated 22nd January, 1972 has been enclosed? A certificate regarding integrity should also be recorded in the DPC minutes.

10. Whether the DPC for confirmation has been convened in time? If not, state the reasons therefor.

contd....35/-

11. Self-contained Note for the DPC:

Whether a self-contained note for the DPC explaining the proposals for confirmation has been enclosed ?

Signature _____
Designation _____
Date _____
Office Tele No. _____

NOTE: This proforma is to be suitably modified when proposal is submitted for confirmation in accordance with the procedure outlined in the Department of Personnel & Training OM No. 18011/1/86-Estt.(D) dated 28.3.1988.

CHECK LIST FOR PROMOTION CASES

1. RECRUITMENT RULES
 - (a) Whether already notified
 - (b) Whether upto date.
 - (c) Does it provide for promotion on selection basis.
 - (d) Whether promotion is from Group B to A.
 - (e) Whether promotion within Group A.
2. DPC PROFORMA
 - (a) Whether in (revised prescribed form.
 - (b) Whether signed by competent Officer.
 - (c) Whether all columns filled properly.
3. SENIORITY LIST
 - (a) Whether in the prescribed proforma.
 - (b) Whether complete/up to date.
 - (c) Whether duly authenticated by an officer not below Under Secy. rank.
 - (d) Whether there is any discrepancy.
 - (e) Whether UPSC reference number given under which officers appointed.
4. ELIGIBILITY LIST
 - (a) whether educational qualification prescribed for direct recruitment applicable to promotees or otherwise specifically prescribed.
 - (b) If so, whether details of educational qualification of officers given
 - (c) Whether separate yearwise eligibility list for preparation of yearwise panels given where applicable.
 - (d) Whether full quantum of officers in consideration zone (including SC/ST in the extended zone) available.
5. OCCURRENCE OF VACANCIES
 - (a) Whether yearwise break-up of occurrence given for extending vacancies.
 - (b) Whether details for anticipated vacancies given.
 - (c) Whether reservation position given for Group B to Group A.

6. SELF-CONTAINED NOTE FOR DPC
Whether enclosed.
7. RELAXATION
(a) Whether any relaxation involved.
(b) If so, whether DOP&AR approval taken.
8. CHARACTER ROLLS
(a) Whether received for all eligible officers.
(b) Whether upto date (w.r.t. year of vacancies).
(c) Any incomplete CRs ? (position to be indicated in separate sheet).
(d) Whether any reason given for missing/incomplete CR.
9. INTEGRITY CERTIFICATE
(a) Whether in the prescribed form.
(b) Whether recorded by an officer of Deputy Secretary rank.
(c) Whether recorded for all eligible officers.
10. PREVIOUS DPC
(a) Has UPSC reference number, if any, for previous DPC, given.
(b) Whether panel drawn earlier has been exhausted.
11. REVIEW DPC
Whether proposal is covered by DOP guidelines dated 30.12.1976.

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ANNEXURE -IV
(Para 4.2.4)

POSITION REGARDING YEAR-WISE AVAILABILITY OF ACRS.

Sl. No.	Name & Date of Birth of the Officer	Whether CRs available for the years								Re- marks
		1	2	3	4	5	6	7	8	

* If not available use the marking 'x'
If available use the marking '✓'

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

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

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

The Hon'ble Shri G. Ray, Administrative Member

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

.....Petitioner

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

- versus -

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

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

.....Alleged Contemnners/
Respondents

.....



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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."

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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 O.M. No.22011/5/85-Estt (D) dated 10.04.1989 which stipulates that at present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. While merit has to be



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

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

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

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

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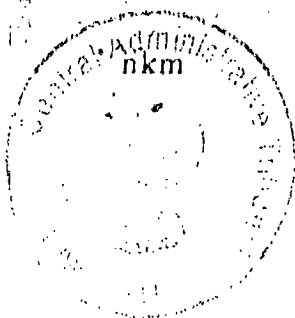
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8. The applicant is also given liberty to approach the appropriate forum, if the applicant has got any further grievance.

The Contempt Petition stands closed and dismissed. No costs.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)



Date of Application : 21/12/06
Date on which copy is ready : 21/12/06
Date on which copy is delivered : 21/12/06
Certified to be true : 21/12/06

Section Officer (J. dl)
C. A. T. Guwahati Bench
Guwahati-8.

21/12/06