

**Central Administrative Tribunal  
Principal Bench, New Delhi**

OA No.1977/2015

This the 31<sup>st</sup> day of August, 2015

**Hon'ble Shri A.K. Bhardwaj, Member (J)**  
**Hon'ble Shri K.N. Shrivastava, Member (A)**

Sukanya Sengupta,  
Aged 58 years,  
W/o Shri Parthapartim Sengupta,  
R/o 81, Millenium Apartment,  
Noida, Section-61,  
Distt. Gautam Budh Nagar(U.P.). ... Applicant

(By Advocate: Shri Apurb Lal)

**Versus**

1. Ministry of Information and  
Broadcasting,  
Through its Secretary  
A-Wing,  
Shastri Bhawan,  
New Delhi-110001
2. CEO, Prasar Bharti,  
Broadcasting Corporation of India,  
PTI Building,  
New Delhi-110001
3. D.G.A.I.R.,  
Akashvani Bhawan,  
Parliament Street,  
New Delhi-110001.
4. Director General,  
Doordarshan  
Doordarshan Bhawan,  
Copernicus Marg,  
New Delhi-110001.

5. U.P.S.C.  
Through its Chairman,  
Dhaulpur House,  
Shajahan Road,  
New Delhi-110001. .... Respondents.

(By Advocate: Shri Rajnish Prasad, Shri Amit Yadav for  
Shri Ravinder Aggarwal)

### **ORDER (ORAL)**

**By Hon'ble Shri A.K. Bhardwaj, Member (J):**

In the present OA filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant is seeking issuance of direction to the respondents to consider her for promotion to Senior Administrative Grade (SAG) by convening review DPC. Indubitable facts of the case are that a proposal for convening DPC for promotion to the post of SAG in IB (Engineering Service) against the vacancy of the year 2012 was received in the Commission (UPSC) on 27.07.2012. In the minutes of the meeting of the DPC constituted in the UPSC held on 3.09.2012, it could be noticed that the applicant herein had certain ACRs below the benchmark and the proposal regarding her promotion was retained as well as one vacancy in SAG was kept in abeyance. The relevant excerpt of the minutes read thus:

" 7. The Committee were also informed that the Ministry has stated that the ACRs of two officers namely Shri R.K. Pandey and Smt. S.Sengupta were found to be below bench mark. Hence, DG, AIR and DG, Doordarshan were requested to take necessary action in terms of the DOP&T OM No.21011/1/2010-Estt. (A) dated 13<sup>th</sup> April, 2010 referred to in para 3 (vii) above. DG, AIR has completed

the process in respect of Shri R.K. Pandey and issued requisite Speaking Order. In respect of Smt. S. Sengupta, DG, Doordarshan has conveyed that they have started the process according to the DOP&T O.M. dated 13.04.2010 and it may take some time to complete the process. The Ministry, has, therefore, requested the Commission to go ahead with the DPC so that promotion of other eligible officers is not withheld and that one vacancy may be kept in abeyance against which Smt. S.Sengupta may be considered later after the procedure laid down in DOP&T O.M. dated 13.4.2010 is completed in her case. The Commission has acceded to the request of the Ministry as above and to reconvene the meeting of the DPC to consider Smt. S.Sengupta after completion of the procedure enumerated in DOP&T O.M. 13.04.2010. In the light of the position explained above, the Committee decided not to assess Smt. S.Sengupta pending action in terms of DOP&T O.M. dated 13.04.2010."

2. It is the case of the applicant that in terms of office order No.A28017/01/2012-Conf.Cell dated 28/29.08.2012 and Office order No.A28017/01/2012-Conf.Cell dated 04.10.2012, in acceptance of her representations, she has been graded 'Very Good' in the ACRs for the years 2004 -2005 & 2006-2007. Relevant excerpt of the office order read thus:-

"Office Order No.A28017/01/2012-Conf.Cell dated 28/29.08.2012

"3. Now, therefore, after considering the material placed before the DD: Doordarshan, which inter-alia include the overall assessment, "intelligent, sincere and knowledgeable officer with an aptitude of R&D work" in Part-IV of the ACR; the description, "dedicated, motivated and systematic officer", in part III of the ACR, made by Reporting Officer; and considering the fact that omnibus expressions like

good and satisfactory have been used in describing her attributes in the ACR, which are in violation of the instruction No.5 given at the end of the ACR, the DG: DDn is of the considered view that Mrs. Sen Gupta is fit to be graded as "Very Good" in the ACR for the year 2004-05.

4. In view of the above, the DG: DD is pleased to upgrade the ACR of Mrs. Sukanya Sen Gupta, then Director ( R ) for the period 2004-05 from 'Good' to "Very Good".

"Office Order No.A28017/01/2012-  
Conf.Cell dated 4.10.2012

"4. Now, therefore, after considering the material placed before the DG: Doordarshan, which inter alia include the remarks, " knowledgeable, sincere, hardworking" made by the Reporting/Reviewing Officers; assessment in other columns; and considering the fact that omnibus expressions like good and satisfactory have been used in describing her attributes in the ACR, which are in violation of instruction No.5 given at the end of the ACR, the DG: DDn is of the considered view that Mrs.Sengupta is fit to be graded as 'Very Good' in the ACR 2006-07.

5. In view of the above, the DG: DD is pleased to upgrade the ACR of Mrs.Sukanya Sengupta, then Director (R ) for the years 2006-07 from 'Good' to 'Very Good'.

3. In terms of the provision contained in para 18.1 of General Instructions G.I. Dept. of Per. & Trg. O.M. No.22011/5/86-Estt.(D) dated the 10<sup>th</sup> April, 1989 as amended by O.M. No.22011/5/91-Estt.(D), dated the 27.3.1997 where adverse remarks in ACR are toned down or expunged after the DPC had considered the case of the officer, his/her case should be reconsidered by convening a review DPC. The relevant excerpt of the said order reads thus:-

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

- (a) where eligible persons were omitted to be considered ; or
- (b) where the eligible persons were considered by mistake; or
- (c ) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
- (d) where some procedural irregularity was committed by a DPC; or
- (e) where adverse remarks in the CRs were toned down or expunged after DPC had considered the case of the officer.”

4. One of the plausible arguments in such cases may arise that the provision apply only in such cases where adverse remarks are toned down and not in a case where the gradings in the ACRs are upgraded. Answer to such doubts is contained in the judgment of Hon’ble Supreme Court in the case of **Dev Dutt Vs. Union of India and Others** (2008 (8) SCC 725), wherein Hon’ble Supreme Court ruled that if on representation made by the employee the gradings in ACR are upgraded, he/she should be reconsidered for promotion by constituting review DPC. The relevant excerpt of the judgment read thus:-

“43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we

direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation .If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest."

5. In the case of **Krishna Mohan Dixit Vs. Union of India and Others (Writ Petition (Civil) no. 6013/2010)** and connected matters, Hon'ble Delhi High Court ruled thus:-

"8. To summarize, the Hon'ble Supreme Court gave following directions to deal with the adverse ACRs (below bench mark ACR), relevant for consideration by a DPC to consider the incumbent for further promotion:-

(i) The un-communicated adverse ACRs (those which are below bench mark) should be communicated to him for enabling him an opportunity of making representation to assail those entries such as if the entry was 'Good' then to get it upgraded to 'Very Good', the bench mark;

(ii) The representation made, if any, should then be considered by the Higher Authority who would certainly entitled to reject the representation and confirm the 'Good' entry (though of course in a fair manner);

(iii) The authority to decide representation must be an authority higher than the one who recorded subject entry, so as to avoid the principle of appeal from ceaser to ceaser.

(iv) If the ACR is upgraded, the review DPC to be held for considering the case of the incumbent afresh for promotion for the relevant year and in case, the incumbent is found fit then to promote him forthwith with retrospective effect. Even if the person has retired when considered by the review DPC for promotion, he would be entitled to all consequential benefits.

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22. In view of the aforesaid, we are of the considered view that the orders passed by the Tribunal in all these cases cannot be sustained.

Thus the orders passed by the Tribunal would stand modified to the extent that the adverse ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below

bench mark would be communicated within a period of 4 weeks from today to the incumbent officer if not communicated so far. The respondent would then be eligible to make a representation within 15 days thereof if not made already, and that such representation would be decided by the competent authority, which, of course, would be higher in rank to the authority who gave the adverse ACR within next 2 weeks irrespective of the fact whether the Reporting Officer or the Reviewing Officer or both are available or not. In case, the ACR is upgraded, making the incumbent eligible for consideration, review DPC would be held based upon the reappraised ACRs for the relevant period within six weeks. In case, the review DPC finds the incumbent fit for promotion, the benefit thereof would be given to him from the date when he was entitled for promotion to the next post had the ACR in question would not have been considered adverse to him with all consequential benefits.”

6. In the wake, we have no hesitation in arriving at the conclusion that once the grading in the ACRs of the applicant for the year 2004-05 and 2006-07 have been upgraded, the applicant need to be reconsidered for promotion to SAG.

7. Ergo, the OA is disposed of with direction to the respondents to reconsider the case of applicant for promotion in SAG by convening a review DPC within a period of 4 months from the date of receipt of a copy of this order. No cost.

**(K.N. Shrivastava)**  
**Member (A)**

**(A.K. Bhardwaj)**  
**Member (J)**

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