

13

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
O.A/T.A No. 32/2007.....

R.A/C.P No.....

✓
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SECTION OFFICER (Judl.)

B. Nahar
21.9.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

CASE SHEET

1. Original Application No. 32/07
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) A. K. Datta VS Union of India & Ors

Advocate for the Applicant(s) MR M. Chanda, S. Nath & Son: U. Datta

Advocate for the Respondent(s) Dr. C. Basu, G. Borthakur

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed on 10-07-2007 deposit No. 286 981 883	8.2.07	Counsel for the applicant submitted that the respondent No.4 arrayed in this O.A is an unnecessary party and he may be permitted to struck off the name of the said respondent. Permission granted.
Dated.....17-1-07..... Meers Dy. Registrar		The issue involved in this case is that 69 officers have been promoted by a DPC purported to be held on June or July 2003 (exact date not available) and the claim of the applicant is that his promotion was not considered and kept under sealed cover on the ground that some proceedings were pending against him and the impugned memorandum was issued
1) Annexure 2 not visible. 2) Copy has been filed for respondents 1 to 4 without Envelope.		
 N. Saha 1-2-07		

subsequent to the DPC held on June/July, 2003 and therefore the action on the part of the respondents in keeping the promotion order under sealed cover is illegal and the procedure adopted is faulty.

Heard Mr M. Chanda, learned counsel for the applicant and Mr G. Baishya, learned Sr.C.G.S.C for the respondents. Learned counsel for the respondents submitted that he would like to take instruction.

Issue notice to respondents No.1 to 3.

Post on 23.3.07 for admission and order.

Vice-Chairman

pg

23.3.07.

Counsel for the respondents wanted to file written statement. Let it be done. Post the matter on 27.4.07.

Member

Vice-Chairman

lm

26.4.07.

O.A. 32/07

23.4.2007 Present: The Hon'ble Mr.G.Shanthappa
Member (J)

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

Mr.S.Nath, learned counsel for the Applicant is present. Service of Respondent No.2 is awaited. Mr.G.Baishya, learned Sr.C.G.S.C. representing Respondent Nos. 1 & 3 sought for time to file written statement. Four weeks' time is granted for the same.

No Ws has been filed.

Call on 30.05.2007.

30.5.07

Member (A)

George Ray
Member (J)

/bb/

Ws not yet filed.

30.5.2007 Mr.G.Baishya, learned Sr.C.G.S.C. is granted, on request, four weeks' further time to file reply statement.

Post on 3.7.2007.

26.7.07

Vice-Chairman

/bb/

ws submitted
by the Respondents.
page 1 to 6, copy
served.

3.7.2007

No reply statement has been filed.
Further four weeks time is granted for the same.

Post on 6.8.2007.

Par

Vakalatnama filed
by Ms.Usha, Mrs. Adv.
on behalf of the
Respondents.

/bb/

30.8.07

Vice-Chairman

O.A. 32/07

22.8.07. Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 24.9.07.

Vice-Chairman

lm

17.9.07 Post the matter on 5.11.07 alongwith O.A.

Vice-Chairman

lm

17.9.07 Rejoinder has filed to-day. Post the matter on 4.10.07 alongwith O.A.

26.9.07

Rejoinder submitted by the Applicant. Copy served.

Vice-Chairman

lm

04.10.07

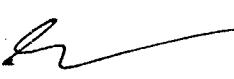
In this case reply and rejoinder has already been filed. Subject to legal pleas, to be examined in the final hearing, this case is admitted.

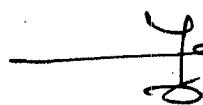
Call this matter on 22.11.07, for hearing of this O.A. awaiting rejoinder from the applicant.

The case is ready for hearing.

21.11.07.

lm


(Khushiram)
Member(A)


Monoranjan Mahanty
Vice-Chairman

22.11.2007 The matter is adjourned to be taken up on 14.12.2007.

The case is ready for hearing.

13.12.07.

/bb/


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

14.12.07 On the prayer of Mrs U. Dutta, learned counsel appearing for the Applicant the case is adjourned to 29.01.08.

22.1.08

Reply to the
Reorder filed
by the Respondents.
copy served.


(G. Ray)
Member(A)


(M. R. Mohanty)
Vice-Chairman

pg


29.01.2008 Call this matter on 11.03.2008
alongwith M.P.14 of 2008.

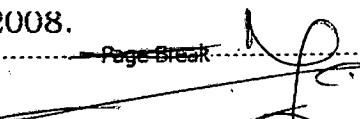

(Khushiram)
Member(A)


(M. R. Mohanty)
Vice-Chairman

lm

11.03.2008 Call this Division Bench matter on
31st March, 2008.

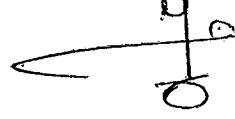
Page Break


(M. R. Mohanty)
Vice-Chairman


28.3.08.

31.03.2008 On the prayer of the counsel for the
parties call this matter on 21.05.2008 for
hearing.


(Khushiram)
Member(A)


(M. R. Mohanty)
Vice-Chairman

pg

21.05.2008 Mrs. U. Dutta, learned Counsel appearing for the Applicant, seeks an adjournment of hearing of this case.

Call this matter on 29.07.2008 for hearing.

Send copies of this order to the Applicant and to the Respondents in the addresses given in the O.A.

By an order dated 29.01.2008 (rendered in M.P.No.14/2008), the Respondents were called upon to cause production of records on the date of hearing.

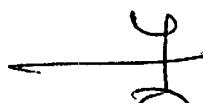
Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, takes notice of this order.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

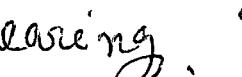
The case is ready for hearing. 29.07.2008 Call this matter on 03.09.2008 for hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.


nkm


2.9.08.

7

03.09.2008 Mrs U. Dutta, learned Counsel appearing for the Applicant, seeks an adjournment. The Applicant has filed a Petition (M.P.No.14/2008) calling for certain records from the custody of the Respondents. A copy of the said M.P.No.14/2008 has already been served on Mr G. Baishya, learned Sr. Standing Counsel for the Union of India,

Call this matter on 03.10.2008 for hearing; when the Respondents should keep the records (specified in the M.P.) ready with the learned Sr. Standing Counsel to produced at the hearing.


(Khushiram)

Member(A)


(M.R. Mohanty)
Vice-Chairman

nkm

03.10.2008

On the prayer of Mr.M.Chanda, learned counsel appearing for the Applicant, call this matter on 3rd December, 2008 for hearing.


(S.N. Shukla)

lm


(M.R. Mohanty)
Vice-Chairman

03.12.08

Call this matter on 30.01.2009 for hearing.

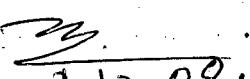

(S.N. Shukla)

Member(A)

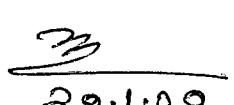

(M.R. Mohanty)
Vice-Chairman

lm

The case is ready for hearing.


2.12.08

The case is ready for hearing.


29.1.09

30.01.2009 Mrs. U. Dutta, learned Counsel appearing for the Applicant, and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, are present.

(b)

The case is ready for hearing.

33
19.3.09.

Call this matter on 20.03.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

nk/m

20.03.2009 At the request of Mr.M.Chanda, learned counsel for the Applicant case is adjourned.

List the case on 04.05.2009.

23.3.09
Memo of appearance filed by Miss C. Das, AGSC for the Respondents.

23.3.09


(A.K.Gaur)
Member (J)

The case is ready for hearing. /bb/

33
01.05.09

04.05.2009 Call this matter on 18.06.2009.


(M.R. Mohanty)
Vice-Chairman

/bb/

The case is ready for hearing.

33
25.5.09.

26.05.2009 On the prayer of the counsel for both the parties, call on 30th June, 2009.


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

25.5.09
This OA is preponed on request.

pb
30.06.2009

Call this matter on 17.08.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

The case is ready for hearing.

33
29.6.09.

The case is ready for hearing.

14.8.09

O.A. 32-07

Khaitul

Send copies of this order to the Respondents in the address given in O.A.

18/8/09

17.08.2009

On the prayer of counsel for both the parties, call this matter on 12.10.2009 for hearing; when learned Addl. Standing counsel shall produce the connected departmental records.

24 - 8 - 2009

Copy of the order

Dated 17-8-2009 prepared and send to D. Section for issuing of the /bb/

Same to the respondents

Date

24-8-09

12.10.2009

✓
(M.K.Chaturvedi)
Member (A)

✓
(M.R.Mohanty)
Vice-Chairman

Vide D.No - 9752-9754

Date 25.8.09

The case is ready for hearing.

9.10.09.

/lm/

✓
(M.K.Chaturvedi)
Member (A)

✓
(M.R.Mohanty)
Vice-Chairman

23.11.2009 On written request of Ms.U.Das, learned Addl. C.G.S.C., case is adjourned to 30.11.2009.

It is made clear that no further adjournment will be allowed.

✓
(Madan Kumar Chaturvedi)
Member (A)

✓
(Mukesh Kumar Gup
Member (J)

/bb/

30.11.2009 Mrs. U.Dutta, learned counsel for the Applicant states that her Senior Mr.M.Chanda, is unwell. In the circumstances case is adjourned to 04.12.2009.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/lm/

02.12.2009 On the request of Mrs U. Dutta, learned counsel for the applicant case is adjourned to 8.1.2010.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

On the request of Mrs U. Dutta, learned counsel for the applicant case is adjourned to 8.1.2010. By present O.A. the Applicant seeks promotion which has been denied to him on the ground the sealed cover procedure had been adopted. But his contention, on the other hand is neither when such DPC took place nor when an order in respect of other official was issued, departmental proceedings was either initiated or issued/pending against him. Another O.A.No.30 of 09, wherein said procedure of sealed cover was followed has been challenged and is pending, which is fixed on 12.1.2010. Hence list present O.A. along with other O.A.No.30 of 2009. It is made clear that no adjournment will be granted on the next date.

List the matter on 12.1.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

IV

O.A. No. 32 of 2007

12.01.2010 Mr. M. Chanda, learned counsel appearing for applicant in O.A. 30 of 2009 states that applicant would be available on the next week and he has to file rejoinder in 30 of 2009.

Furthermore, learned counsel for applicant states that he has to take instruction from him. In the circumstances, he prays for adjournment of the case. Ms. U. Das, Addl. CGSC appearing for Respondents has no objection.

List the matter on 27.01.2010.

*The case is ready
for hearing.*

25.1.2010

 (Madan Kumar Chaturvedi)  (Mukesh Kumar Gupta)
Member (A) Member (J)

/PB/

*The case is ready
for hearing.*

2.2.2010

lm

27.1.2010 On the request of proxy counsel for Mr. M.R. Das, counsel for BSNL, list the matter on 3.2.2010.

 (Madan Kumar Chaturvedi)  (Mukesh Kumar Gupta)
Member (A) Member (J)

03.02.2010 Heard both sides. Reserved for orders.

Respondents have produced copy of ACRs and minutes of the DPC for the year 1998-99 which were taken into consideration while considering the applicant's case for promotion besides complete records of the disciplinary proceeding in sealed cover.

 (Madan Kr. Chaturvedi)
Member (A)

 (Mukesh Kr. Gupta)
Member (J)

/pg/

-12- OA 32/07

25.02.2010

Judgment pronounced in open court,

kept in separate sheets. O.A. is dismissed in
terms of the said order. No costs.

/bb/

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

10 + 3 - 2010

Judgment /Final Order
dated 25/2/2010. Prepared
and sent to the D/Coltwn
for issuing to all the respondents
by Post and issued Advocate
for the both sides,
vide NO —
dated —

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A.No.32 of 2007

And

O.A.No.30 of 2009

DATE OF DECISION: 25.2.2010

Shri Anjan Kumar Dutta

.....Applicant(s)

Mr M. Chanda and Mrs U. Dutta

Advocate(s) for the
Applicant(s)

- Versus -

Union of India and others

Respondent(s)

Mrs M. Das, Sr. C.G.S.C.,
Ms U. Das, Addl. C.G.S.C.,
Mr M.R. Das & Mrs P. Das for BSNL

Advocate(s) for the
Respondent(s)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, 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 their Lordships wish to see the fair copy
of the Judgment? Yes/No

Member()

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.32 of 2007

And

Original Application No.30 of 2009

Date of Order: This the 25th day of February 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Anjan Kumar Dutta
So Late N.G. Dutta
Working as Deputy General Manager, BSNL
Tezpur Assam Circle
Triveni Complex, Kocharigaon
Tezpur - 784001. ...Applicant in both the O.A.s

By Advocate: Mr. M. Chanda alongwith Mrs. U.Dutta

-Versus-

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication and Information Technology
Department of Telecommunication (STG-III Section)
Sanchar Bhavan, 20 Ashoka Road
New Delhi - 110001.
2. Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Represented by the Chairman and
Managing Director, BSNL
Registered office - Statesman House
Barkhamba Road, New Delhi - 110001.
3. Under Secretary (SNG)
Ministry of Communication IT
Department of Telecommunications (STG III Section)
Sanchar Bhavan, 20 Ashoka Road
New Delhi - 110001. ...Respondents in O.A. No. 32/2007

By Advocates: Ms. U. Das, Addl. CGSC
Mr. M.R. Das & Mrs. P. Das for BSNL

1: The Union of India
 Represented by the Secretary to the
 Government of India
 Ministry of Communication and Information Technology
 Department of Telecommunication (STG-III Section)
 Sanchar Bhavan, 20 Ashoka Road
 New Delhi - 110001.

2. Bharat Sanchar Nigam Limited
 (A Govt. of India Enterprise)
 Represented by the Chairman - Cum
 Managing Director, BSNL
 Registered office - Bharat Sanchar Bhavan
 Harichandra Mathur Lane, Janapath
 New Delhi - 110001.

3. Desk Officer (Vig.II)
 Ministry of Communication and IT
 Department of Telecommunications (Vigilance II Section)
 915, Sanchar Bhavan, 20 Ashoka Road
 New Delhi - 110001.

4. Union Public Service Commission
 Represented by its Secretary
 Dholpur House, Shahjahan Road,
 New Delhi - 110011.Respondents in O.A. No. 30/2009

By Advocates: Mrs. M. Das, Sr. CGSC
 Mr. M.R. Das & Mrs. P. Das for BSNL.

.....
ORDER

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

Since issues raised in these two O.A.s, filed by Anjan Kumar Dutta, are overlapping, the same are being dealt with by present common order.

2. Vide O.A.No.32/2007 he has challenged validity of impugned letters dated 29.09.2003 (Annexure-4) and 23.11.2006 (Annexure-7) whereby certain officials including junior to him have been promoted, excluding him. He also seeks direction to the respondents to open the sealed cover and promote him to the cadre of

SAG from retrospective date with all consequential benefits including costs. Further he seeks direction to the respondents to produce minutes of DPC proceedings held in June/July 2003 including his ACRs and if his claim for promotion was rejected based on uncommunicated adverse/downgraded ACRs or on mere contemplation of disciplinary proceedings, then the same be quashed and direct holding Review DPC, consider him ignoring such uncommunicated/downgraded ACR, if any.

3. Vide O.A.No.30/2009 challenge has been made to Charge Memo dated 02.08.2004 which culminated into penalty of "censure" inflicted vide order dated 31.01.2008.

4. In nutshell, on examination of the entire records, we find that admitted facts are, applicant who is a ITS Group 'A' 1983 batch joined the services as Probationer on 17.01.1986, promoted as Divisional Engineer (STS Grade) vide order dated 23.11.1989, promoted to Junior Administrative Grade (JAG) on ad hoc basis on 14.02.1996 and regularized in JAG w.e.f. 20.08.2001. He was due for promotion to next higher grade i.e. Senior Administrative Grade (SAG). Vide order dated 23.07.2003, sixtynine JAG officials were promoted to SAG. Officials at serial Nos.60 to 69 are stated to be his juniors. He was not promoted to SAG and his name did not find place in the aforesaid order.

5. Charge Memo dated 29.08.2003 had been issued under Rule 14 of CCS (CCA) Rules, 1965, which culminated into penalty of reduction in scale by one stage for a period of one year. Before it, Rule 16 proceedings were initiated vide memorandum dated 22.08.2003 alleging certain misconduct. In continuation of said

memorandum another memorandum was issued on 02.08.2004. The gravamen of the charge had been that he committed the fraud in collusion with private subscribers of telephone numbers detailed therein by using highest secret commands of E-10B Exchange, at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using secret passwords. Thereby he caused huge revenue loss to the Department for self monetary benefits. Vide statement of imputation, it was stated that he was in overall charge of said Exchange and holding exclusive possession of the Password Management Commands with which inter alia, meter reading of any telephone number could be manipulated. Scrutiny of meter reading statements, detailed therein, revealed that there was increase and decrease in the meter reading though there should have been continuous increase in the meter reading of any working telephone. Thus, it was alleged that he failed to maintain absolute integrity and devotion to duty and acted in a manner, unbecoming of a Government servant. Allegations made therein were denied vide communication dated 30.09.2003. He also prayed for holding regular departmental proceedings, which prayer had been acceded to and, therefore, an oral enquiry was held. Presenting Officer as well as Inquiry Officer had been appointed and regular disciplinary proceedings were undertaken. Inquiry Officer submitted his report dated 15.09.2006 holding that the article of charge 'not proved'. The matter was referred to Central Vigilance Commission (CVC) which observed that on the basis of role and responsibility of applicant who was in charge of the Exchange, it can be inferred that he was responsible for any irregularity committed or occurred with regard to major Exchange faults leading to revenue loss. There was

abnormal decrease or increase in the meter reading due to technical fault, which was a supervisory lapse on his part. Hence, charge was proved to that limited extent, which warranted imposition of minor penalty of "censure". Vide memorandum dated 05.12.2006 the Disciplinary Authority agreed with the CVC and granted an opportunity to the applicant to make a representation against aforesaid findings, if any, within the time limit prescribed. Thus, the Disciplinary Authority differed with the findings recorded by Inquiry Officer. He, indeed, made a detailed representation dated 27.01.2007 and prayed for his exoneration and also requested that the advice of CVC be ignored. Thereafter, matter was referred to UPSC and vide its advice dated 08.01.2008 it concurred with the view of CVC that charge was partially proved. Ultimately, Presidential order dated 31.01.2008 imposing aforesaid penalty of censure had been issued.

6. The basic contentions raised by the applicant are as follows:

- a) Vide order dated 23.07.2003, as many as ten juniors who figured at serial Nos.60 to 69 were promoted to SAG overlooking applicant's claim. Representation made did not yield any positive result, rather vide communication dated 29.09.2003 (Annexure-4) he was conveyed that he was assessed as unfit by DPC held in June/July 2003. Placing reliance on (2008) 8 SCC 725, Dev Dutt vs. Union of India and others, it was urged that downgraded ACRs ought to have been conveyed, which had not been done. At no point of time he was conveyed any adverse ACR.

b) Though vide order dated 29.01.2004 (Annexure-5) he was recommended for ad hoc promotion in SAG of ITS Group 'A' service, but it had not been given effect to. In reply to various representations made on said subject, vide communication dated 23.11.2006 he was conveyed that recommendations of DPC held after August 2003 were kept in sealed cover as disciplinary proceedings were initiated against him during August 2003. It was contended that since no disciplinary proceedings were pending when DPC was held in June/July 2003, there was no justification to assess him unfit or to follow 'sealed cover procedure'.

c) Charge Memo dated 22.08.2003 had been issued belatedly for an alleged incident of 1995-96. Even the said proceedings were not concluded expeditiously and it took more than four years to finalize it. Departmental proceedings were prolonged without any justification and inordinate delay had been caused in initiation as well as conclusion of said proceedings, which caused serious prejudice. Placing reliance on 1990 Supp SOC 738, State of Madhya Pradesh vs. Bani Singh, it was emphasized that since there was no explanation offered for the inordinate delay in initiation as well as finalization of said proceedings, there is no justification in either initiating or concluding the said departmental proceedings.

d) Allegations made vide Memo dated 22.08.2003, which was improved by issuing another memo dated 02.08.2004 had

been denied in specific. Though request was made to supply certain documents, 12 in number as well as to examine 7 witnesses, said request had not been duly appreciated. Only 3 out of 12 documents were supplied. Similarly, only 2 out of 7 witnesses were examined. It was further highlighted that documents listed at serial No.4 vide Annexure-III of the charge memo dated 02.08.2004 had not been supplied. Specific averments made on this aspect were totally ignored and, therefore, serious prejudice was caused to him.

- e) The charge levelled was vague and not precise. As per settled law and requirement of rule, charge must be specific and distinct. He has been punished for an allegation namely, lack of supervisory role, which did not form part of the charge. It is well settled law that a person cannot be penalized for an allegation for which he had not been tried and which was not made part of the charge levelled against him.
- f) He had been exonerated by the Inquiry Officer. Said findings had never been disagreed. The Disciplinary Authority without recording tentative reasons for disagreement straightaway punished him. Merely because CVC as well as UPSC observed that due to technical fault supervisory lapse on his part was established, is inconsequential. CVC as well as UPSC have inferred that he was in possession of highest commands of Exchange and there was abnormal increase or decrease in the meter

reading without any basis. Documents listed at serial No.4 vide charge memo dated 02.08.2004 was a material document namely, computerized sheet, hard copy available with the Exchange as narrated by Shri Sandeep Kolwadkar, ADE E-10B in his letter dated 02.07.1996.

g) On the one hand UPSC in its recommendation dated 08.01.2008 clearly observed that Disciplinary Authority had not made available any evidence to show that applicant caused huge financial loss of revenue as well as quantum of loss had not been specified, but on the other hand made an observation that he being a DGM and holding administrative control of the Exchanges in Nasik was in possession of important passwords by which he manipulated the meter reading of the given telephone numbers. Learned counsel emphasized that said findings are contradictory in nature. When there was no evidence to link the allegations levelled against him, how he could be made responsible for certain supervisory lapses particularly, in the absence of making the same as part of the charge.

h) Placing reliance on Guidelines for 'Arrangement of Password Grouping of Various Commands into Different Classes And Remedial Measures To Avoid Leakage Of Revenue By Misusing Certain Commands In E10B Exchanges', issued on 26.2.1991 (Annexure-20), it was emphasized that the Password Authority is vested with the DE and not with the applicant.

ii) Reliance was also placed on (2004) 2 SCC 570, Union of India and another vs. Sneha Khemka and another, particularly para 23 to contend that as the order of Disciplinary Authority which has severe civil consequences, is not supported by any reasons and there was no justification to impose impugned penalty of censure. A decision must be arrived at on "some evidence", which is legally admissible. The provisions of the Evidence Act may not be applicable in departmental proceedings, but the principles of natural justice are. Suspicion has no role to play. (2007) 1 SCC 338, Government of A.P. and others vs. A. Venkata Raidu, para 9 in particular, was cited to contend that it is settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. Further a chargesheet should not be vague; it should be specific. (2006) 4 SCC 713, Narinder Mohan Arya vs. United India Insurance Co. Ltd. and others, particularly para 26 was relied upon to contend that the circumstances under which the findings arrived at in the departmental proceedings can be successfully questioned by a delinquent before the court including where the Inquiry Officer traveled beyond the charge and any punishment imposed on the basis of the findings which was not the subject matter of the charge is wholly illegal. Further reliance was placed on (2006) 5 SCC 88, M.V. Bijlani vs. Union of India and others, particularly paras 14, 19, 23

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and 25 to contend that Inquiry Officer performs a quasi-judicial function. While analyzing the documents and arriving at a conclusion, he must not take into consideration any irrelevant fact or refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. It was further urged that the Disciplinary Authority cannot proceed on a wrong premise where the charges were vague. Lastly, reliance was placed on (2004) 13 SCC 797, SBI and others vs. Arvind K. Shukla, to contend that the findings even recorded in favour of the charged employee, Disciplinary Authority can certainly take a different view but it is required to record its tentative reasons and give it to the delinquent officer and provide him an opportunity to represent, before recording its ultimate findings.

7. In the above backdrop, learned counsel for applicant vehemently contended that he is entitled to relief as prayed for.

8. Contesting the claim made by applicant and by filing separate reply in these two O.A.s, it was stated that He was duly considered by DPC held in June/July 2003 against vacancy year 2003-04 and was assessed "unfit". As such, he could not be promoted to SAG alongwith his juniors in JAG, vide order dated 23.07.2003. SAG is a selection post and one has to achieve the prescribed Benchmark of 'very good'. As per instructions contained vide para 6.3.1 of DOPT O.M. dated 10.04.1989 read with subsequent O.M.s dated 27.03.1997 and 08.02.2002, the benchmark for promotion to SAG is 'Very Good'.

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A conscious decision had been taken by UPSC that an officer attaining at least 4 'Very Good' gradings out of 5 ACRs, should be assessed as fit for promotion and said decision was applicable to all DPCs pertaining to the vacancy year 2003-04 and subsequent years. Merely because he was declared unfit, he could not be allowed to challenge his non-promotion to SAG vide order 23.07.2003. Subsequently, charge sheets under Rules 14 and 16 were issued on 29.08.2003 and 22.08.2003 respectively. In view of above departmental proceedings, his case was considered by subsequent DPCs and recommendations were kept in sealed cover. Ms U. Das, learned counsel for respondents in O.A.No.32/2007 produced the minutes of DPC as well as his ACRs and contended that applicant had not attained the prescribed benchmark and, therefore, was rightly declared "unfit" by the Selection Committee. Reliance was placed on Union Public Service Commission Vs. Hirayananalal Dev and others, AIR 1988 SC 1069, to contend that jurisdiction to make the selection is vested with the Selection Committee. The Selection Committee has to make selection by applying the same yardstick and norms as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as "Outstanding", "Very Good", "Good" etc. This function had to be discharged by the Selection Committee by applying the same norms and tests and the selection was also to be made by the Selection Committee as per rules. Tribunal has no role to play in such selection. Reliance was also placed on Dalpat Abasaheb Solunke etc. Vs. Dr B.S. Mahajan etc, AIR 1990 SC 434, to contend that: whether a candidate is fit for particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The

decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the Selection or proved malafides affecting the selection etc. Nutan Arvind (Smt) Vs. Union of India and another, (1996) 2 SCC 488, was cited to contend that, when a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the court will not sit over the assessment made by DPC. Same view was taken in Anil Katiyar (Mrs) Vs. Union of India & others, (1997) 1 SLR 153. Even very recently in Union of India and Another Vs. S.K. Goel and others, decided on 12.02.2007 Hon'ble Supreme Court held that DPC enjoys full discretion to devise its methods and procedure for objective assessment of suitability and merit of the candidates being considered by it. In the aforesaid background, learned counsel vehemently contended that applicant has failed to make out any case warranting judicial interference. With reference to records produced it was pointed out that his ACRs for the period of 1997-98 to 2001-02 were considered by DPC while considering his case for SAG against vacancy year 2003-04. As the grading made in said ACRs was not "Very Good" for four years, he had no claim at all.

9. By filing reply in O.A.No.30/2009 it was highlighted that there was no delay in initiating disciplinary proceedings against the applicant. As and when the irregularities came to its notice an investigation was conducted and chargesheet was issued after following due procedure such as obtaining advice of the CVC, approval of competent authority etc. His request for providing additional documents was allowed after considering their relevance to

its case. No prejudice was caused to him and he was afforded full opportunity during course of enquiry. CVC was justified to advice the Disciplinary Authority and based on its advice and other records of the case the Disciplinary Authority came to the conclusion that allegations against him were established. Furthermore, the Disciplinary Authority has been vested with the power to disagree with the findings of Inquiry Officer. There were valid reasons and justification to disagree with the Inquiry Officer as the Inquiry Officer has failed to take into consideration vital material, evidence brought on record. UPSC tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case. After analyzing the findings of the Inquiry Officer and evidence on record, documents made available, UPSC rendered its advice which is self-contained and self-explanatory. The competent authority duly considered the records of the case and advice of the UPSC and decided to accept the same since, which advice was a reasoned one. The allegation that UPSC was influenced by the advice of CVC was denied. It was further stated that both the institutions are independent and arrived at their own individual conclusions. He was afforded an opportunity of making representation after the Disciplinary Authority decided to disagree with the findings of the Inquiry Officer and, therefore, no prejudice was caused to him, strongly emphasized learned counsel for respondents. Our attention was drawn to the enquiry report particularly to the deposition of Shri Sandeep Kolwadkar SW-1, Shri N.A. Kulkarni and Shri D.D. Wani, DW1 and DW2 respectively. SW1 in his deposition had confirmed that the applicant was incharge of E-10B Exchange maintenance and password was with him. He further confirmed that after December

1995 the exchange keys were with the CO and he only used to open and lock the exchange daily. Similarly, DW1 who was introduced as Technical expert in E-10B exchange narrated the possible reasons for such erratic behaviour as under:

- "i) Malfunctioning of the rack which may result in Zero Meter Reading (ZMR) for all the numbers from that rack
- ii) For the entire exchange to show Zero Meter Reading, it can be either due to malfunctioning of Charging unit or use of MMRAZ command
- iii) One man made reason for erratic meter reading could be the possibility of misusing the ABOMU command. In such a case of man made misuse of ABOMU command, it is recorded in the YJDB log file of the exchange."

Similarly, DW2 who was working as SDE (Mobile), Nashik had stated as follows:

- "i) after major exchange fault on 06.05.1996, the meter reading of the entire exchange was reset to 000
- ii) The Meter Reading for all the subscribers were added manually to the previous Meter Reading of 30.04.1996 on the basis of average of calls made during earlier periods
- iii) He also deposed that applicant's visits to the exchange were occasional."

It is undisputed fact that these witnesses were examined and cross-examined by the applicant at length.

10. In the above backdrop, Mrs M. Das, learned Sr. C.G.S.C. forcefully contended that there being no merit in the claim made, O.A. deserves to be dismissed. Mr M.R. Das, learned counsel appearing for BSNL contended that BSNL had no role to play in the charge Memo issued and action taken thereon, and, therefore, he had nothing more to add.

11. We have heard learned counsel for parties at length, perused the pleadings and other material placed on record besides, the original records produced by the respondents in O.A.No.32/2007. We have also examined various citations used by the parties as noticed hereinabove. We may also note that M.P.No.14/2008 had been filed by applicant for production of CRs. As the CRs had been produced, no further order is required in said M.P. On examination of the matter and upon hearing the parties, the question which arise for consideration are:

- 1) Whether there was any justification to exclude the applicant from the order dated 23.07.2003?
- 2) Whether the respondents' action in adopting the sealed cover procedure while considering him for SAG was justified?
- 3) Whether the departmental proceedings initiated against him which culminated in the penalty of "censure" requires any judicial interference?

12. As noticed hereinabove, we have examined applicant's CR as well as DPC minutes dated 30th June, 1st and 2nd July 2003, as produced by the respondents, perusal of which reveals that said DPC considered applicant along with various other officials for the vacancy years 2002-03 and 2003-04. We have also perused the applicant's ACR for the years 1997-98 to 2001-2002 which were considered and taken into account by the aforesaid DPC. The record further reveals that he was considered for the vacancy year 2003-04 and assessed as "unfit", which was the basic reason for not including him vide order

dated 23.07.2003 whereby 69 officials were promoted to Sr. Administrative Grade of IIS Group 'A'. It also reveals that he had been graded in the ACRs concerned as, 'good', 'very good', 'average', 'good' and 'very good' respectively in the concerned years. It is not in dispute that Benchmark prescribed for the said post has been "Very Good" and as per UPSC policy/guidelines, an officer attaining at least 4 very good grading out of 5 ACRs alone should be assessed as fit for promotion, which policy decision was applicable to all DPCs pertaining to the years 2003-04 and subsequent years. Examining the present case on the touchstone of above policy decision/guidelines, it is clear that the applicant had not attained 4 "very good" grading out of 5 ACRs, considered for the vacancy year 2003-2004. On this basis, our considered view is that applicant was rightly found "unfit" by the concerned DPC. As far as the DPCs held subsequent to the charge memo dated 29.8.2003 issued under Rules 14 and 16 of CCS (CCA) respectively are concerned, it is the categorical stand of the respondents that it adopted sealed cover procedure. In such circumstances even if he had been recommended for promotion vide order dated 29.01.2004 is concerned, as by that time departmental proceedings had been initiated against him, he was rightly and justly not promoted. The law on said aspect is well settled that if the departmental proceeding is initiated or a person who is suspended on the day DPC had met or such promotion order issued, such delinquent officials need not be promoted. Keeping in view the aforesaid rule position and in the given facts of present case, we do not find any illegality in the communication dated 23.11.2006 whereby he was conveyed that since disciplinary proceedings were initiated against him in August 2003 the recommendations of DPC held thereafter had

been kept under sealed cover as per Government rules and instructions. In this view of the matter, we do not find any justification in the contention raised by the applicant.

13. In view of the discussion made hereinabove, we have no hesitation to conclude that the respondents' action in finding him "unfit" vide DPC held in June/July 2003 as well as adopting sealed cover procedure by DPCs held subsequent to August 2003 did not suffer any illegality warranting any judicial interference. Therefore, the first two issues noted hereinabove are answered in negative.

14. Coming to the third issue noted hereinabove, at the outset, we may note that scope of judicial review in departmental proceedings has been laid down in unequivocal term by Hon'ble Supreme Court in B.C. Chaturvedi vs. Union of India, relevant portion of which is quoted below:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence."

(emphasis supplied)

15. The basic issue which requires consideration is whether there is any justification warranting re-appreciation of material, findings and conclusion arrived at by the Disciplinary Authority namely, the President of India. We may note that vide statement of imputation of misconduct, appended alongwith charge memo dated 22.08.2003 it had been observed that applicant as DGM (Imp) was in overall charge of E-10B Exchange Nasik, and had in his exclusive possession the Password Management Commands with which inter alia the meter reading of any telephone no., details of which provided therein, could be manipulated. Para 3 thereof in specific narrated that scrutiny of meter reading of various statements of telephone numbers detailed therein revealed that there was increase and decrease in meter reading though there should have been continuous increase in the meter reading of any working telephone number. SW1, Sandeep Kolwadkar, the then ADET Nasik had in specific confirmed his earlier statement that the applicant "was in charge of E-10B Exchange maintenance and password was with him". He further stated that no password was handed over to him i.e. Sandeep Kolwadkar. He had further deposed that "after December 1995 the Exchange keys were" with the applicant and he only used to open and lock the Exchange daily. Similarly, N.A. Kulkarni, DW1 in his deposition highlighted the reasons for erratic behaviour of the meter reading. DW2 in his deposition in specific stated that the frequency of visit by the applicant to the Exchange were occasional. When we examined this aspect vis-à-vis the findings recorded by the Inquiry Officer we find that the Inquiry Officer has totally overlooked these material aspects while arriving at his conclusions and in such circumstance, the Disciplinary Authority was fully justified and had good and sufficient

reasons to disagree with the findings recorded by the Inquiry Officer. In our opinion, in the given circumstance, no exception can be taken by the applicant to said course of action. As far as the contention raised that no disagreement note was recorded by the Disciplinary Authority, is concerned we find the same is totally misconceived as the Disciplinary Authority had in its memo dated 05.12.2006 vide para 2 specifically recorded that on the basis of the role and responsibility of the applicant it can be inferred that he was in possession of highest command of exchange. Therefore, he was responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. There was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on his part. Said observations are, in our opinion, reasons for disagreement. Vide said Memo dated 05.12.2006 applicant was afforded an opportunity to make a representation which opportunity he indeed availed by submitting a detailed representation dated 27.01.2007.

16. Based on the assessment of evidence the Inquiry Officer though observed that the charges were not proved, we find that the CVC, the UPSC as well as the Disciplinary Authority were justified to disagree with the findings of the Inquiry Officer, for which they had enough material to justify. When three witnesses in specific pointed out that after December 1995 the exchange keys were with him, he used to open and lock the Exchange daily, the erratic behaviour of the meter reading because of malfunctioning of the rack as well as misuse of ABOMU command and frequent visits by the applicant to the exchange, how the applicant could be absolved of his supervisory role. We may note that the applicant has been punished by imposing a

minimum penalty of censure only based on preponderance of probability and holding that he being in administrative control of all the exchanges in Nasik and in possession of the important passwords could have manipulated the meter readings of the telephones. As per the statement of imputation, a specific allegation was made against him that a scrutiny of meter readings of various telephone numbers revealed that there was increase and decrease in the meter reading though there should have been continuous increase in the meter reading of any working telephone.

17. As far as reliance placed on Sneha Khemka (supra) is concerned, we may observe that said judgment itself says that if a decision is arrived at on "some evidence", which is legally admissible, the same cannot be questioned. In present case, there had been overwhelming evidence against the applicant and, therefore, said judgment basically did not support his case, rather it goes against him. As far as A. Venkata Raidu (supra) is concerned, in our considered opinion, the charges levelled against the applicant were specific and not vague, as projected. The statement of article of charge has to be read alongwith imputation of misconduct. When read together, in the present case, we do not find any ambiguity in the same. The same is specific alleged that he was in overall charge of E-10B Exchange and, therefore, it cannot be accepted that he has been punished for an allegation which has not included in the Charge Memo. Similarly, it has not been shown as to how the document No.4, the listed documents had been used against him by any authority. As long as a document is listed but not used against the delinquent official it need not be supplied. Similarly, Narinder Mohan Arya (supra) is also inapplicable in the facts and circumstances of present

case, particularly when the Inquiry Officer had not traveled beyond the charge and the punishment was based on the findings. M.V. Bijlani (supra) also is totally distinguishable in the facts of the present case as in present case it is the Inquiry Officer who had not analyzed the documents properly and totally ignored the vital material deposition made by the witnesses which basically pointed out the guilt of the applicant. Arvind K. Shukla (supra) is also of no assistance to him as the Disciplinary Authority had taken a different view than the findings arrived at by the Inquiry Officer, for the cogent and relevant reasons. Similarly, we do not find any justification in the contention raised that there had been delay either in initiating or concluding said proceedings. We may note that said contention had not been raised at the earliest. Applicant had participated in the Disciplinary Proceedings without any demur, and at this stage, after conclusion of said proceedings, which culminated into minor penalty of censure, he is precluded from raising such contention. Moreover, no prejudice has been established by the applicant because of said alleged delay. Thus the judgments on which reliance had been placed by the applicant are of no assistance to him in the peculiar facts and circumstances of the present case.

18. Taking an overall view of the matter and in view of discussion made hereinabove as well as finding no merits, O.A.Nos.32/2007 and 30/2009 are dismissed. No costs.

Madan Kumar Chaturvedi
(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

Mukesh Kumar Gupta
(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

7-2-07

গুৱাহাটী ন্যায়পরিষদ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 32 /2007

Sri Anjan Kumar Dutta.

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

21.08.2001- Applicant promoted as Junior Administrative Grade (JAG) on regular basis w.e.f 20.08.01, presently he is working as General Manger, RSNI, Tezpur Assam Circle, Tezpur. (Annexure-1)

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29.07.2003- Applicant was not promoted to the grade of Senior Administrative Grade (SAG) vide order dated 29.07.03 whereas 69 officers of Junior Administrative Grade (JAG) have been promoted including juniors of the applicant. (Annexure-2)

14.08.2003- Applicant submitted representation for review/consideration of his case for promotion. (Annexure-3)

29.09.2003- Applicant has been informed that he could not be promoted to SAG since he was assessed as "unfit" by the DPC held in June/July, 2003. (Annexure-4)

29.01.2004- Applicant's named appeared in the promotion list dated 29.01.04 but he was not promoted as because some disciplinary proceeding was initiated against him. (Annexure-5)

12.10.2006- Applicant submitted representation to the Member (Services) stating that there was no disciplinary proceeding against the applicant before the DPC held on June/July' 03 nor any adverse ACR against the applicant and prayed that he may be considered for promotion when his juniors promoted. (Annexure-6 series)

23.11.2006- Applicant received impugned letter dated 23.11.06 intimating that since a vigilance case/disciplinary proceedings were initiated against him in August, 03, so promotion to SAG have been kept in sealed cover, as per Govt. rules. (Annexure-7 series)

A K Dutta

29.08.2003- Disciplinary proceeding was initiated against the applicant through charges sheet dated 29.08.03. (Annexure-8 series)

It is stated that no disciplinary proceedings was initiated against the applicant at the time when DPC held in June/July, 03 and the said DPC under no circumstances can assess the applicant as "unfit" even in completion of disciplinary proceeding against the applicant which did not exist on the relevant day of assessment.

Hence this Original Application.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter No. 315-21/2003-STG-III dated 29.09.2003 (Annexure-4) and letter No. 315-21/2003-STG-III dated 23.11.2006 (Annexure-7 series) and further be pleased to declare the applicant as eligible for promotion to the Grade of SAG of ITS Group 'A' w.e.f the date on which his juniors were promoted.
2. That all the records of DPC proceedings held in June/July, 2003 including the ACR's of the applicant be called for, and on perusal of records, if the Hon'ble Tribunal finds that the DPCs conclusion is based on uncommunicated adverse/downgraded ACR or in mere contemplation of disciplinary proceeding against the applicant, the same be declared void and further be pleased to direct the respondents to hold Review DPC ignoring the uncommunicated downgraded ACR, if any.
3. That the Hon'ble Tribunal be pleased to direct the respondents to open the sealed cover, adopted in the DPC held in the year 2003, for consideration of promotion to the cadre of S.A.G and to give effect of the same, promoting the applicant to the cadre of S.A.G with consequential service benefit, including seniority.
4. That the Hon'ble Tribunal be pleased to direct respondents to promote the applicant to the grade of SAG of ITS Group 'A' w.e.f. the date on which his juniors were promoted, with all consequential service benefits.

AK Dutta

5. Costs of the application.
6. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be a bar for the respondents to consider the case of the applicant for his promotion to the cadre of SAG of ITS Group "A" as prayed for.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : **O.A. No. 32 /2007**

Shri. Anjan Kumar Dutta. : **Applicant.**

-Versus-

Union of India & Ors. : **Respondents.**

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Date: - 5.02.07

Filed By:

M. Dutta
Advocate

AK Dutta

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 32 /2007

BETWEEN:

Shri Anjan Kumar Dutta.

S/o- Late N.G. Dutta,
Working as Deputy General Manager, BSNL.
Tezpur, Assam Circle,
Triveni Complex, Kocharigaon,
Tezpur-784001.

.....Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India.
Ministry of Communication and Information Technology,
Department of Telecommunication (STC-III Section)
Sanchar Bhavan, 20 Ashoka Road,
New Delhi-110001.
2. Bharat Sanchar Nigam Limited
(A Govt. of India enterprise)
Represented by the Chairman and
Managing Director, BSNL
Registered office- Statesman House,
Barkhamba Road, New Delhi-110001.
3. Under Secretary (SNC)
Ministry of Communication IT.
Department of Telecommunications, (STG III section)
Sanchar Bhavan, 20 Ashoka Road,
New Delhi-110001.
4. Union Public Service Commission
Represented by its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011.

..... Respondents.

Resp. No 4 struck off vide
order dt. 8/2/07.

AK Dutta

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Filed by the applicant
through Mr. Dutta, Advocate
on

DETAILS OF THE APPLICATION

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

This application is made against the impugned orders bearing No. (1) No. 315-21/2003-STG-III dated 23.11.2006 (Annexure-7 Series), and (2) No. 315-21/2003-STG-III dated 29.09.2003 (Annexure-4) issued by the respondents whereby the prayer of the applicant for his promotion to the cadre of SAG of ITS Group 'A' have been rejected in spite of his legitimate entitlement for the same whereas persons even junior to him have been promoted.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

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

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially joined in ITS Group "A" service in 1983 batch and as Probationer on 17.01.1986 under staff No. 8188 in the respondent department. Thereafter he was promoted as Divisional Engineer (STS Grade) vide order dated 23.11.1989. On the basis of his performance, he was subsequently promoted to the Junior Administrative Grade (JAG) on ad hoc basis vide letter dated 14.02.1996 and eventually promoted in the JAG on regular basis w.e.f. 20.08.2001. Presently he is working as Deputy General Manager, BSNL, Tezpur, Assam Circle, Tezpur.

AK Dutta

4.3 That while working as Divisional Engineer (STS Grade) under Ahmedabad Telecom District, the applicant was promoted to the rank of Junior Administrative Grade (JAG) on ad hoc basis vide letter No. 314-3/95-STG-III dated 14.02.1996 and joined as Dy. General Manager (I & M), Nasik Telecom District, MH Circle. Eventually, vide order No. 314-9/2000-STG-III dated 21.08.2001, as many as 392 officers, including the applicant who were promoted as JAG on regular basis w.e.f 20.08.2001 and the name of the applicant appears at Sl. No. 251 in the said order of promotion.

(Extract copy of the order dated 21.08.2001 is enclosed as Annexure-1).

4.4 That vide order No. 315-10/2003-STG-III dated 21.07.2003 as many as 69 officers of the Junior Administrative Grade (JAG) have been promoted to Senior Administrative Grade (SAG), which have been circulated vide order dated 29.07.2003. But to his utter surprise, the name of the applicant has not been appeared in the said promotion order although he is legitimately entitled for promotion as per rules. It is relevant to mention here that the names of the officers appearing under Sl. No. 60 to 69 in the said promotion order, are junior to the applicant but even they have been promoted whereas the applicant in spite of being senior to them has been excluded from considerations, for the reasons best known to the respondents.

(A Copy of the ~~order~~ dated 23.07.2003 is enclosed as Annexure-2).

4.5 That being aggrieved due to his exclusion from promotion to the cadre of SAG, the applicant submitted through proper channel one representation on 14.08.2003 to the member (Services), DOT, New Delhi narrating all details and prayed for review/reconsideration of his case for promotion.

(Copy of the representation-dated 14.08.03 along with forwarding letter dated 22.08.03 are annexed hereto as Annexure-3).

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4.6 That in response to his representation dated 14.08.2003 aforesaid, the applicant received one communication bearing No. Endst No. DGM (Admn)/X/SAG/Rfr. & pstg/2 dated 07.10.2003 from Dy. General manager (Admn), Mumbai, forwarding therewith a copy of the impugned letter No. 315-21/2003-STG-III dated 29.09.2003 issued from the office of the DOT, New Delhi. In the said letter dated 29.09.2003 it has been informed that the applicant could not be promoted to SAC of ITS Group 'A' since he was assessed as "unfit" by the DPC held in June/July, 2003.

(Copy of impugned letter dated 29.09.03 is annexed hereto as Annexure-4).

4.7 That vide order No. 315-10/2003-STG-III dated 29.01.2004, another group of 93 officers of Junior Administrative Grade (JAG) including the applicant were promoted on purely ad-hoc basis to the cadre of Senior Administrative Grade (SAG). In the said order dated 29.01.2004, the name of the applicant appears at Sl. No. 5 but his promotion was not given effect to, since in the meantime, a disciplinary proceeding was initiated against the applicant on some alleged charges. It is relevant to mention here that a disciplinary proceeding was initiated against the applicant on 29.08.2003 alleging some charges, resulting into imposition of penalty of "reduction to one lower stage in the time scale of pay for a period of one year" upon the applicant vide order dated 17.10.2005 which has already been challenged before this Hon'ble Tribunal, and is pending before the Tribunal.

(Copy of promotion order dated 29.01.04 is marked as Annexure-5).

4.8 That thereafter, the applicant submitted through proper channel one representation on 12.10.2006 to the Member (services), DOT, New Delhi agitating against the findings of the DPC held in June/July, 2003 which assessed the applicant as "unfit for promotion and excluded him from promotion to the grade of SAG in an arbitrary and illegal manner. In his

A.K.Dutt

representation dated 12.10.2006, the applicant narrated all details and submitted interalia that on the date when the DPC was held in June/July 2003 there was no disciplinary proceeding whatsoever against the applicant before the DPC nor there was presumably any adverse ACR against the applicant in records which might have stood on the way of his promotion and further prayed for reconsideration of his case for promotion even by holding review DPC from the date on which his juniors were promoted. The said representation dated 12.10.2006 of the applicant was forwarded by the DGM, Tezpur to the Chief General Manager, Assam Telecom Circle, Guwahati vide his letter dated 16.10.2006, who in turn, forwarded the same to the Member (services), DOT, New Delhi vide his letter No. STES-3/19/43 dated 19.10.2006 for favour of disposal.

(Copy of the forwarding letter dated 19.10.2006 along with forwarding letter dated 16.10.2006 and representation dated 12.10.2006 are annexed hereto as Annexure-6 Series).

4.9 That in response to his representation dated 12.10.2006, the applicant received one letter No. STES-3/19/45 dated 27.11.2006 from Asstt. General Manager, Assam circle, Guwahati forwarding therewith a copy of the impugned letter No. 315-21/2003-STG-III dated 23.11.2006 issued from the office of the DOT, New Delhi. In the said letter dated 23.11.2006, it has been informed that since a vigilance case/disciplinary proceedings were initiated against the applicant in August 2003, as such the recommendations of the DPC held thereafter for promotion to SAG in respect of the applicant have been kept in sealed cover, as per Govt. Rules. Surprisingly, the respondents in their letter dated 23.11.2006 have stated about the DPC held after August, 2003 but have not explained as to why the applicants case was not considered by the DPC held prior to that i.e. in June/July, 2003 when there was no vigilance case/disciplinary

proceedings against the applicant. It is relevant to reiterate here that the DPC which assessed the applicant as "unfit", was held in June/July, 2003 but the disciplinary proceedings commenced thereafter only i.e in August, 2003 and as such the contentions of the respondents are unsustainable in the eye of law.

(Copy of letter dated 27.11.2006 along with impugned letter dated 23.11.2006 are annexed hereto as Annexure-7 Series).

4.10 That the applicant most respectfully begs to state that at the time of DPC meeting held in June/July 2003, the applicant was eligible for promotion to the cadre of SAG of ITS Group "A" and as such he was assessed by the DPC along with other eligible candidates including even his juniors and his case was not considered while his juniors even were promoted. The respondents contended vide their impugned letter dated 29.09.2003 (Annexure-4 hereto) that the applicant could not be promoted since he was assessed as "unfit" by the DPC held in June/July, 2003, but have not spelt out the reasons for such conclusion. Presumably, there might be only two reasons which led the DPC to such an erroneous conclusion, viz; (1) adverse ACR, in respect of the applicant, or (2) contemplation of disciplinary proceedings against the applicant.

As regards the ACR, the applicant begs to submit that he had discharged his duties and responsibilities all along to the best satisfaction of his superiors and in no occasion he had received any warning, memo, letter or the kind whatsoever regarding any shortcomings in his performances. To his knowledge and belief, the applicant had very good ACRs all through and consistently. This gains support from the fact that the applicant was promoted to the Junior Administrative Grade (JAG) on regular basis only on 20.08.2001, which means that his ACR at least for five years prior to 2001 were satisfactory and fulfilled the required benchmark. Immediately thereafter, in June/July, 2003, the DPC was held and there was absolutely no reasons for the said DPC for assessing the

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applicant as "unfit" on the basis of ACR, unless the ACRs had been downgraded deliberately and purposely. In the event of such downgrading of ACRs in respect of the applicant, if any, it was mandatory for the respondents to communicate such adverse/downgraded ACR to the applicant as per rules which was never done in the instant case. It is settled position of law that the DPC cannot act upon uncommunicated adverse/downgraded ACRs, if any, which have to be ignored for the purpose of promotion. As such the DPC held in June/July, 2003 cannot assess the applicant as "unfit" on the basis of ACRs.

As regards the contemplation of disciplinary proceedings, if resorted to by the DPC, it is also unsustainable in the eye of law. It is the settled position of law that a disciplinary proceeding against an officer is deemed to have commenced from the date of issuance of the charge sheet and not prior to that. In the instant case, though a disciplinary proceeding was initiated against the applicant, the memorandum of charges was issued vide No. 8/248/2003-Vig. II dated 29.08.2003 and memorandum No. 8-99/2003-Vig. II dated 22.08.2003 issued under Rule 16 of CCS (CCA) Rules, 1965 and thereafter held an inquiry under Rule 16 of CCS (CCA) Rules, 1965 as requested by the applicant and accordingly revised memorandum No. 8.99/2003-Vig. II dated 02.08.2004 has been served to the applicant. The inquiry authority has submitted its report to disciplinary authority and the case is under further process and as such the disciplinary proceedings against the applicant is deemed to have commenced from 29.08.2003. As such there was no disciplinary proceeding against the applicant in existence before the DPC held in June/July, 2003, and the DPC under no circumstances can assess the applicant as "unfit even in contemplation of disciplinary proceeding against the applicant which did not exist on the relevant day of assessment. It is relevant to mention here that the memorandum of charges dated 22.08.2003 in respect to the disciplinary proceedings

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aforesaid has further been amended vide order No. 8-99/2003-Vig. II dated 02.08.2004, which is still pending before the authority.

It is therefore evident from the above facts that the DPC held in June/July, 2003 had no reasons whatsoever either on account of adverse ACR's or in contemplation of disciplinary proceedings, to deny the legitimate promotion of the applicant to the cadre of SAG of ITS Group 'A' when the persons even junior to the applicant were promoted. As such the action of the respondents and the findings of the DPC are arbitrary, malafide, discriminatory, unfair and opposed to the settled position of law, and the Hon'ble Tribunal be pleased to direct the respondents to produce all the records of the DPC proceedings including the relevant ACR held in June/July, 2003 before this Tribunal for assessment of facts.

(Copy of memorandum of charges dated 29.08.03 and memorandum dated 02.08.04 are annexed hereto and marked as Annexure-8).

4.11 That the applicant most respectfully begs to state that the contents of the impugned letter dated 23.11.2006 (Annexure-7 Series hereto) as stated by the respondents are not sustainable. The respondents have stated therein in respect of the DPC meeting held after August 2003 i.e. after the commencement of the disciplinary proceedings against the applicant in August 2003 and have stated that the recommendations of the DPC in respect of the applicant have been kept in sealed cover. Such contention of the respondents are irrelevant in the instant case in as much as that the applicant was entitled for promotion in June/July, 2003 DPC itself, prior to August, 03 when there was no disciplinary proceeding pending against the applicant nor there was any question of adopting sealed cover procedure in respect of the applicant. The crux of the issue is that the applicant was assessed as "unfit" by the DPC held in June/July, 2003 only in an illegal manner and as such the question of subsequent DPC's

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recommendations vis-à-vis sealed cover etc. is not relevant in the issue involved in the present case. As such the impugned letters dated 29.09.2003 (Annexure-4 hereto) and dated 23.11.2006 (Annexure-7 Series hereto) are liable to be set aside and quashed.

4.12 That the applicant most respectfully begs to state that this Hon'ble Tribunal dealt in a similar matter earlier in O.A. No. 336/2002 (Subir Bhattacharjee -Vs- U.O.I and others) and allowed the O.A. This applicant is similarly situated and covered by the decision rendered by this Hon'ble Tribunal in O.A. No. 336/2002.

4.13 That due to the denial of promotion to the applicant to the cadre of SAG of ITS Group "A", which he is legitimately entitled to, the applicant has been suffering heavy losses in terms of financial benefits and his service prospects as well. Therefore, finding no other alternative, the applicant is now approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the legitimate rights and interests of the applicant by quashing the impugned letters dated 29.09.2003 and dated 23.11.2006 and further directing the respondents to promote the applicant to the cadre of SAG of ITS group 'A' at least from the date on which his juniors were promoted, even by holding review DPC, with all consequential benefits incidental to the promotion.

4.14 That this application is made bona fide and for the cause of justice.

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

5.1 For that, the applicant was eligible for and entitled to promotion to the cadre of Senior Administrative Grade (SAG) of ITS Group "A" but he has been denied the same by the DPC held in June/July, 2003 in an arbitrary, unfair and illegal manner.

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5.2 For that, the officers even junior to the applicant have been promoted superseding the applicant which is discriminatory and opposed to the provisions of Article 14 and 16 of the Constitution of India.

5.3 For that, the applicant has very good ACRs all along, on the basis of which he was promoted to the Junior Administrative Grade (JAG) in 2001 only and as such there is no reason for the DPC held immediately thereafter in June/July, 2003 to assess the applicant as "unfit" for promotion.

5.4 For that, no adverse or downgraded ACR, if any in respect of the applicant, was ever communicated to the applicant and as such the DPC cannot act upon any such uncommunicated adverse/downgraded ACR which is the settled position of law.

5.5 For that, there was no disciplinary proceedings against the applicant before the DPC held in June/July, 2003 on the day of assessment and as such the DPC cannot deny the promotion to the applicant in mere contemplation of disciplinary proceeding against him as per law.

5.6 For that the applicant is entitled to get the promotion to the cadre of SAG from the date on which his juniors have been promoted, but he has been denied the benefit even by going against the laws laid down in the matter.

5.7 For that the applicant has submitted representations time and again praying for his legitimate promotion aforesaid but have been rejected on unsustainable pleas.

5.8 For that by denying the promotion in an illegal and arbitrary manner have deprived the applicant of his legitimate legal rights.

5.9 For that the actions of the respondents are arbitrary, malafide, unfair, discriminatory, opposed to the settled position of law and violative of the principles of natural justice.

6. Details of remedies exhausted.

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That the applicant declares that she has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. **Matters not previously filed or pending with any other Court.**

The applicant further declares that she had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. **Relief (s) sought for:**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter No. 315-21/2003-STG-III dated 29.09.2003 (Annexure-4) and letter No. 315-21/2003-STG-III dated 23.11.2006 (Annexure-7 series) and further be pleased to declare the applicant as eligible for promotion to the Grade of SAC of ITS Group 'A' w.e.f the date on which his juniors were promoted.
- 8.2 That all the records of DPC proceedings held in June/July, 2003 including the ACR's of the applicant be called for, and on perusal of records, if the Hon'ble Tribunal finds that the DPCs conclusion is based on uncommunicated adverse/downgraded ACR or in mere contemplation of disciplinary proceeding against the applicant, the same be declared void

A K Dutt

and further be pleased to direct the respondents to hold Review DPC ignoring the uncommunicated downgraded ACR, if any.

5.3 That the Hon'ble Tribunal be pleased to direct the respondents to open the sealed cover, adopted in the DPC held in the year 2003, for consideration of promotion to the cadre of S.A.G and to give effect of the same, promoting the applicant to the cadre of S.A.G with consequential service benefit, including seniority.

5.4 That the Hon'ble Tribunal be pleased to direct respondents to promote the applicant to the grade of SAG of ITS Group 'A' w.e.f. the date on which his juniors were promoted, with all consequential service benefits.

5.5 Costs of the application.

5.6 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. **Interim order prayed for:**

During pendency of the application, the applicant prays for the following interim relief: -

9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be a bar for the respondents to consider the case of the applicant for his promotion to the cadre of SAG of ITS Group "A" as prayed for.

10.

11. **Particulars of the I.P.O**

i) I.P.O No. : 28 G 981883 .
 ii) Date of issue : 17.1.07 .
 iii) Issued from : G.P.O, Guwahati.
 iv) Payable at : G.P.O, Guwahati.

12. **List of enclosures** :
 As given in the index.

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VERIFICATION

I, Shri Anjan Kumar Dutta, S/o- Late N. G.Dutta, aged about 47 years, working as Deputy General Manager, BSNL, Tezpur, Assam circle, Tezpur, Assam, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 30th day of January, 2007.



Government of India
 Department of Telecommunications
 Sanchar Bhawan, 20 Ashoka Road, New Delhi - 1.
 (STG-III Section)

No.314-9/2000-STG-III

DATED : August 21, 2001

ORDER

Subject:- Promotion to the Junior Administrative Grade of Indian Telecommunications Service Group 'A'.

The president is pleased to promote the following officers of Senior Time Scale of ITS Group 'A' who are at present officiating in Junior Administrative Grade of ITS Group 'A' (Pay scale 12000-16500/-) on purely temporary and adhoc basis, to officiate in that Grade on regular basis with effect from 20.8.2001 or with effect from the date the officer(s) actually assumed the charge of the higher post on regular basis, whichever is later: -

1	2128 TARAPADA LAYEK
2	2194 SUBASH CHAND JAIN
3	2211 PRITHVI CHAND
4	734 M LAXMI NIWAS
5	1711 DAS DULAL CHANDRA
6	1712 PATRA APURBA KUMAR
7	1719 BHARTI M.R.
8	1720 MOTI LAL
9	1742 AHIR B.R.
10	2157 DALEEP K SINGH
11	2212 SATISH K OBERAI
12	2213 SUBHASH C LEEKHA
13	2214 K A JOSEPH
14	2215 AVADESH K SRIVASTAVA
15	2216 SUKDEV ADAK
16	2217 SANKAR KUMAR BOSE
17	2218 RAM AUTAR GUPTA
18	2219 NARENDRA KR MEHTA

*Attested
Month
Adarsh*

243	8180 N ASHOK RAJ
244	8663 B CHANDRASEKHAR
245	8181 GANESH CHANDRA PANDE
246	8182 MASOOD ALAM SIDDIQUI ***
247	8183 SURESH K GUPTA
248	8184 AMIT MISRA
249	8185 V P SIVADASAN
250	8187 MOHD NASARULLAH KHAN
251	8188 ANJAN K DATTA
252	8189 MANOJ K MISHRA ✓ 60
253	8190 SATISH TANDON
254	8192 MAHENDRA PATI ✓ 62
255	8193 BHAGWATI PRASAD ***
256	8194 PRASANA K SIKDAR ✓ 63
257	8195 ANUPAM GUPTA ✓ 64
258	8196 NARENDRA K CHHOKAR
259	8197 SUBHASH CHAND ✓ 65
260	8198 V SRISANKAR
261	8199 M BALASUBRAMANIAN ✓ 66
262	8200 ASHOK KR MOHABE ✓ 67
263	8201 ANTHONY EKKA
264	8202 P SANTHOSHAM ✓ 68
265	8204 KALI S AHIRWAR ✓ 69
266	1949 MOHAPATRA S.C.
267	1950 CHOUDHURY SILENDRA
268	8170 SHIV SHANKER
269	2028 VISHWANATHAN S.
270	2075 LONDHEKAR V.R.
271	2076 DAS MRINAL KANTI
272	2085 BUDH PRAKASH
273	8206 ASHUTOSH SHARMA
274	8207 D S NARENDRA

Attested
S. Ahmad
Advocate

371 8321 SATINDER KUMAR JAIN

372 8323 SATYAPAL SINGH

373 8324 VINOD KUMAR SINGH

374 8325 RITU RANJAN MITTAR

375 8326 VINOD P ABRAHAM

376 8327 VINOD KUMAR

377 8328 T S SIVAKAMY

378 8329 SUDEB KUMAR KAYAL

379 8330 PROMOD KUMAR

380 8331 NARENDER. K

381 8332 SIVA SANKAR REDDY

382 8333 N R NATARAJAN

383 8334 V RAJENDRAN

384 8335 G NARENDRA NATH

385 8336 N JANARDHAN RAO

386 8337 RAKESH K SHARMA

387 8338 NEERAJ VERMA ***

388 8339 BAL KISHAN

389 8341 RAKESH KUMAR DUBEY

390 8344 BALRAM PAL

391 8345 KALLYAN K SINGH

392 8346 P S DESALE

*** Proforma Promotion

2. The officers who have been placed in the pay scale of Rs.14,300-18,300/- in accordance with DOT order No.1-1/97-PAT dated 27/10/97 shall continue to draw their pay in that scale, but will not be entitled for refixation of pay.

3. In case any of the above officers is not officiating in the JAG, the fact may be brought to the notice of the Department.

4. In case any vigilance case is pending or the officer is undergoing punishment, the promotion may not be given effect and the matter may be reported to the Department.

5. Charge reports may be furnished to all concerned.

Attested
Munshi
Advocate

- 17 -

(Dr. VINCENT BARLA)
Asstt. Director General (STG-III)
Ph. No. 3032876

Copy to: -

1. PS to MOC/MOS(C)/Chairman, TC/Secy. DOT.
2. All Members/Advisors/Sr. DDGs/DDGs/Addl. Secy., DOT.
3. CMD, BSNL/MTNL.
4. Directors of the Board of BSNL.
5. All Heads of Telecom. Circles/Distt./Regions/Projects/Units, BSNL.
6. CGM MTNL DI/MBI.
7. Officers concerned/CAOs Concerned.
8. G-I, II/Admn.I....IV/PHA/Paybill/Pension/Cash/STG-I, II /Pers.I Sections, DOT/BSNL.
9. Sr. CA to Advisor(HRD).
10. DDG(Pers.)/Jt. DDG(Pers.), BSNL.
11. DDG(Estt.)/Director(staff)/ADG(SGT), DoT.
12. Secretary UPSC, Dholpur House, New Delhi, w.r.t. their letter No. 1/34(10)/AP-3 dated 20/8/2001.
13. Unions/Federation/JCM Members/Order Bundle.

(Dr. VINCENT BARLA)
Asstt. Director General (STG-III)
Ph. No. 3032876

*Attested
Muftis
Advocate*

ANNEXURE-2

BHARAT SANCHAR NIGAM LIMITED
CORPORATE OFFICE
(PERSONNEL - I SECTION)
STATESMAN HOUSE, BARAKHMHA ROAD, NEW DELHI - 110001

No. 315-01/2003-Pers-1/17

July 21, 2003

ORDER

Sub: - PROMOTION, TRANSFER/POSTING IN SAG OR ITS GROUP A

In accordance of order contained in Deptt. of Telecom Order No. 315-01/2003-SAG-III dated 21st July, 2003. The following officers of SAG or IES Group 'A' are promoted to officer in the Senior Administrative cadre of IES Group 'A' on regular basis in the pay scale of Rs 18100-22400/- with effect from the date of assumption of charge & higher post by the respective officers and are posted as indicated in the column "POSTING ON PROMOTION".

SL. NO.	ST. NO.	NAME S/SIRI	PRESENT POSTING	POSTING ON PROMOTION	REMARKS
1.	2218	RAMESH GUPTA	GM, DIX. (BSI) BSNL, C.G., New Delhi	ODC (BSI) BSNL Corporate Office C.O., New Delhi	Vice SAG - Secretary (P)
2.	8030	AKHILESH MEHTA SIRI	PGM (TEC), New Delhi	GM, Circle Office (C.O.) Shanti, HP Circle	Agenda & approved
3.	8007	ARVIND KUMAR BAJAJ	PGM, Surat City Circle	GM, Surat (P) Guj. Circle	Agenda & approved
4.	8008	ASHOK PUNJ MITTAL	PGM, Patiala HP Circle	GM, BBSR (C), C.O. Dehradoon Utt. Circle	Agenda & approved
5.	8101	RAMESH RASTogi	PGM, Coimbatore, TN.	GM, Thanjavur TN Circle	Agenda & approved
6.	8102	P.T. SARAVANAPATHAM PRAKASH	PGM, Hyderabad, AP Circle	GM, Koraput, Orissa Circle	Agenda & approved
7.	8103	PALLAVI	PGM, Surat City Circle	GM, C.O. MP Circle Bhopal	Agenda & approved
8.	8107	K. S. S. S. KUMAR	PGM, Mysore Mysore	GM (C) Wardha MH Circle	Agenda & approved
9.	8108	DEEPMALA PARIMAH	PGM, DIX. (VNSL), BSNL, C.G., New Delhi	GM (C) Jaipur Circle	Agenda & approved
10.	8110	C.M. PRASAD GUPTA	PGM, Jaipur Raj	GM (C) Raigarh WB Circle	Agenda & approved
11.	8111	RAM KRISHNA	Director (BS-III), BSNL, New Delhi	GM (BS-III) (P) Del. C.G. Shanti, HP Circle	Agenda & approved
12.	8115	VRAO	PGM (BS-III), BSNL, C.G., New Delhi	GM Tirunelveli, TN Circle	Vice SAG - Secretary (P)

Attested
Rakesh
Advocate

Rakesh

Contd 24

SRN NO.	ST. NO.	NAME S/SIRI	PRESENT POSTING	POSTING ON PROMOTION	REMARKS
13.	8116	INY PRASAD	DGM, Hyderabad, AP Circle	GM (M) C.O. Hyderabad, AP Circle	Against a vacant post
14.	8118	NIZAMUL HAQ	DGM, Ambala, HR Circle	GM (Mksg) C.O. Ambala, HR Circle	Against a vacant post
15.	8119	MS NAGALEELA C.V.L	DGM, Pune, MH Circle	GM, Pune TD, MH Circle	Against a diverted post
16.	8121	CHARLEY MATHEW	DGM, Jamshedu Town, J&K Circle	GM (M) PCSI C.O. Jamshedu, J&K Circle	Against a vacant post
17.	8123	GAYA PRASAD	DGM, Dehradun, Uttarakhand Circle	GM(T), Kotdwara, UTRJ, Circle	Against a vacant post
18.	8128	BALAGANGADHARA RAO	DGM, NE-II, Delhipur	GM, Agartala, NE TD, AP Circle	Vice Shri R Chandramouli (R)
19.	8129	RUPA RACHOK KUMAR	TDM, Moribhan, Bihar Circle	GM(T), Suknapur, UP (E) Circle	Against a vacant post
20.	8130	AJAY KUMAR KANOJIA	DGM, Lucknow, UP (E) Circle	GM (M) PCSI C.O. Mice, C.O., Lucknow, UP (E) Circle	Against a vacant post
21.	8131	SHAILENDRA AGARWAL	JII DNG (Peri), BSNL CO., New Delhi	GM, DNW, New Delhi	Against a diverted post
22.	8132	SURIL KUMAR GUPTA	DGM, DNW, New Delhi	GM, DNW, New Delhi	Against a diverted post
23.	8133	CEN MURTHY	IXGM Hyderabad QS Circle	GM(T), Khammam, AP Circle	Against a vacant post
24.	8135	HARI SHANKAR DWMVRD	TDM, Begusarai, Bihar Circle	GM(T), Begusarai, Chhattisgarh Circle	Against a vacant post
25.	8136	DEBASIS CHATTOPADHYA	DGM, Burdwan, WB Circle	GM, Kolkata TD	Against a vacant post
26.	8139	VINEET KUMAR MATHUR	DGM, IT Project Circle, Pune	GM, Pune IT Project Circle, Pune	Against a vacant post
27.	8140	ALOK K SRIVASTAVA	IXGM Dehradun, Uttarakhand Circle	GM(Mksg), C.O. Dehradun, UTRJ, Circle	Against a vacant post
28.	8142	ANANTHA PAIMANABHAI	DGM, Amaravati, MH Circle	GM, Hyderabad TD, KTK Circle	Against a vacant post
29.	8144	APURNA CHANDRA RAO	DGM, Secunderabad, AP Circle	GM (Mksg), Dharmapuri, NE-II Circle	Against a vacant post
30.	8146	RAJNEH SHYAM PANDEY	TDM, Elawa UP (E) Circle	GM(T), Mirzapur, UP (E) Circle	Against a vacant post
31.	8147	K SAMPATH KUMAR	DGM, Kurnool, AP Circle	GM(T), Gulbarga, KTK Circle	Vice Shri N. Nallappa TD
32.	8148	VEERA SOMAYIA	DGM, Mysore, KTK Circle	GM(T), Mysore MH Circle	Against a vacant post

Contd 3

SRL NO.	ST. NO.	NAME S/SHRI	PRESENT POSTING	POSTING ON PROMOTION	REMARKS
33.	8149	MAHENDRA P. MEITA	IXM, Patna. ETR	GM TD, Bhagalpur, BR Circle	Against a vacant post
34.	8150	FIROZ ANWAR	DGM, Humayunpur. HP Circle	GM TD, Lakhampur, UP (E) Circle	Against a vacant post
35.	8152	V V SRAGHRAVE KUMAR	DGM Vijayawada, STP	GM TD, Kurnool, AP Circle	Vice Shri & Mahender
36.	8153	NARENDRA KUMAR JAIN	TDM, Jhalawar, Rajasthan Circle	GM TD, Bhilwara, Raj. Circle	Against a vacant post
37.	8154	ANILKAN M.A.E	DGM, Kolkata TD	GM TD, CO Kolkata, WB Circle	Against a vacant post
38.	8155	RAKESH JOSHI	JL, DDG (Eng) BSNL CO, New Delhi	DDG (Eng), BSNL CO, New Delhi	Against a diverted post
39.	8156	NIRMAL K KUMAR	Dy. Administrator (Tech) USF, DDG, New Delhi	GM TD, Almora, Utt. Circle	Against a vacant post
40.	8157	SHYAM NARAYAN	JL, DDG (OF), BSNL CO, New Delhi	GM, Sambhal TD, MP Circle	Against a vacant post
41.	8158	PRAMOD KUMAR JAIN	TDM, Chandigarh, Punjab Circle	GM TD, Churu, Raj. Circle	Against a vacant post
42.	8159	NARESH SHARMA	DGM, Chandigarh, Punjab Circle	GM (Mktg.) Chandigarh, Punjab Circle	Against a vacant post
43.	8160	M. K. KHAN CHINCHI SULTAN	DGM, Assam, Circle	GM (MPCS), OP & Dev. Gauhati, Assam Circle	Against a vacant post
44.	8161	MANEESH SINGH, A	TDM, Sagar, MP Circle	GM TD, Howrahbad, MP Circle	Against a vacant post
45.	8162	S. S. SINGH	DGM, Mumbai, MH Circle	GM TD, BHELCO, MH Circle	Against a vacant post
46.	8163	S. NATH BANERJEE	DGM, Malda WB Circle	GM TD, Siliguri, WB Circle	Vice Shri S. Chakraborty DS
47.	8164	BRUPAL SINGH	DGM, Lucknow, UTR	GM, (MPCS), OP & Mier CO Amlabali, UTR Circle	Against a vacant post
48.	8165	RAJIV GOEL	MTNL CO, DI	GM (DO), CO, OP (W) Circle	Against a vacant post
49.	8166	MS. S. LEETA SHANKAR	DDM, Chennai TD	GM TD, Madras Circle	Against a vacant post
50.	8167	SHYAM SUNDAR YADAV	DGM, Saharanpur, UP Circle	GM TD, Morena, MP Circle	Against a vacant post
51.	8168	ASHOK KHE UPALIHYAY	DGM, Jhalsipur, MP Circle	GM TD, Ahmedabad FE, Guj	Vice Shri & S. Bharyava DS
52.	8169	BISWAJIT PAUL	AM, WB Circle	GM TD, Asansol, WB Circle	Vice Shri & S. Kundu DS

Contd. 1.

SRL No.	ST. No.	NAME S/SHRI	PRESENT POSTING	POSTING ON PROMOTION	REMARKS
53.	8178	VIRENDRA KUMAR AYYA	JI DDG (R), BSNL, C.O. New Delhi	GM (BSNL) Ahmedabad, Guj Circle	Against a vacant post
54.	8179	LAL BHAIJI YADAV	IXIM, Surat, Guj Circle	GM(TD), Hasan, UP (E) Circle	Against a vacant post
55.	8180	NARINJAR HARI	DGM, Coimbatore, TN Circle	GM, Vellore, TD, TN Circle	Against a vacant post
56.	8183	B. CHANDRA KUMAR	IXIM, Hyderabad, TAD Circle	GM(TD), Jorhat, Assam Circle	Against a vacant post
57.	8181	GANESH CHANDRA PANDE	TDIM, Khandaon, MP Circle	GM(TD), Ratlam, MP Circle	Against a vacant post
58.	8184	AMIT KUMERA	AM, Gondia Nagar, Guj Circle	GM, Unacademy TD, Guj Circle	Against a vacant post
59.	8185	V.P. RYALAYAN	AM, Mulapuram, KRL Circle	GM, Pethamam, Cuttua TD, KRL Circle	Against a vacant post
60.	8189	MANGAL MISHRA	DGM, Jabalpur, MP Circle	GM, BHUBANESWAR Jabalpur	Against a vacant post
61.	8191	SANDEEP NIDAM	IXIM, Lucknow, UP (E) Circle	GM (MPC), C.O. Lucknow UP (E) Circle	Against a vacant post
62.	8192	MAHENDRA PATI	DGM (O), Vadodara, Guj Circle	GM, Rajkot TD Guj Circle	Against a vacant post
63.	8194	PRABHAKAR SIKDER	IXIM, Kolkata, WB Circle	GM, Port Blair A&N Circle	Against a vacant post
64.	8195	ANUPAM GUPTA	TDIM, Boudh UHW Circle	GM (Mysore), C.O., Meerut (UP) (W) Circle	Against a vacant post
65.	8197	SUBRAHMANYAM	MTNL, Delhi	GM (NC), C.O., Meerut (UP) (W) Circle	Against a vacant post
66.	8199	M. RAMA BRAMHAN	DGM, Tirupur, TN Circle	GM, Palakkad TD, KRL Circle	See ST. 8. Sharpening
67.	8200	ASHOK KU. MOHABE	AM, Nagpur, MH Circle	GM(TD), Yeomal, MH Circle	Against a vacant post
68.	8202	P. SANTHOSHAM	DGM, Chennai, TN Circle	GM, Chennai, TD	Against a vacant post
69.	8204	KALIS ARIKAN	MTNL Mumbai	GM(TD), Mumbai, MH Circle	Against a vacant post

Note:- Posting order in respect of MS. Deepa Tyagi (Staff No. 81381 and Sh. Harwesh Bhatiya (Staff No. 8143) will be issued separately.

b. In case any officer's case is pending against the officer and/or is undergoing punishment the promotion may not be given effect and the matter may be reported to that office.



The following transfers and postings in SAG of BSNL Gr. 'A' are hereby ordered with immediate effect and until further orders:

SRL NO.	ST. NO.	NAME S/SHRI	PRESENT POSTING	POSTING ON PROMOTION	REMARKS
1.	637	P A PARAMANANIAN	GM, Coimbatore TD, TN Circle	GM (BD), Chennai TD	Against a vacant post
2.	739	A SNAJITHAN	GMTD, Palakkad KRI Circle	GM, Coimbatore TD, TN Circle	Vis Sh P A Paramananian RJ
3.	2188	K NEELAYYA	GMTD, Gudurka KTK Circle	GMTD, Visakhapatnam, AP Circle	Against a vacant post
4.	741	H CHANDHALAKHAN	GM (OP), Vijayawada, AP Circle	GM, CO, Bangalore, KTK Circle	Against a vacant post
5.	8018	C SIVA PRAKASH	GMTD, Sivdli, MH Circle	GM, Pune TD, MH Circle	Vis Sh Mr. Siva Prakash RJ
6.	644	S R RAVI VATHAN	GMTD, Himachalpradesh GUJ Circle	GMTD, Mysore KTK Circle	Vice Shri Ravivathavan TD
7.	7441	L RAGHAVAN	GMTD, Mysore, KTK Circle	GM, CO, Bangalore, KTK Circle	Against a vacant post
8.	559	K K RENGANNA	GM, Guntakal, VELI	GM, CO, Bhopal, MP Circle	Against a vacant post
9.	2080	GULIAN CHAKRAYARAY	GMTD, Siliguri, WB Circle	GM, Kolkata SSA WB Circle	Vis Sh Gulian Chakrayaray RJ
10.	8070	S SIVA PRAKASHAN	GM, Tirunelveli, TN Circle	GM, Chennai TD	Vis Sh Siva Prakashan TD RJ in his own case against a vacant post
11.	2178	S KRISHNAN	GM, Dindapur NE-II Circle	GM (INPCSI) P.R. & Dev CO, Chennai, TN Circle	Against a vacant post
12.	2147	G SELVAN	GM (IN), Chennai TD	GM, Dindapur, NE-II Circle	Vice Sh K Krishnan TD
13.	2269	K MANDIRAN	GMTD, Raipur, AP Circle	GM, NE-II Circle, Shillong	Against a vacant post
14.	8033	APURBA KULJAN KUMAR	GMTD, Ahmedabad, WB Circle	GM CO, Kolkata, WB Circle	Vis Sh Mr. Apurba Kumar RJ
15.	8002	A RAVI AKHILWAL	(GM, ALTC, Ghaziabad (Under order of Vis on promotion))	GM, ALTC, Ghaziabad	Vice Sh S R Gulia TD RJ per modification in order dated 12.12.2002
16.	2189	SUNHOON KIMIAN Gupta	GM, ALTC, Ghaziabad	GM, CO, Rishabh, HP Circle	Against a vacant post
17.	732	A V VAIJAYANTHI Rao	DDG, BSNL CO, New Delhi	DDG (TPM), HSNI CO, New Delhi	Vice Sh Kavitha TD
18.	8071	RAMAN LAL	DDG (TPM), BSNL CO, New Delhi	GM (INPCSI) P.R. Dev CO, Jaipur, RJ Circle	Vis Sh Raman Lal TD RJ in his own case against vacant post

Contd. 6

SRL NO.	ST. NO.	NAME S/SHRI	PRESENT POSTING	POSTING ON PROMOTION	REMARKS
19.	6143	Mr. K. K. Arora	GM(TD), Moradabad OP(W) Under order of Sr. to GM(TD) Arora	GM(TD), Musaffarnagar, OP(W) Circle	In partial execution of the order under S. 807 (3)
20.	724	DEVENDRA N. TRIPATHI	GM Repatriated from TCH.	GM, Haryanagar Circle	Against existing mechanism

Note:- Transfer of S/Shri. C. Siva Prakash (Staff No. 8018), S. Siva Prakasam (Staff No. 8070), Apurba Kumar Kundu (Staff No. 8033) and Raman Lal (Staff No. 8071) are at their own cost.

d The leave, if any requested by the officer, who is under promotion/transfer, should not be allowed. If any officer desires leave, he can apply for leave to the Competent Authority only after joining the new post and the Competent Authority will sanction leave, if it is considered justified, in the normal course.

e Change report may be furnished to all concerned through their respective CGMs.

f This issues with the approval of competent authority.

g Hindi version follows.

4
23.7.2003
(J. B. JAIN)
ASSTT. DIRECTOR GENERAL (PERS-II)

Copy to :-

1. PS to MOC&IT/MUS (C&E).
2. Chairman, Telecom Commission.
3. Member, Telecom Commission.
4. CXD, BSNL/MTNL/TCL, New Delhi.
5. Advisor, Telecom Commission.
6. Board of Directors, BSNL, New Delhi.
7. Sr. DDG/Deputy Director, MUS (C&E), The Advisor to BSNL CO.
8. DDG/Executive Director (C&E), BSNL/MTNL/CDT/CDT-III, DoT.
9. All Sr. DDGs/Deputy Asstt. Director (C&E), BSNL.
10. All Heads of Telecom Circles.
11. Officer Concerned (C&E) through concerned CGMs.
12. Gen. M/Adm. I/V/PMA/Payable/Pensionary, BSNL/MTNL/CDT Section, DoT/BSNL.
13. CSS/LSA/Perf. Secretary, BSNL/MTNL/CDT/CDT-III, DoT.
14. Spare Copy/Order Bundle.

4
23.7.2003
(J. B. JAIN)
ASSTT. DIRECTOR GENERAL (PERS-II)

Attested
by
Advocate

From:

Shri Anjan Kumar Dutta,
Area Manager (Kalyan),
Kalyan Telecom District,
MH Circle, Kalyan-421 301

TO:

The Member (Services),
Telecom Commission,
Department of Telecommunication,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi-110 001

THROUGH PROPER CHANNEL

SUB: Self-raising in the matter of promotion from Junior Administrative Grade to Senior Administrative Grade: Case of Shri Anjan Kumar Dutta, Staff no.8188 of 1983 batch of ITS Group 'A'

Respected Sir,

Most Respectfully, I beg to state the following few lines for your kind consideration and favourable action.

1. I joined ITS Group 'A' - 1983 batch on 17-1-1986 as probationer and was allotted staff no.8188.
2. I was promoted as Divisional Engineer (STS Grade) in due course vide letter no.10-11/89-STG-1 dt.23-11-89 of Telecom Commission, Govt. of India and joined as D.E.(Extl) Railway Pura Tele.Exch., Ahmedabad Telecom District.
3. I was promoted in JAG Grade on Adhoc Basis vide letter no.314-3/95-STG-III dt.14-2-96 of Dept. of Telecom, New Delhi and accordingly I joined as DGM(I&M), Nashik Telecom District, MH Circle.
4. The Adhoc promotion was granted as mentioned in para-3 above against Regular Vacancy and observing due process including holding of DPC (at Departmental Level) and due screening and vigilance clearance process on approval of competent and appropriate authority.

Attested
Anjan
Advocate

5. That I continued to work as JAG Rank Officer of ITS Group 'A' since long promoted on Adhoc basis without any break since then.
6. I had been placed in the revised pay scale of Rs.14300-400-18300/- with effect from 1-7-98 vide letter no.1-1(18)/97-PAT dated 9-2-98 of Department of Telecom, Govt. of India and I am being paid salary as per this revised pay scale since then.
7. Vide letter no.314-9/2000-STG-III dated 21-8-2001 of Department of Telecommunication, Govt. of India, I have been promoted on regular basis with effect from 20-8-2001.

My name has not been appeared in the promotion list in SAG cadre recently published in the letter no.315-3/2003-STG-III dated 21-7-2003 by the DOT where as the name of the officers Junior to me are contained therein.

As I was promoted on regular basis with effect from 20-8-2001 vide DOT memo no.314-9/2000-STG-III dated 21-8-2001 as such my service still 21-8-2001 was quite unblemished.

Also after 21-8-2001 or even prior to it, I did not received any oral/written warning/caution.

That I have completed all the targeted work assigned to me by my superiors within the time prescribed.

That I have not received any adverse remarks of my ACR till date.

That no vigilance/disciplinary case is pending against me in terms of the instructions contained in DOP OM NO.22011/91 dated 14-9-1992 hence there may be no case of sealed cover.

That in accordance with the order contained in G.I. Department of Pers. & Trg. OM no.22011/9/98/ESTT(D) dated 16-6-2001 ACR's upto the year 2001-2002 are to be considered as the vacancy relates to the year, 2003.

That as per instructions contained in G.I. Department of Pers. & Trg. OM no.22011/7/98-ESTT(D) dated 6-10-2000 DPC is to consider ACR for five years only preceding year of vacancy and as such the ACR from 2001-2002, 2000-2001, 1999-2000, 1998-1999 and 1997-1998 might have been considered in our case in which I have earned the bench mark.

That here it would not be out of place to mention that my ACRs for 1997-98, 1999-2000 and 2000-2001 must have required bench mark when I was appointed on regular basis with effect from 21-8-2001.

That my ACRs have not been assessed in accordance with the instructions contained in para 6.1 and 6.2 of OM dated 10-4-1989 by the DPC rather it has been guided by the grading given by the reporters/reviewing officer which may not be consistent with the contents of the reports.

That the recommendation of the DPC are advisory in nature.

Under the circumstances stated above I request your honour to be graciously pleased to request the DPC for reconsideration as provided in para-16 of OM dated 10-4-1989 to meet the ends of natural justice and for this act of your kindness I shall remain obliged for ever.

Thanking you Sir,

Yours Sincerely

Anjan Dutta 14-8-2003
(ANJAN KUMAR DUTTA)
STAFF NO.8188

Date: 14-8-2003
Place: Kalyan

Advance copy to:

The Member (Services): for kind information and necessary action please

Attest
Anjan
Advocate



KALYAN TELECOM

BHARAT SANCHAR NIGAM LIMITED
(A GOVERNMENT OF INDIA ENTERPRISE)
Office of Principal General Manager, Kalyan

ANNEXURE - 3

To,
The Chief General Manager,
BSNL,
MH Telecom Circle,
8th Floor,
Fountain Building,
M U M B A I.

No.: KYN/Admn/Grp-A/Corr/2003-04

dated at Kalyan, the 22.8.2003.

Dear Sir,

Sub: Self-raising in the matter of promotion from Junior Administrative Grade to Senior Administrative Grade: Case of Shri Anjan Kumar Dutta, Staff No. 8188 of 1983 batch of ITS Group 'A'.

Kindly find enclosed herewith the representation received (2 copies) from Shri A.K. Dutta Staff No. 8188, presently working as Area Manager, Kalyan in Kalyan SSA regarding the above subject matter. You are requested to consider the case favourably and forward the case to Member (Service), DOT, New Delhi.

The case is liereby recommended by the undersigned.

With kind regards,

Encl: As above.

Yours sincerely,


(R.K. Batra)
PGM
Kalyan

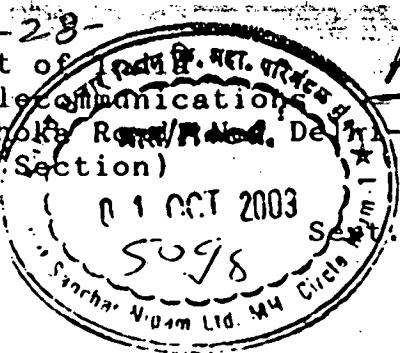
*Att. st. 2
Anjan
Advocate*

-28-

Government of India
Department of Telecommunications
Sanchar Bhawan, 20 Ashoka Road, New Delhi-110 011
(STG-III Section)

ANNEXURE-4

No. 315-21/2003-STG-III



Sept. 21, 2003.

To,

The Chief General Manager,
Maharashtra Telecom. Circle, BSNL,
Mumbai-400 001.

Subject:- Promotion to SAG of ITS Group 'A' - Case of Shri Anjan Kumar Dutta(Staff No.8188), Area Manager, Kalyan Telecom. District, M. Telecom. Circle.

Sir,

I am directed to refer to letter dated 14-8-2003 from Shri Anjan Kumar Dutta(Staff No.8188), Area Manager, Kalyan Telecom. District and to say that the case of Shri Anjan Kumar Dutta has been examined in this office in detail. In this connection, it is informed that Shri Anjan Kumar Dutta was assessed as "unfit" by the DPC held in June/July, 2003. As such, he could not be promoted to SAG of ITS Group 'A'.

The officer may be informed of the position accordingly.

Yours faithfully,

(Dr. Vincent Barla)
Under Secretary to the Govt. of India

Endst. No. DGM (Admin/X/SAG/Tfr& Psto/?) Dated at Mumbai, the 07/10/2003

Copy forwarded for information to :-

1. Shri A.K. Dutta, Area Manager, Kalyan.
O/o PGM, Kalyan Telecom District, Kalyan.

(M.B. PATEL)
Dy. General Manager (Admin)
TEL :- 2269 3500
FAX :- 2269 2527

*Attested
Anjan
Dutta
Advocate*

341 29/01/2004 11:00 AM. CT-1 233
Ministry
Department
Sanchay Bhawan,
(b)

-29-

ANNEXURE-5

P.1

11/2
Toms & J.T
announcements
DAD, New Delhi - 110001

No.315-10/2003-STC-III

Dated. 29-01-2004

ORDER

Subject: - Promotion, transfer and postings in SAG of ITS Group 'A'.

The President is pleased to promote the following officers of Junior Administrative Grade of ITS Group 'A' to Senior Administrative Grade in the pay scale of Rs 18400-22400/- on purely ad-hoc and temporary basis with effect from the date of assumption of the charge of the higher post or until further orders whichever is earlier and to post them as under:-

SI NO.	ST NO	NAME (S/She)	Present Circle	Posting on Promotion
1.	8126	ARVIND K AGARWAL	BSNL C.O.	MTNL DLI
2.	8127	ASHOK K GUPTA	MH	MTNL MBI
3.	8137	SUBHAS NARAYAN SINGH	JHK	BSNL
4.	8137	MUHD. NASARULLAH KHAN	KTK	BSNL
5.	8188	ANJAN K DATTA	MH	BSNL
6.	8201	ANTHONY EKKA	Chhr	BSNL
7.	8200	ASHUTOSH SHARMA	MTNL MPI	BSNL
8.	8207	NARENDRA D.S.	AP	BSNL
9.	8206	NARASIMHAN N.C.V.L	AP	BSNL
10.	8209	MANI K	CGJ	BSNL
11.	8210	SAMIP K. SAMANTA	CTD	BSNL
12.	8211	RAM PARTAP	PB	BSNL
13.	8213	LAXMAN SINGH ROHIA	MH	BSNL
14.	8214	JAIPRAM K.L.	KTK	BSNL
15.	8217	SANJEEV AGARWAL	MTNL DI	BSNL
16.	8221	JAGDISH C. MANARIA	RAJ	BSNL
17.	8222	ARUN KUMAR	BSNL/DOT	BSNL
18.	8224	ARUN K. SRIVASTAVA	UP/EL	BSNL
19.	8225	UDAYA SHANKAR PANDA	ORISSA	BSNL
20.	8226	MALIK FARZED ANSARI	T&D	BSNL
21.	8237	VIRENDRA KUMAR AHUJA	NTP	BSNL
22.	8223	MATILAL P.T.	KER	BSNL
23.	8229	UMLA SHANKAR PANDEY	UP/FL	BSNL
24.	8230	SUNIL KUMAR GARG	MH	BSNL
25.	8231	RAJENDRA K. CHAUHAN	RAJ	BSNL

Attested
Withers
Advocate

SP/11/2004

BSNL-15494 15146 FROM

RECORDED

RECORDED

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- 30 -

MTNL MUMBAI KB200 ROLLS 98

25.	8258	SHANKAR PAMAYANT	GLJ	BSNL
27.	8233	HARISH K. MAHAJAN	MH	BSNL
28.	8233	MADAN MOHAN	J&K	BSNL
29.	8234	RAJENDRA P. SHARMA	RAJ	BSNL
30.	8235	MOHD. ASLAM KHAN	J&K	MTNL, DLI
31.	8236	RAJIV K. RASTOOI	UP(E)	BSNL
32.	8237	MRS. SAJLA GARG	MH	BSNL
33.	8238	RABINDRA NATH JHA	DOI	MTNL, DLI
34.	8239	THIRUNAVUKKARASU I.	TN	BSNL
35.	8241	ATANU DHOOSH	CTD	BSNL
36.	8242	ARUN K. SHARMA	MTNL DI	BSNL
37.	8243	MRS. RAJKI TANEJA	MTNL DI	DDG(PG), DOT
38.	8245	HASAN ZAHEER	WTR	BSNL
39.	8246	MD. NAIMUDDIN	AS	BSNL
40.	8249	MUKESH INOAM	J&K	BSNL
41.	8250	VALIT KUMAR GOVIL	NTR	BSNL
42.	8251	RAMA KRISHNA M.	STR	BSNL
43.	8252	MRS. MEENA CHAUHAN	ALTTC	MTNL, DLI
44.	8253	ASHOK K. SRIVASTAVA	UP(W)	BSNL
45.	8254	HARIBABU N.	AF	BSNL
46.	8255	SHYAM DHAR BIND	MP	BSNL
47.	8256	SHIVA SHANKAR JHA	MH	BSNL
48.	8257	RADHA KRISHNAN S.	KTK	BSNL
49.	8258	M. NALINI KAPOOR (W.I.T.H)	UP(E)	BSNL
50.	8261	SHIVENDRA K. SHARMA	GUJ	BSNL
51.	8263	SUSHIL K. MISRA	MH	BSNL
52.	8264	S. C. AHLUWALIA	NOCC	BSNL
53.	8265	SUNIL KUMAR	MH	BSNL
54.	8267	DURGA PRASAD T.	AF	BSNL
55.	8268	RAJVEER SHANTARAKSHIT	MTNL MBI	MTNL, DLI
56.	8270	SHARMA	MTNL DI	MTNL, DLI
57.	8271	RAMESHWAR SINGH	MTNL DI	MTNL, DLI
58.	8272	CIRJESH K. MISRA	ALTTC	MTNL, DLI
59.	8273	ANAND PPAKASH	UP(E)	BSNL
60.	8274	SUNIL K. AGARWAL	ETP	BSNL
61.	8274	URAIM NARAYAN SINGH JAGDISHBHADUR	JJSR	BSNL
62.	8275	SINGH	UTR	BSNL
63.	8280	ASHWANI SALVAN	PB	BSNL
64.	8281	MRS. MONISHA BISWAS	AP	BSNL

RECORDED

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65.	8282	RAJENDRA PRASAD	MTNL DI	BSNL
66.	8284	SANJAY K. MITTAL	UTR	BSNL
67.	8285	ASHOK KUMAR	DOT	Jt Administrator(USOF)DOT
68.	8286	TRIBHUVAN S. CHAUHAN	MTNL DI	BSNL
69.	8287	MISS RAJAM S.E.	TN	BSNL
70.	8288	RAVINDRA NATH	RAJ	BSNL
71.	8289	DILIP KUMAR KAR	WB	BSNL
72.	8291	KUPPU SWAMY O.	CHENNAI TEL	BSNL
73.	8292	SANJAY VERMA	MP	BSNL
74.	8293	KAM VILASH VERMA	UP(E)	BSNL
75.	8294	AKHILESH K. PANDEY	BRBRAIT	BSNL
76.	8295	KISHORE K. THAKUR	AP	BSNL
77.	8296	PRABHAKAR V.	CHENNAI TEL	BSNL
78.	8297	PARYEZ AKHILAR	UP(W)	BSNL
79.	8298	RAHHEY MOHAN TEWARI	MTNL DI	MTNL DI
80.	8299	BRAJENDRA K. GUPTA	BRBRAIT	BSNL
81.	8300	DILIP KUMAR	CE	BSNL
82.	8301	SATISH KUMAR	UTR	BSNL
83.	8302	VIJAY K. SRIVASTAVA	MH	BSNL
84.	8303	KAVI CHANDRAN M.B.	TN	BSNL
85.	8304	INDERJEET S. KHANNA	RAJ	BSNL
86.	8305	ARADHYA A.N.J.S	BLORE TD	BSNL
87.	8306	DARSHAN KUMAR	MH	BSNL
88.	8308	GOVIND S. JOSHAL	DOT	MTNL DI
89.	8309	ANIL KUMAR	BSNL CO	BSNL
90.	8310	AJAY R. SAWANTKAR	MH	BSNL
91.	8311	PAVMANABHAN P.	TN	BSNL
92.	8313	MUSADDI LAL	BSNL CO	BSNL
93.	8316	RAJINDER KUMAR	MTNL DI	BSNL

2. The above promotion is purely on temporary and ad-hoc basis and the officer would have no claim for his seniority in the grade based on this promotion and will not confer any right for regular promotion.

3. In case of disciplinary/vigilance case is pending against the officer(s) or any punishment of stoppage of increment is in operation; or the officer(s) is/are on deputation to TCSL etc., the officer(s) should not be promoted without obtaining the specific approval of this Department. Information in this regard may be brought to the notice of the Department forthwith.

RELEASER

~~- 32 -~~

4. The officers promoted above are directed to join their new assignment within forty days from the date of issue of the orders, failing which the promotion orders are liable to be cancelled. In case the officer cannot be released within the stipulated period due to exigencies of service, the concerned CGM may intimate to this office immediately.

5. The leave, if any requested by the officers, who are under transfer, should not be allowed. If any officer desires leave, he can apply for leave to the Head of Circle under whom he has been posted on transfer only after joining the new posting and the new CGM will sanction leave if it is considered justified in the normal course.

6. Charge reports may be furnished to all concerned.

Urgent
 (R.K. Goyal)
 Director (Staff)
 Tel - 23036645

Copy to:-

1. PS to MOC&IT, MOS(C&IT)(M) Chairman, TC.
2. All Members/Advisors/Sr. DDCG/DDGs/Addl. Secy./JS(A), DOT.
3. CMD, BSNL. It is requested that the officers allotted to their units may be given further postings in their respective units with reference to transfer policy.
4. Directors of the Board of BSNL.
5. All Heads of Telecom. Circle/Distr./Regions/Projects/Units, BSNL.
6. CMD, MTNL D1.
7. ED, MTNL, DI/MBI.
8. Sr. DDCG(TEC), DoT.
9. Officers concerned/CAOs Concerned.
10. C-I, II/Admin.I....IV/PHA/Paybill/Pension/Cash/STC-I, II./Pers.I Sections, II, DOT/BSNL.
11. CS to Advisor(HRD).
12. Sr. DDCG(Pers.V) & DDCG(Pers.), BSNL.
13. DDCG(Estt.)/Director(Safn)/JS(SGT), DoT.
14. Unions/Federations/ICM Members/Order Bundle

Replied
 (R.K. Goyal)
 Director (Staff)
 Tel - 23036645

*Attested
by
H. N. Dholakia
Advocate*

ANNEXURE - 6 (Series)

*Bharat Sanchar Nigam Limited
(A Government of India Enterprises)
Office of the Chief General Manager, BSNL
Assam Circle: Administrative Building
Panbazar Guwahati -781001.*

No. STES- 3/19/43

Dated at Guwahati the 19/10/2006

To

The Member (Services),
Telecom Commission,
Department of Telecommunication,
Sanchar Bhawan, 20 Ashoka Road
New Delhi-110001.

Sub:- Promotion to SAG of ITS Group 'A' -- case of Shri A.K. Dutta (Staff No 8188), Dy. G.M., Tezpur of Assam Circle.

Kindly find enclosed herewith a representation dated 16-10-2006 received from Sri A. K. Dutta, Dy. G.M., Tezpur, of Assam Circle for his promotion to the grade of SAG of ITS Group 'A' for favour of your disposal please.

Enclosed :- As above

(G. Rajaram)
Chief General Manager
Assam Telecom Circle
Guwahati-781001

Attested
Dutta
Advocate

BHARAT SANCHAR NIGAM LIMITED
OFFICE OF GMTD, TEZPUR,
KACHARI GAON,
TEZPUR-384 001

TO:

The Chief General Manager,
Assam Telecom Circle,
Gawhati

NO: TZ/DGM/Genl.Corr./06-07

October 16, 2006

SUB: Promotion to SAG of ITS Group- 'A' – case of Shri A.K.Dutta,
(Staff no.8188) DGM, Tezpur

Kindly find enclosed herewith a representation dt.12/10/06 submitted by Shri A.K.Dutta, DGM, Tezpur, O/o.GMTD, Tezpur on the above subject matter. The case is forwarded herewith for further disposal please.

Encl: As above

DK
16/10/2006
DGM TEZPUR
O/o.GMTD, TEZPUR

*Atteest
Maiti
& Advocate*

From:

Shri A.K.Dutta,
DGM Tezpur.
Staff no.8188.
O/o.GMTD, Kachari Gaon.
TEZPUR-784001.

TO:

The Member (Services),
Telecom Commission,
Department of Telecommunication,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi-110 001

(Through Proper Channel)

SUB: Promotuion of Shri Anjan Kumar Dutta, Staff no.8188, from JAG to the Cadre of SAG of ITS Group-“A”

Respected Sir,

Most humbly and respectfully, I beg to lay the following few lines before you for favour of your kind consideration and favourable action.

That Sir, I was promoted to JAG on Adhoc basis vide letter no.314-3/95-STG-III dated 14/2/96. Subsequently vide letter no.314-9/2000-STG-III dated 21/8/2001, I have been promoted to JAG on regular basis w.e.from 20/8/2001 and since been working in the grade of JAG.

That Sir, vide order no.315-3/2003-STG-III dated 21/7/2003, as many as 69 officers have been promoted from JAG to the SAG of ITS Group-A. Shockingly, inspite of my bonafide entitlement and legitimate expectation, my name has not been appeared in the said promotion order dated 21/7/2003, whereas persons junior to me have been promoted under the said order.

That Sir, I submitted one representation to your honour on 14/8/2003 against non-consideration of my promotion, narrating all details and prayed for review/reconsideration of my case. In response to my representation, the Deputy General Manager (Admn), Mumbai vide his communication no. Endst.No. DGM(Admn) /X/SAG/Tfr & Pstg/2 dated 7/10/2003 has forwarded to me a copy of the letter no.315-2/2003-STG-III dated 29/9/2003 of the under Secretary to the

*Attested
A.K.Dutta
Advocate*

Govt. of India, informing thereby that I could not be promoted to SAG of ITS Group "A" since I was assessed as "Unfit" by the DPC held in June/July, 2003.

That Sir, the decision of the DPC is shocking and surprising to me and in this context I have to state that it is apprehended that the DPC might have assessed me as "Unfit" either on account of adverse ACR, if any or for contemplation of the disciplinary proceeding initiated subsequently.

That Sir, to my bonafide belief, my performance were very good and satisfactory all along and I had the required Bench mark for promotion to SAG, unless the same have been down graded. It is also evident from the fact that I was promoted to JAG on regular basis on 21/8/2001 only which confirms my satisfactory performance till that date. The DPC held immediately thereafter in June/July,2003, therefore has got no reasons to underscore my ACR since nothing adverse happened between 21/8/2001 and June/July,2003, nor any notice/warning etc. of any kind was received by me regarding any of my short comings.

That Sir, on the date of DPC meeting, i.e. in June/July,2003 there was no disciplinary proceeding pending against me. It is relevant to mention here that in subsequent future, a disciplinary proceeding was though initiated against me but it was commenced from 29/8/2003 only i.e. after the DPC Meeting since it is the settled position of law that a disciplinary proceedings is deemed to commence from the date of charge sheet which was 29/8/2003, in my case. The DPC cannot act in mere contemplation of disciplinary proceedings if any, which did not exist on the date of DPC meeting. As such there was no tangible reason whatsoever before the DPC held in June/July,2003 for assessing me as "Unfit" and it leads me to have speculative apprehensions about the fairness of the DPC in excluding my name from recommendation for promotion. I strongly feel that natural justice will be denied to me unless the exact reasons of assessing me as "unfit" by the DPC is communicated to me.

That Sir, I firmly believe that I am legitimately entitled to get promotion to SAG of ITS Group-'A' on the basis of my performances over the years and there is no reason whatsoever to deprive me of my legitimate promotion which is against the principles of natural justice, more so when the persons junior to me have been promoted.

Under the circumstances started above, I would fervently pray your honour kindly to reconsider my case even by holding review DPC and promote me to the SAG of ITS Group-'A' from the date on which my juniors have been promoted and for this act of your kindness, I shall remain ever grateful to you.

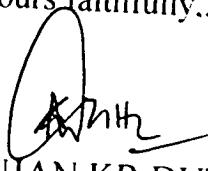
I am enclosing my earlier representation on dated 14/08/2003 duly recommended by PGM, Kalyan on dated 22/08/2003 and the reply on dated 29/9/2003 for your ready reference please.

Yhanking You,

Yours faithfully..

Date: 12/10/2006.

Place: Tezpur.


(ANJAN KR DUTTA)

Attested
Anjan
Kr Dutta
Advocate

BHARAT SANCHAR NIGAM LIMITED
(A GOVERNMENT OF INDIA ENTERPRISE)
OFFICE OF THE CHIEF GENERAL MANAGER, ASSAM CIRCLE
PANBAZAR :: GUWAHATI-781 007.

No. STES-3/19/45

Dated at Guwahati the 27.11.2006

To

Sri A.K.Dutta,
DGM (P&A)
O/o the GMTD
Tezpur

Sub:- Promotion to the cadre of SAG of ITS 'A'- case of
Sri A.K.Dutta (Staff No.8188), Dy. GM, O/o the GMTD
Tezpur.

I am directed to forward herewith a copy of the letter No. 315-
21/2003-STG-III dated 23.11.06, received from Department of Telecommunications,
Govt. of India, New Delhi, for favour of your kind information and necessary action.

Enclo:-

As stated above.

EXECUTIVES/Akh

(A.K.Chellang)
Asstt. General Manager (Admn.)

Attested
A.K.Dutta
Advocate

No. 315-21/2003-STG-III
Government of India
Ministry of Communications & IT
Department of Telecommunications
Sanchar Bhawan, Ashoka Road, New Delhi-110001
(STG-III Section)

New Delhi, November 23, 2006

To,

The Chief General Manager,
Assam Telecom Circle,
Bharat Sanchar Nigam Limited,
Guwahati.

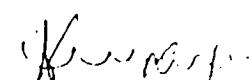
Subject: Regular promotion to SAG - Case of Shri A K Dutta (Staff No. 8188) Dy
G M Tezpur of Assam Circle.

Sir,

I am directed to refer to your letter No STES-3/19/43 dated 19.10.2006 on the subject mentioned above and to say that a vigilance case/disciplinary proceedings were initiated against Shri A K Dutta (Staff No. 8188) in Aug 2003 and as such, the recommendations of DPCs held thereafter, for promotion to SAG in respect of the officer have been kept in sealed cover, as per Govt. rules.

2. You are requested to intimate the same to the officer.

Yours faithfully,


(Amarjit Singh)
Under Secretary (SAC)
Tel - 23036226/Fax - 23716099

*Requested
Shri Dutta
Advocate*

26/11/06

No. 8-99/2003-Vig.II

Government of India

Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance Wing)

R.No.915, Sanchar Bhawan
20, Ashoka Road, New Delhi-110001

Dated 28.8.2003

28.8.03

MEMORANDUM

1. In continuation of Memorandum No.8-99/2003-Vig.II dated 22.08.2003 issued under Rule 16 of CCS(CCA) Rules, 1965, the President after considering the request of Shri A.K. Dutta, DGM is of the opinion that it is necessary to hold an inquiry against Shri A.K. Dutta, DGM under Rule 16(1)(b) of CCS(CCA) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV). A copy of the first stage advice of CVC for instituting ~~minor~~ penalty proceedings against Shri A.K. Dutta is also enclosed.

2. Shri A.K. Dutta is directed to submit within ten days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri A.K. Dutta is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 14 of CCS(CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry against him ex parte.
5. Attention of Shri A.K. Dutta is invited to Rule 20 of the CCS(Conduct) Rules, 1964, under which no government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri A.K. Dutta is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.
6. Receipt of this Memorandum should be acknowledged by Shri A.K. Dutta, DGM

By order and in the name of the President.

Mohinder Singh

(Mohinder Singh)
Director(VA)

Shri A.K. Dutta,
DGM,
Maharashtra Telecom Circle
Mumbai.
(Through CGMT, Maharashtra Circle)

*Attested
A. K. Dutta
Advocate*

No:8/248/2003-VIG.II

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS & INFORMATION TECHNOLOGY
DEPARTMENT OF TELECOMMUNICATIONS

WEST BLOCK #1, WING F.2.
R.K. PURAM, NEW DELHI 66
Dated the 14 1993

Final thoughts

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29th August, 2003

MEMORANDUM

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MEMOR

The President proposes to have an inquiry held against Shri V.L. Joshi (Staff No.8183), Deputy General Manager, Maharashtra Telecom Circle, under Rule 14 of the CCS(CEA) Rules,1965. The substance of the imputations of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A Statement of the imputation of misconduct or misbehavior in support of each Article of Charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the imputations of charge are proposed to be sustained are also enclosed (Annexures III & IV).

2. Shri A.K. Dutta is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of the articles of charge as are not admitted. He should therefore specify all the relevant articles of charge.

4. Shri U.C. Datta is further informed that if he does not file his written statement of defence on or before the date specified in para 2, he does not appear in person before the Inquiring Authority or otherwise fails to refuse to comply with the provisions of Rule 11 of the C.C. of C.W. Rules, 1965, or the orders/directions issued in pursuance of the said Rule, the Inquiring Authority may hold the inquiry against him ex parte.

5. Attention of Shri A.K. Dutta is invited to Rule 39 of the Code of Conduct Rules, 1964 under which no Government servant shall take any attempt to bring any political or outside influence to bear upon his departmental authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf or on another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri B. Prasad is a party of such a representation.

Matthew
Dutton
Advocate

T. M. M. T.

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6. Receipt of this Memorandum along with a copy of I.D. Note No.003/P&T/142 dated 5.6.2003 of the Central Vigilance Commission, shall be acknowledged.

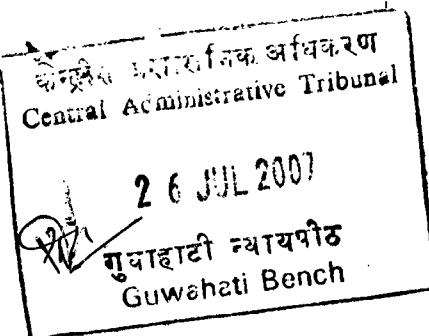
By Order and in the name of the President.

(John Mathew)
Under Secretary to Government of India

✓
Shri A.K. Dutta, (Staff No.8188)
Deputy General Manager Telecom,
Maharashtra Telecom Circle,
Mumbai 400 001

(Through the Chief General Manager Telecom, Maharashtra Telecom Circle,
Mumbai 400 001.)

*Mathew
Dutta
Advocate*



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

OA NO. 32/2007

SHRI ANJAN KUMAR DUTTA

.....APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS.

.....RESPONDENTS

IN THE MATTER OF

Written statement submitted by the respondents

- 1) That the respondents have received copy of the OA, have gone through the same and understood the contentions made therein. Save and except, the statements, which are specifically admitted herein below, rests may be treated as total denial. The statements which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That before traversing various paragraphs of the OA, the respondents would like to place the Brief Facts of the Case
 - (A) A DPC for regular promotion to SAG of ITS Groups 'A' against the vacancy year 2002-2003 and 2003-2004 was held in June/July 2003. The applicant was considered by the DPC against the vacancy year 2003-2004. DPC, however, assessed him 'Unfit'. As such, he could not be promoted to SAG along with juniors. It is relevant to mention here that SAG is a selection post and to be promoted to that grade one has to achieve the prescribed 'Bench Mark' of "very good".
 - (B) It may be stated that Supreme Court in Jankiraman's case (AIR 1991 SC 2000) has observed, "An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post depends upon several circumstances. To qualify for promotion the least that is expected of an employee is to have an unblemished record. That is to say, 'minimum interest'. The guidelines issued by the Government for the DPC clearly mentioned that: -

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

(C) It is further mentioned that in the case of Union Public Service Commission Vs. Hirayanalal Dev and others, AIR 1988 SC 1069, the Supreme Court held:-

“ The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee has to make the selection by applying the same yardstick and norms as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as “outstanding”, “Very Good”, “Good” etc. This function had also to be discharged by the Selection Committee by applying the same norms and tests and the selection was also to be made by the Selection Committee as per the relevant rules. The powers to make selection were vested into the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play”.

Similarly it was held that a competitive merit of the candidate could only be judge but the Departmental Promotion Committee and to be the Tribunal/Courts. In the case of Dalpat Abasaheb Solunke etc. Vs. Dr. B. S. Mahajan etc., AIR 1990 SC 434, the findings were:-

“ Whether a candidates is fit for particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegally or patent material irregularity in the constitution of the Committee or its procedure vitiating the Selection or proved malafides affecting the selection etc. It is not disputed that in the present case the University has constituted the Committee in due compliance with the relevant statute. The Committee consisted of experts and it selected the candidates after going though all the relevant material before it. In sitting in appeal over the selection so made and on setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded in its jurisdiction”.

Same view was expressed on the case of Nutan Arwind (Smt.) Vs. Union of India & Another, (1996) 2 SCC 488 that when a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases

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for promotion, the court will not sit over the assessment made but the Departmental Promotion Committee.

Same was the view of the Supreme Court in the case of Anil Katiyar (Mrs.) Vs. Union of India & others, (1997) 1 SLR 153.

(D) It is further submitted that DPC is an independent expert body which is fully equipped and qualified to assess the suitability of the officers based on the performance as reflected in the ACR for filing up post by promotion in the public interest. The DPC is not guided by merely but the overall grading, if any, that may be recorded in the CRs but to make its own assessment on the basis of the entries in the CRs. The Apex Court in its judgment-dated 12.2.2007 in the Appeal (Civil) 689/2007 (arising out of SLP (C) No. 2410/2007 in the matter of UOI & Anr Vs. S.K. Goel & Ors) held "the DPC enjoys full discretion to devise its methods and procedure for objective assessment of suitability and merit of the candidates being considered by it. Hence, the interference of the High Court is not called for".

(E) It is most relevant to mention here that a charge sheet under Rule 14 and another under Rule 16 of CCS (CCA) Rule 1965 were issued to the applicant on 29.8.2003 and 22.8.2003 respectively. Subsequently, the applicant was considered for ad hoc promotion to SAG in December 2003 and for regular promotion to SAG against the vacancy year 2004-05 and 2005-06 in December 2004 and February 2006 respectively. Recommendations of the DPC was, however, kept in 'Sealed cover' in view of disciplinary proceedings/vigilance case on the applicant as per prevailing instructions of the Government. These sealed covers can be opened on exoneration of the officer from charge leveled against him.

- 3) That with regard to the statement made in paragraphs 1 to 4.3 of the OA, the respondents beg to offer no comment.
- 4) That with regard to the statement made in paragraph 4.4 of the OA, the respondents be to submit that the averments made by the applicant is wrong hence denied. It is submitted that the officer was duly considered by the DPC held in June/July 2003 against th

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vacancy year 2003-2004 and was assessed 'Unfit'. As such, he could not be promoted to SAG along with his juniors in JAG vide order No. 315-10/2003-STG-III dated 21.7.2003.

- 5) That with regard to the statement made in paragraphs 4.5 and 4.6 of the OA, the respondents beg to submit that the case of the applicant was examined in the department and he was duly informed of the position through CGM, Maharashtra Telecom Circle vide letter No. 315-21/2003-STG-II dated 29.9.2003 (Annexure-IV of the OA).
- 6) That with regard to the statement made in paragraph 4.7 of the OA, the respondents beg to submit that the applicant could not be promoted to SAG on ad hoc basis as per guidelines/instructions of the Government of India in view of pending vigilance case on him. It is submitted that a charge sheet under Rule 14 and another under Rule 16 of CCS (CCA) Rule 1965 were issued to the applicant on 29.8.2003 and 22.8.2003 respectively. It is pertinent to mention here that meeting of the DPC for consideration for ad hoc promotion was held in December 2003.

That with regard to the statement made in paragraphs 4.8 and 4.9 of the OA, the respondents beg to submit that the applicant was considered by the DPC held in June/July 2003, i.e. before issuance of charge sheet to him, as well as subsequent DPCs held afterwards. DPC held in June/July 2003 assessed him "Unfit" whereas recommendation of the DPC held afterwards were placed in 'Sealed cover'. As such, the officer could not be promoted to SAG. The fact that the applicant was assessed as "Unfit" by the DPC held in June/July 2003 was communicated him on 29.9.2003. This fact has been admitted by the applicant in his averments in para 4.6 of the present OA.

- 7) That with regard to the statement made in paragraph 4.10 of the OA, the respondents beg to reiterate that the applicant was considered by the DPC held in June/July 2003 but could not be promoted as he was assessed 'Unfit' by the DPC. It is also relevant to mention here that SAG is a selection post and to get promotion to that grade one has to achieve the prescribed benchmark. As such, the contention of the applicant that his non-promotion to SAG is a result of adverse ACR is also not valid. It is pertinent to mention here that as per instruction contained in para 6.3.1 of the DoP&T O.M. No. 22011/5/80-Estt (D) dated 10.4.1989, read with subsequent O.M. No. 22011/5/91-Estt (D) dated 27.3.1997 and O.M. No. 35034/7/97-Estt (D) dated 08.2.2002, the bench mark for promotion to SAG is "Very Good". It is further mentioned that a conscious decision has

been taken by the UPSC that an officer attaining at least 4 bench mark grading out of 5 ACRs, as prescribed by the Government of India in DoP&T O.M. No. 22011/9/98-Estt (D) dated 08.9.1998, read with subsequent O.M. of even number dated 16.6.2000, should be assessed as "fit" for promotion and that this decision should be applicable to all DPCs pertaining to the vacancy year 2003-2004 and subsequent years.

Further, DPC is an independent expert body which is fully equipped and qualified to assess the suitability of the officers based on the performance as reflected in the ACR for filing up post by promotion in the public interest. The DPC is not guided by merely by the overall grading, if any, that may be recorded in the CRs but to make its own assessment on the basis of the entries in the CRs. The Apex Court in its judgment-dated 12.2.2007 in the Appeal (Civil) 689/2007 (arising out of SLP (C) No. 2410/2007 in the matter of UOI & Anr. Vs. S.K. Goel & Ors) held "the DPC enjoys full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidates being considered by it. Hence, the interference of the High Court is not called for".

- 8) That with regard to the statement made in paragraphs 4.11 to 4.14 of the OA, the respondents while reiterating and reaffirming the statements made above beg to submit that every officer has only the right for consideration and not the promotion. Right of consideration has been provided to the applicant by considering him by the duly constituted DPC as per his eligibility.
- 9) That with regard to the statement made in paragraphs 5.1 to 5.3 of the OA, the respondents while reiterating and reaffirming the statements made above beg to submit that the applicant was considered by the DPC for promotion to JAG against the vacancy year 1996-97 and DPC assess his ACRs for the period of 1990-1991 to 1994-1995. Whereas, he was considered by the DPC for promotion to SAG against the vacancy year 2003-04 and DPC assessed his ACRs for the period of 1997-98 to 2001-02.
- 10) That with regard to the statement made in paragraph 5.4 of the OA, the respondents most respectfully submit that the criteria for promotion to SAG is 'Selection' and as such one to achieve the prescribed benchmark for promotion. Merely absence of communication of adverse ACRs cannot be inferred as achieving of the prescribed benchmark. Moreover, DPC is an independent expert body which is fully equipped and qualified to assess the

suitability of the officers based on the performance as reflected in the ACR for filing up post by promotion in the public interest. It assesses the officers on the basis of overall assessment of the service record and is not guided merely by the overall assessment of the service record and is not guided merely by the overall grading given in ACR.

- 11) That with regard to the statement made in paragraphs 5.5 and 5.6 of the OA, the respondent beg to submit that the applicant could not be promoted to SAG as DPC held in June/July 2003 assessed him 'Unfit'. Recommendation of further DPCs were placed in 'Sealed cover' in view of pending vigilance case contemplated in August 2003.
- 12) That with regard to the statements made in paragraph 5.7 of the OA, the respondents beg to submit that the representations of the applicant was considered in the department on the basis of instruction/guidelines issued by the Government on the subject and the applicant has duly been informed of the decision taken by the Competent Authority.
- 13) That with regard to the statements made in paragraphs 5.8 and 5.9 of the OA, the respondents beg to submit that the averments made by the applicant is totally wrong and hence denied.
- 14) That with regard to the statement made in paragraphs 6 and 7 of the OA, the respondents beg to offer no comment.
- 15) That with regard to the statement made in paragraph 8 to 9 of the OA, the respondents beg to submit that the relief sought by the applicant is devoid of merit as there is no violation of rules and procedures. Hence, it is prayed that it may be dismissed with cost.
- 16) That in view of the above facts and circumstances of the case and the submissions made by the respondents it is prayed that the Hon'ble Tribunal may be pleased to dismiss the OA with cost.

VERIFICATION

I .. Shri Sreenendra Nath Chakravarty, aged
about .. 52 .. years .. at .. present .. working .. as
Ass't. Director Telecom (Legal), o/o CGMT, BSNL, Assam Telecom Circle
Guwahati .., who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph
1, 3, 14, 15, 16 .. are true
to my knowledge and belief, those made in paragraph
2, 3, 4, 5, 6, 7, 13 .. being matter of records, are
true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 23rd day of July 2007 at Guwahati.

Sreenendra Nath Chakravarty

DEPONENT

Notice

28

Date - 26/7/07

From
Usha Das
Addl Cuse

To, Mr. M. Chanda
Mr. S. Nath
Advocates

Sub: O A No. 32/07

Sir, Please find herewith
a copy of ws being filed
today. Kindly acknowledge
the receipt thereof.

Received
Copy of submision 26/7
Date
26/7

Thanking You

Sincerely Yours
Usha Das
Addl Cuse

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26 SEP 2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

29
Filed by the applicant
through A.K.Dutta, advocate
on 17.09.07

In the matter of:-

O.A.No 32/2007.

Sri A.K.Dutta

... Applicant

-Versus-

Union of India and Others.

... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant
against the written statement submitted
by the respondents.

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

1. That the applicant beg to say that the statements made in para 2 (a), (b), (c), (d) and (e) of the written statements are not correct, so far the statements made in sub-para (a) of para 2 is concerned, it is stated that there is no denial that the prescribed bench mark was 'very good', but it now appears from the categorical statement of the respondent that the applicant did not achieve prescribed bench mark of 'very good', therefore DPC, which was held in the month of June/July 2003 for consideration of regular promotion to SAG of ITS, Group A against the vacancy year 2002-2003 and 2003-2004 in the month of June-July 2003, the applicant was assessed unfit for such promotion. As a his juniors has been superseded in the matter of promotion to SAG of ITS, Group A. Therefore it can rightly be presumed that the ACR of the applicant has been downgraded without providing any opportunity and the DPC also acted upon such downgraded ACR, as a result the applicant has been declared unfit by the DPC due to arbitrary action of the respondents in downgrading the ACR

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of the applicant of the relevant year. The applicant is very much confident that he had a very good service record, but the authority more particularly the supervising and reviewing authority might have downgraded the ACR after being influenced on the basis of contemplation of a disciplinary proceeding at the relevant point of time, which was subsequently issued vide memorandum dated 29.08.2003 relating to allegation during the period from July, 1997 to February/ 1998 due to purchase of certain items on the basis of quotations without inviting tenders, whereby it has been alleged that the Department of Tele Communications has been deprived from the benefit of computative rates and showing undue favour to the private party. But admittedly there was no communication from the competent and concerned authorities regarding downgrading of ACR of the applicant therefore respondents as well as the DPC are not entitled to act upon the uncommunicated adverse ACR or downgrading ACR during the relevant period without providing any reasonable opportunity. The applicant is consistently maintaining a very good performance which would be evident from the service records of the last 10 years, more particularly of ACR's. Therefore, the learned Tribunal be pleased to direct the respondents to produce the last 10 years ACR's for proper adjudication of the case. It is a settled position of law that a officer graded 'outstanding' or 'very good' in a particular year cannot be downgraded to 'Very good' or 'good' respectively without providing opportunity to the applicant. Since the applicant never received any communication from the competent authority regarding adverse entries in ACR in any relevant year before holding the DPC in the month of June/July, 2003, as such contention of the respondent that the applicant could not achieve bench mark to the extent for promotion is not sustainable in the eye of law. Therefore, in view of the fact that downgraded ACR has been acted upon by the DPC, the declaration of unfit by the said DPC is not sustainable in the eye of law and a review DPC is liable to be held to reconsider the case of promotion of the petitioner.

The judgment referred in sub-para C and D has no relevancy with the facts and circumstances of the instant case. That with regard to the contention raised in sub-para E of paragraph 2, the applicant has no comment on the same but the case of the applicant for promotion to the

cadre of SAG is concerned with the DPC held against the vacancies of the year 2002-2003 and 2003-2004.

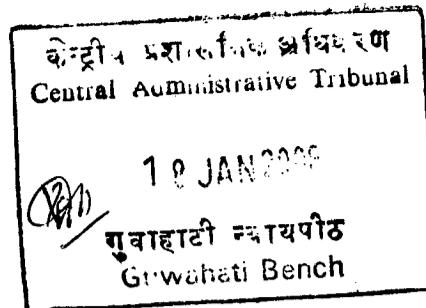
2. That your applicant beg to say that with regard to the statements made in paragraph 4, 5, 6, 7 and 8 that assessment of the DPC as unfit for promotion to the cadre of SAG has been made due to downgrading of ACR of the applicant without any communication as required under the rule as such the said assessment or declaration by the DPC held in the month of June/July is bed in law. Moreover, the DPC is not entitled to act upon the downgraded ACR. Hence it is a fit case for holding a review DPC with a direction upon the respondents to ignore the downgraded ACR if any of the relevant years which were considered by the DPC earlier. In the instant application, applicant is not concerned with the adoption of sealed cover of the DPC finding which held subsequently against the vacancies of the year 2004-2005 and 2005-2006. Downgrading of ACR is amount to adverse ACR for the purpose of promotion and as such communication of such adverse ACR is a must as decided by the Hon'ble Apex Court as well as by the Hon'ble High Court and various benches of the learned Central Administrative Tribunal. Therefore, non communication of adverse ACR is a valid ground and it is a fit case for the Hon'ble Tribunal to pass appropriate direction upon the respondents to holding the review DPC after perusal of ACR's of the relevant years, which were considered by the DPC held in the month of June/July, 2003. therefore there is no dispute regarding the eligibility criteria laid down in O.M dated 08.09.1998 by the DOPT and subsequent O.M dated 16.06.2000.
3. That your applicant denies the correctness made in paragraph 8, 9, 10, 11, 12, 13, 15 and 16 and reiterates the statements made in the original application.
4. In the facts and circumstances stated above, the application is deserves to be allowed with cost.

VERIFICATION

I Sri Anjan Kumar Dutta, S/O Late N.G.Dutta, aged about 47 years, working as Deputy General Manager, BSNL, Tezpur, Assam Circle, Tezpur, Assam, do hereby verify that the statements made in Paragraph 1 to 4 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 16 day of September 2007.





Filed by
Respondents through
Adv. Dinesh Das
Adv. Cse 103
11/1/08

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

OA NO. 32/2007

SHRI A. K. Dutta

.....APPLICANT

-VERSUS-

UNION OF INDIA

.....RESPONDENTS

IN THE MATTER OF

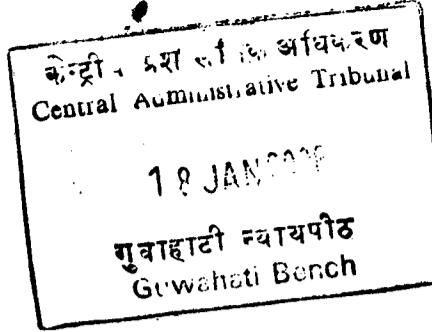
Reply to the rejoinder filed by the applicant

- 1) That the respondents have received a copy of the rejoinder and understood the contentions made thereof. Save and except, the statements, which are specifically admitted herein below rests, may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraphs 1 and 2 of the rejoinder the respondents beg to state that the averments made by the applicant can not be accepted on the ground that the D.P.C. is an independent expert body which is fully equipped and qualified to assess the suitability of the officers based on the performance as reflected in the ACR for filling up by promotion in the public interest. As per the guidelines of DOP & T, DPC enjoys full discretion to devise its own methods and procedures for objective assessment of the suitability of candidates who are to be considered for promotion. Further, as per these guidelines, the DPCs should not be guided merely by the overall grading, if any, that may be recorded in the ACR. Accordingly, the DCP considered the case of the applicant for promotion on the basis of overall assessment and also norms and guidelines issued by the DOP & T and did not recommend the name of the applicant for inclusion in the select panel for the year 2003-04. The competent

Received
on 1/10/08
by
Adv. Dinesh Das

Sreenadra Nath Chakravarty

AMIE: Director Telecom (Legal)
@/o CGMT, BSNL
Panbazar, Guwahati-1



authority accepted the recommendations of the DPC. In this connection, DoP&T OM No. 22034/3/2007-Estt (D) dated 11.04.2007 is enclosed herewith.

It is most respectfully submitted that there is no provision in the Rules of Government of India to communicate ACRs, which is downgraded, or below the benchmark. Only ACRs entries having adverse in nature have to be communicated. In this connection, DoP&T O.M. No. 21011/1/2006-Estt (A) dated 02.02.2006 is enclosed herewith for kind perusal of the Hon'ble Tribunal.

Copies of the DoP&T's letter dated 11.4.2007 and 02.02.2006 are annexed herewith and marked as Annexure- M1 and M2 respectively.

- 3) That with regard to the statement made in paragraph 3 of the rejoinder, the respondents beg to submit that the averments made in paragraphs 8,9,10,11,12,13,15 and 18 of the Written Statement are correct and reiterated.
- 4) That in view of the above facts and circumstances of the case and the statements made in the written statement Original Application is devoid of merit hence the Hon'ble Tribunal may be pleased to dismiss the Original Application with cost.

Swarup Nalini Chakravorty
Asst. Director Telecom (Legal)
O/o CGMT, BSNL
Panbazar, Guwahati-1

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केन्द्रीय प्रशासनीय अधिदरण
Central Administrative Tribunal

10 JAN 2008

गुवाहाटी न्दायपीठ
Guwahati Bench

VERIFICATION

I Sreenendra Nath Chakravarthy , aged
about 53 years at present working as
Asstt. Director Telecom (Legal), O/o CGMT, BSNL, Assam Telecom circle, Panbazar,
Guwahati , who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph
1, 4 are true
to my knowledge and belief, those made in paragraph
2, 3 being matter of records, are
true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 10th day of January 2008 at Guwahati

Sreenendra Nath Chakravarthy

DEPONENT

Asst. Director Telecom (Legal)
O/o CGMT, BSNL
Panbazar, Guwahati-1

57 No.22034/3/2007 Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

Ann-1st

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New Delhi, the 11th April, 2007

OFFICE MEMORANDUM

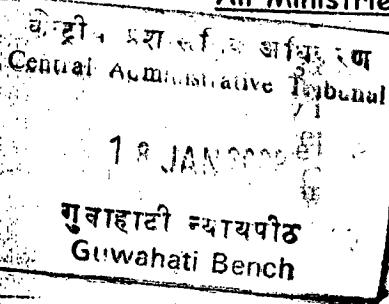
Subject:- DPC guidelines - Appeal (Civil) No. 689/2007(arising out of SLP(C) No 2410/2007 in the matter of UOI & Anr. vs. S.K.Goel & Ors - Judgment dated 12.2.2007 of Supreme Court of India.

The undersigned is directed to say that in its judgment dated 12.2.2007 in the Appeal (Civil) 689/2007(arising out of SLP(C) No 2410/2007 in the matter of UOI & Anr. vs. S.K.Goel & Ors, the Supreme Court of India has held that "the DPC enjoy full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the interference by the High court is not called for". The Bench has also noted that the DPC are not required to be guided merely by the over all grading, if any that may be recorded in the CRs but to make its own assessment on the basis of the entries in the CRs. While delivering the above judgment, the Division Bench of Hon'ble Justice Dr. A.R.Lakshmanan and Hon'ble Justice Mr. Altamas Kabir has observed that it is now more or less well settled that the evaluation made by an Expert Committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. In fact Hon'ble Justice Dr. Laskhmanan has noted that no judicial review of the DPC proceedings, which are already conducted in accordance with the standing Government instructions and rules is warranted.

2. The above judgment of the Hon'ble Supreme Court is brought to the notice of Ministries/Departments concerned so that they may ensure that any challenge to the existing DPC instructions of DoPT in any Court particularly with regard to role/authority of the duly constituted DPC on the issue of evaluation of candidates is properly defended keeping in view the directions of the Hon'ble Supreme Court in the matter of UOI & Anr. vs. S.K.Goel & Ors.

abhishek
(A.K. Srivastava)
Under Secretary to the Govt. of India

All Ministries/Departments of Government of India



Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. Cabinet Secretariat, New Delhi.
4. Rajya Sabha Secretariat/ Lok Sabha Secretariat, New Delhi.
5. The Registrar General, The Supreme Court of India.
6. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
7. The Comptroller and Audit General of India, New Delhi.
8. Secretary, Union Public Service Commission
9. The Secretary Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. National Commission for Scheduled Castes, New Delhi.
12. National Commission for Scheduled Tribes, New Delhi.
13. Secretary, National Council(JCM), 13, Ferozeshah Road, New Delhi.
14. Establishment Officer & A.S.
15. National Commission for OBCs, New Delhi.
16. All Officers and Sections in the Department of Personnel and Training.
17. Facilitation Center, DoP&T(20 copies).
18. NIC (DoP&T) for placing this Office Memorandum on the Website of DoP&T.
19. Establishment (D) Section (200 copies).

New Delhi, 2nd February, 2006

OFFICE MEMORANDUM

Subject: Communication of adverse entries/remarks recorded in the ACR.

The undersigned is directed to state that in accordance with the existing instructions of this Department, adverse entries/remarks recorded in the ACR of the official have to be communicated to him for further improvement in his performance and the concerned official has also an option to make a representation against the adverse remarks within the prescribed time limit. As per existing instructions, the overall grading given in the ACR should however, not be communicated even when the grading given is below the bench mark prescribed for promotion to the next higher grade. The overall grading recorded in the ACR has also not be changed in any way even after the expunction of the adverse remarks either fully or partially by the competent authority.

The Hon'ble Supreme Court has declared in their judgement, dated 22.11.2005 in UOI and Anr. Vs. Major Bahadur Singh (Civil Appeal No. 4482 of 2003) that the judgement of the court, dated 31.1.1996 in UP Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. SLP (Civil) No.16988/95 has no universal application and the judgement itself shows that it was intended to be meant only for the employees of UP Jal Nigam.

All Ministries/departments are accordingly requested to ensure that any challenge to the existing instructions of this Department in regard to communication of adverse remarks in any court taking shelter in the Supreme Court judgement in UP Jal Nigam or any other judgement based on UP Jal Nigam judgement is properly defended keeping in view the above declaration of the Supreme Court in UOI vs. Major Bahadur Singh.

(C.A.Subramanian)
DY. SECRETARY TO THE GOVT. OF INDIA

To:

All Ministries/Departments of Govt. of India

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3. Central Vigilance Commission, New Delhi
4. Central Bureau of Investigation, New Delhi
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6. Lok Sabha/Rajya Sabha Secretariat
7. All attached and subordinate offices of the Ministry of Personnel, PG and Pensions
8. All officers and sections in the Ministry of Personnel, PG and Pension
9. NIC (DoP&T) for placing this Office Memorandum on the website of DoP&T
10. Hindi Section for Hindi version of the OM.

