



disposed of by the Tribunal, vide its order dated 08.01.2010 (Annexure A-14), which is reproduced hereinunder:

"Applicant, a retired Assistant Nursing Superintendent, through this TA, has sought quashing of recommendations of the DPC held on 22.2.2005, 18.10.2005 and 28.5.2006 and a direction to the respondents to hold a review DPC and consider her for promotion as Deputy Nursing Superintendent and in such an event to grant her all consequences from the date her immediate junior was promoted.

2. Applicant, who was imposed a minor penalty of censure, was declared unfit for promotion on an admitted stand of the respondents whereby for promotion to the post of Deputy Nursing Superintendent (DNS) the benchmark fixed is good and as the applicant has not achieved the requisite Bench Mark in the year 2001-2002 and 2003-2004 she was declared unfit and in the DPC held on 28.6.2006 having failed to achieve the required benchmark, claim of applicant was not considered.

3. We have heard the learned counsel of the parties and perused the material on record. In our considered view in the grading either in the ACR or given by the DPC, which falls below the benchmark has to be necessarily communicated, failing which a downgrading on the basis of remarks adverse per se has to be assumed and for want of following due process of law the finding of the DPC cannot be held legal. Three-Judge Bench of the Apex Court in *Abhijit Ghosh Dastidar v. Union of India & others* (Civil Appeal No.6227/2008), decided on 22.10.2008, after discussing the decision in *Dev Dutt v. Union of India & others*, 2008 (7) SCALE 403 ruled that when such a downgrading is done in the ACR, the same has to be ignored and consideration for promotion as per the methodology under the Regulations shall take place.

4. In the above view of the matter, being a binding precedent, TA stands allowed to the extent that respondents are directed to hold a review DPC for consideration for promotion of applicant as DNS, ignoring the ACRs falling below the benchmark. In such an event, on being declared fit otherwise, applicant shall be promoted from the date when her immediate junior was promoted, with all consequential benefits, within a period of three months from the date of receipt of a copy of this order. No costs."

2. Followed the respondent's memorandum dated 21.07.2011

(Annexure A-1), which reads, *inter alia*, as under:

'Subject:- Review Departmental Promotion Committee to the post of Deputy Nursing Supdt. at the AIIMS, New Delhi in terms of Hon'ble Central

Administrative Tribunal order dated 20.01.2010 in T.A. No.128/2009 (Ms. Cynthia Singh Vs Dr. D.K. Sharma).

.....

Whereas, in compliance of the Hon'ble CAT orders as stated above, a DPC to review the DPC meetings held on 22.02.2005, 18.10.2005 and 28.06.2006 was held on 20.01.2011. The Review DPC considered the case of Smt. Cynthia Singh for promotion to the post of Deputy Nursing Superintendent as under:-

"First of all the Review Departmental Committee reviewed the DPC held on 28.06.2006 and considered the candidature of Smt. Cynthia Singh and found that two ACRs for the year 2001-2002 and 2003-2004 have been graded as 'Fair'. However, the ACR for the year 2003-2004 contained adverse remarks which were duly communicated to her vide OM No.5-1/2004/ACR Cell/Estt.I dated 21.08.2004. Smt. Cynthia Singh, however, did not represent for expunging the said adverse remarks. The Committee was of the considered view that if the grading as 'Fair' of both the years 2001-2002 and 2003-2004 is ignored, the adverse remarks communicated to her still remain. Hence, the Committee did not find Smt. Cynthia Singh suitable for promotion to the post of DNS.

This position remains the same in other two DPC meetings held on 22.02.2005 and 18.10.2005.

The Committee also noted that simultaneously a disciplinary case was initiated against Smt. Cynthia Singh vide OM No.17-91/72-Estt. (H) dated 27.07.2001 which concluded in the year 2006 with the award of penalty of 'Censure' vide Order no.17-91/72-Estt.(H) dated 09.01.2006.

In such a case, the rules provide that where disciplinary case has been initiated and concerned official has been charge-sheeted, the recommendations of the DPC are required to be kept in a 'Sealed Cover' and the sealed cover is to be acted upon only in case the concerned official is fully exonerated and where the official is awarded any penalty, his/her case is considered by the next DPC. Accordingly, even if Smt. Cynthia Singh would have been considered by the Review DPC on the dates of original DPCs held on 22.02.2005 and 18.10.2005 the recommendations would have been kept in 'sealed cover' owing to pendency of disciplinary proceedings. The disciplinary proceedings initiated against Smt. Cynthia Singh concluded with the award of penalty of 'Censure' vide order No.17-91/72-Estt(h) dated 09.01.2006 and the candidature of Smt. Cynthia Singh was required to be considered in the next DPC meeting held after the penalty

was imposed. The next DPC for the post of DNS was held on 03.08.2007 and by that time Smt. Cynthia Singh had retired (w.e.f. 30.06.2007)."

Whereas the minutes of the DPC held on 20.01.2011 have been duly accepted and approved by the competent authority and now, therefore, Smt. Cynthia Singh, Ex-Assistant Nursing Superintendent is conveyed accordingly.'

3. In the above backdrop, the instant OA has been filed by the applicant praying a direction to the respondent to promote her to the post of Deputy Nursing Superintendent w.e.f. the date of promotion of her juniors with all consequential benefits.

4. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

5. In **Union of India and Others Vs. A.N. Mohanan** [(2007) 5 SCC 425], the Hon'ble Supreme Court has held that awarding of censure is a blameworthy factor.

6. In **Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others** [(1990) 1 SCC 305], the Hon'ble Supreme Court has held as under :

"It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a 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 mala fides affecting the selection etc."

7. We do not see any infirmity in the decision of the respondent, vide the aforesaid memorandum dated 21.07.2011 (Annexure A-1) and are of the view that the OA is devoid of merits.

8. Therefore, the OA is dismissed. No order as to costs.

**(Dr. B.A. Agrawal)**  
**Member (J)**

**(P.K. Basu)**  
**Member (A)**

/jk/



