

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 4th October, 2010
Judgment Delivered On: 8th October, 2010

+ **WP(C) 5859/2010**

UNION OF INDIA & ORS. ...Petitioners
Through : Mr.Parag Tripathi, ASG with
Mr.V.S.R.Krishna and Mr.Shadan
Farasat, Advocates

Versus

RAJEEV BHARGAVA ...Respondent
Through: Mr.J.L.Gupta, Sr.Advocate with
Mr.Nidesh Gupta, Sr.Advocate and
Mr.Tarun Gupta, Advocate

WP(C) 6426/2010

RAJEEV BHARGAVA ...Respondent
Through: Mr.J.L.Gupta, Sr.Advocate with
Mr.Nidesh Gupta, Sr.Advocate and
Mr.Tarun Gupta, Advocate

Versus

UNION OF INDIA & ORS. ...Petitioners
Through : Mr.Parag Tripathi, ASG with
Mr.V.S.R.Krishna and Mr.Shadan
Farasat, Advocates for R-1 to R-3
None for R-4 to R-13

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Having an outstanding academic career; topping the Engineering Examination conducted by the Roorkee

Engineering College (now IIT Roorkee) and having stood first at the All India Engineering Service Examination conducted by UPSC, Rajeev Bhargava joined Indian Railway Service of Civil Engineering and after completion of training joined duties and in the very first year of his regular service, as per the first ACR written and agreed to by the Accepting Authority, earned the grading ‘Very Good’ with a further note by the Reporting Authority: *‘A young energetic and sincere engineer who has acquainted himself very well in the management of his office and field work. He will prove an asset to the department.’*

2. Whether the prophecy of Shri P.N.Mehta the then Senior Divisional Engineer, Northern Railway and the author of the note aforementioned has come true? This is the further journey we are required to charter; not as voyagers but as captains with the mandate to re-charter the journey. We say so for the reason we have to reflect back in the past and peep into the personal file of Rajeev Bhargava.

3. The prophecy of Shri P.N.Mehta stood the test of time and came true till the assessment year 2002-03. Commencing the journey in the year 1979-80 and till the year 2002-03, the ACR grading of Rajeev Bhargava stands tabulated as under:-

Sl. No.	Assessment year	Grading
1	1979-80	Very Good
2	1980-81	Very Good
3	1981-82	Very Good
4	1982-83	Very Good
5	1983-84	Outstanding
6	1984-85	Very Good
7	1985-86	Outstanding
8	1986-87	Outstanding
9	1987-88	Outstanding
10	1988-89	Outstanding
11	1989-90	Outstanding
12	1990-91	Outstanding
13	1991-92	Outstanding

14	1992-93	Outstanding
15	1993-94	Outstanding
16	1994-95	Outstanding
17	1995-96	Outstanding
18	1996-97	Outstanding
19	1997-98	Outstanding
20	1998-99	Outstanding
21	1999-2000	Outstanding
22	2000-2001	Very Good
23	2001-2002	Outstanding
24	2002-2003	Outstanding

He earned promotions at the very first instance when he became eligible and never had a hic-up.

4. The turbulence came in the year 2003-04. Record shows that for the said year the ACR was written in three parts on account of the fact that Rajeev Bhargava had to work under three different officers who initiated the recording of the ACR for the period they worked as the immediate superior officer of Rajeev Bhargava. The three periods are: 01.04.2003 - 07.08.2003 for which Rajeev Bhargava was graded 'Outstanding'. Part II comprise the period 08.08.03 - 05.11.03 when he was graded 'Good'. Part III is the remainder period from 06.11.03 - 31.03.04 for which when he was graded 'Very Good', but with a negative comment by the Reviewing Authority who wrote that though a person with a very high technical knowledge, Rajeev Bhargava was a stubborn and an obstinate person having quarrelsome nature; and was unfit as a team leader. Further it was written that to further his ambition Rajeev Bhargava would hob-knob with politicians. To put it in a tabular form, the ACR grading for the year 2003-04 would be as under:-

Sl. No.	Period	Grading
1	01.04.03 - 07.08.03	Outstanding
2	08.08.03 - 05.11.03	Good
3	06.11.03 - 31.03.04	Very Good

5. ACR for the next year i.e. the year 2004-05 is in two parts. Part I being the period 01.04.04 – 18.10.04 for which Rajeev Bhargava is graded ‘Very Good’. Part II is the balance period from 27.10.04 till 31.03.05 when Rajeev Bhargava is graded ‘Outstanding’. To put it in a tabular form, for the year 2004-05 the ACR gradings would be as under:-

Sl. No.	Period	Grading
1	01.04.04 – 18.10.04	Very Good
2	27.10.04 – 31.03.05	Outstanding

6. ACR for the next year i.e. the year 2005-06 is in two parts and for both, Rajeev Bhargava is graded ‘Outstanding’. To put it in a tabular form the ACR grading would be as under:-

Sl. No.	Period	Grading
1	01.04.05 – 31.03.06	Outstanding

7. ACR for the next year i.e. the year 2006-07 is again in two parts. For the period 01.04.06 to 31.07.06 he is graded ‘Outstanding’. For the remainder part the Reporting Authority graded him ‘Very Good’ which was upgraded by the Reviewing Authority to ‘Outstanding’. The Chairman Railway Board reduced the grading for the second period to ‘Very Good’, which was accepted by the Accepting Authority i.e. the Hon’ble

Railway Minister who wrote: '*I agree*'. It may be noted here that the Chairman Railway Board, while justifying the reduction in the grading as graded by the Reviewing Authority, stated that he agreed with the observations of the Reporting Authority who had graded Rajeev Bhargava 'Very Good'. Being relevant, we need to spend a little time here and note that while justifying the grading 'Very Good', the Reporting Authority has encircled, within boxes with serial No.1 to 6 marked against 6 boxes under the column General Assessment, where we find, that for the guidance of the Reporting Authority, the attributes on which the rating has to be justified is pre-printed. We note the same with the clarification that what has been encircled within the boxes has been highlighted by us in bold with serial number prefixed while reproducing the ACR proforma pertaining to General Assessment. It reads as under:-

"General Assessment-This should contain in narrative form an overall assessment of the officer's personality, his/her qualities and shortcomings and in particular touch on the following points viz., quality of mind, **(1) Knowledge, conceptual ability, communication skill (written and oral)** analytical and planning ability, leadership qualities and initiative, attention to detail **(2) industry** and conscientiousness, judgment, **(3) speed of disposal, willingness to accept responsibility and take decision, courage, ability to withstand mental/physical pressure** relations with subordinates and colleagues, **(5) public relations, interest in training and (6) development of subordinates and in the development of Scheduled Castes/Scheduled Tribes and weaker section of the society and attitude towards Raj Bhasha."**

Thereafter in his own hand the Reporting Officer has written: *The officer is up to the mark in the attributes above (boxed and numbered) whereas they are substantial ones. But lack of detail, time/timing has affected targets, their timings. At*

times, he gives a feeling of hiding facts at his end. Relationship with other are also not quite sound and also the style of management is not healthy’.

8. To put it in tabular form, for the year 2006-07 the ACR grading would be as under:-

Sl. No.	Period	Grading
1	01.04.06 – 31.07.06	Outstanding
2	31.07.06 – 31.03.07	Very Good

9. ACR for the next year i.e. the year 2007-08 is again in two parts. Part I is for the period 01.04.07 – 24.08.07 when Rajeev Bhargava has been graded ‘Good’ and part II is the period 19.09.07 – 31.03.08 when Rajeev Bhargava has been graded ‘Outstanding’. To put it in a tabular form, for the year 2007-08 the ACR grading would be as under:-

Sl. No.	Period	Grading
1	01.04.07 – 24.08.07	Good
2	19.09.07 – 31.03.08	Outstanding

10. For the next year i.e. the year 2008-09 Rajeev Bhargava was graded ‘Outstanding’.

11. Having become eligible to be considered for the top cadre posts under the Indian Railways i.e. the post of General Manager and equivalent, candidature of Rajeev Bhargava had to be considered along with the other eligible officers for empanelment to fill up vacancies of General Managers and equivalent for the year 1.4.2009-31.3.2010 and for which a Selection Committee was constituted to give

recommendations for consideration by the ACC i.e. Appointment Committee of Cabinet. When notified on 11.8.2009, name of 28 candidates empanelled and approved by the Appointment Committee of Cabinet excluded Rajeev Bhargava who filed OA No.2201/2009 in which he urged: (i) as per notification dated 16.7.1986 the scheme for making appointments to the post of General Manager and equivalent in the Indian Railway was notified, vide clause 6 whereof the Selection Committee was obliged to assess the suitability of officers on merit, based on the record of their service and experience; but the Selection Committee considered only the past 5 ACR grading record. It was pleaded that this had vitiated the selection process inasmuch as the outstanding service record of Rajeev Bhargava (extracted by us in para 3 above) was ignored; (ii) the Screening Committee had applied the criteria 3 Outstanding gradings and 2 Very Good gradings as the eligibility for empanelment and had awarded 5 marks for grading Outstanding, 4 marks for Very Good and 3 marks for Good. By taking into account ACR grading for the period 8.8.2003 to 5.11.2003 as Good, prejudice was caused to Rajeev Bhargava. It was pleaded that the period 8.8.2003 to 5.11.2003 comes to 89 days inasmuch as the Reporting Authority had joined in the afternoon of 8.8.2003 and hence said day has to be excluded. It was further pleaded that the Reporting Authority had taken leave on 3 days during this period and thus 3 more days had to be deducted while computing 90 days. Placing reliance upon DOPT OM dated 22.5.1975, it was highlighted that the same required: *'The officers at both reporting and reviewing level are required to have at least 3 months' experience of supervising the works and conduct of the government servant reported upon'*. Reliance was also placed upon a communication dated 7.8.2009 from the South Central Railway to the Secretary

Railway Board to highlight that the Railway Authorities themselves were of the opinion that the ACR grading for the said period i.e. 8.8.2003 to 5.11.2003 had to be ignored. The South Central Railway letter dated 7.8.2009 which was relied upon reads as under:-

“The Secretary, Railway Board,
New Delhi

(Attn.Shri M.S.Mehra, Joint Secy. (Confdl)

Sub: Representation of Sri Rajeev Bharga, ex.PCE/SCR/SC and now Addl. Director General, RDSO/Lucknow about his ACR for the year 2003-04.

A copy of representation dt.17.07.2009 received from Sri Rajeev Bhargav, ex.PCE/SCR/SC and now Addl. Director General, RDSO/Lucknow is enclosed herewith for necessary action at your end.

It is seen from the representation of Sri Rajeev Bhargav, Addl.Director General, RDSO that he is requesting for the issue of ‘non-initiation’ certificate concerning the Part ACR for the year 2003-04 (period from 8.8.03 to 5.11.03). In this connection, it is stated that Sri Rajeev Bhargav, had held the following posts during the assessment year 2003-04 in ‘South Central Railway.’

CBE SA.Grade 08.08.2003 to 05.11.2003

PCE SA.Grade 06.11.2003 to 09.01.2004 (on

dual charge looking after the posts of CBE and PCE in SA Grade)

PCE HA Grade 10.01.2004 to 31.03.2004

As Sri Rajeev Bhargav had held two posts of CBE and PCE during the assessment year, the ACR was written in two parts separately for both the posts. The part II ACR which involved the posting of Sri Rajeev Bhargav as a PHOD was initiated by the General Manager and sent to the Board for review and acceptance. As regards part I of the ACR, the same was initiated by Sri S.R.Chowdhury, the then PCE and reviewed by the General Manager. As already advised by this Railway

vide letter of even number dt. 21.04.2009 that Sri S.R.Chowdhury, the then PCE was on sanctioned LAP for 3 days from 29.9.2003 to 1.10.2003 during the reporting period and thereby not completing minimum period of 90 days required for initiation of an ACR. However, this fact has come to the notice of this Railway only on receipt of representation from Sri Rajeev Bhargav. Had the issue come to the notice of the Railway at the time of initiation of the part ACR for the relevant period, the prescribed procedure to meet such a situation would have been followed.

As far as the present representation from Sri Rajeev Bhargav, requesting for the issue of 'non-initiation' certificate is concerned, issuance of the same by the Railway is felt to be inappropriate as the same is already available with the Railway Board and that it is not known to the Railway if the same has been considered for any other purpose earlier including promotion. It is also felt that if for any technical reason, an ACR is to be treated as invalid, such an action can only be initiated by the accepting authority. Incidentally, it is observed that the Railway Board, as the accepting authority, had made the ACR of Sri Sopan Laxman, the then Asst. Secretary/RRB/Secunderabad for the year 2005-06 as 'invalid' due to certain technical reasons vide letter No.2007/SCC/2/10 dt. 17.10.2007. A copy of Board's letter is enclosed herewith for information and further necessary action.

As explained, Board may consider the representation of Sri Rajeev Bhargav Addl. Director General/RDS/Lucknow and take remedial action if required.

Sd/

DGM(CO-ord) & Secretary to GM

For General Manager."

12. It was further pleaded (iii) that for the period 1.8.2006-31.3.2007 the Reporting Authority graded Rajeev Bhargava 'Very Good' which was upgraded by the Reviewing Authority to

'Outstanding' and was reduced by the Chairman Railway Board to 'Very Good', but without recording reasons which was accepted by the Accepting Authority i.e. the Hon'ble Railway Minister. Contention urged was that the Chairman Railway Board was an interloper and the ACR Proformas envisaged no role of his, thus it was urged that for the entire year 2006-07 grading of Rajeev Bhargava had to be treated as 'Outstanding'. An alternative contention was urged that the reasons for downgrading were not stated and even on said count it was urged that downgrading recommended by the Chairman Railway Board and accepted by the Accepting Authority i.e. the Hon'ble Railway Minister had to be ignored. Contention No.(iv) urged was that the grading for the period 1.4.2007 - 24.8.2007 being 'Good' had to be ignored as it was below the benchmark and hence, having adverse consequence. In support of which contention the decision of the Supreme Court reported as Dev Dutt Vs. UOI & Ors. 2008 (3) SCT 429 was relied upon. Contention No.(v) urged was that clause 9 of the policy notified by the Railways on 16.7.1986 required Selection Committee to meet after 1st April i.e. as soon as the report for the year ending March of that year is ready, which was modified vide circular dated 5.6.2007 by shifting the date of the Selection Committee meeting to be after 15th July. Plea urged was that the Selection Committee met on 18.3.2009 and 8.5.2009 and the result thereof was that the ACR grading of Rajeev Bhargava, which was 'Outstanding' for the period 1.4.2008 - 31.3.2009 was ignored causing prejudice.

13. To put it in mathematical language, contention urged was that since the Selection Committee had set the benchmark 3 'Outstanding' and 2 'Very Good' gradings; requiring a candidate to score 23 points out of 25; Outstanding

getting 5 marks, Very Good getting 4 marks and Good getting 3 marks, for the year 1.4.2003 - 31.3.2004; for the 3 periods for which grading was accepted by the Selection Committee it awarded Rajeev Bhargava 4 marks i.e. $5 + 3 + 4 \div 3 = 4$ and if the period 8.8.2003 - 5.11.2003 for which grading was Good was ignored, Rajeev Bhargava would have got the grading $5 + 4 \div 2 = 4.5$. Likewise, for the period 31.7.2006 - 31.3.2007 where the Chairman's downgrading of Very Good was accepted and hence for the period 1.4.2006 - 31.3.2007 marks awarded were $5 + 4 \div 2 = 4.5$, the same ought to have been 5 inasmuch as downgrading had to be ignored. Similarly for the period 1.4.2007 - 24.8.2007 where grading awarded was Good resulting in the Railway Board awarding marks $3 + 5 \div 2 = 4$, the same ought to have been 5 since grading Good being below benchmark had to be ignored. So reworked out, Rajeev Bhargava pleaded that calculative as aforesaid he would have crossed the cut-off point 23. With respect to the ACR grading taken into account for the period 1.4.2003 to 31.3.2004 it was pleaded that if the entire period was excluded and the ACR grading for the year 2008-09 was included, Rajeev Bhargava would have obtained 23.5 marks.

14. Since we have referred to the Railway Board's circular dated 16.7.1986 relied upon by Rajeev Bhargava as also its amendment carried out on 5.6.2007, it would be useful if we reproduce relevant extracts thereof at this stage. The relevant part of the scheme notified on 16.7.1986 reads as under:-

**"SCHEME FOR MAKING APPOINTMENTS TO POSTS OF
GENERAL MANAGERS AND EQUIVALENT IN THE
RAILWAYS**

1. Title

The Scheme shall be called the Scheme for appointment to the posts of General Managers and equivalent in the Indian Railways.

2. Date of effect

The Scheme shall come into force with effect from 16th July, 1986.

3. Applicability

The Scheme shall be applicable to the posts of General Managers and equivalent in the scale of ₹24,050-26,000 as listed at Appendix-I.

4. Method

4.1 A panel of names for consideration for appointment to the posts of General Manager and equivalent, listed in Appendix-I to the Scheme, shall be prepared by a Selection Committee set up in accordance with para 5 of the Scheme. For this purpose, the Selection Committee shall consider on merit, eligible officers of each of the Railway Services listed in Appendix-II, having regard to their inter-se seniority as well as their seniority in the respective Services-officers working in Higher Administrative Grade (₹22,400-24,500/-) being placed above those working in Senior Administrative Grade (₹18,400-22,400/-) in each respective Service and prepare a panel of officers considered suitable in all respect for appointment to the posts of General Manager and equivalent. The Selection Committee may also recommend the specific type/types of assignment for which a particular officer mentioned in the panel may be considered suitable.

4.2

4.3 On every occasion on which appointment is required to be made to any particular vacancy/vacancies amongst the posts of General Managers and equivalent listed in Appendix-I, the Railway Board shall, keeping in mind the specific requirement(s), if any, of the post(s) to be filled up, process the case for obtaining the approval of the Appointments Committee of the Cabinet for appointment of person/persons included in the Select List, to such post/posts.

4.4 While taking action as in the preceding sub-para, the Railway Board shall normally suggest the promotion of empanelled officers in order of their

inter-se seniority within those cleared for that particular type of assignment, except when-

- (a)
- (b)
- (c)
- (d)

5.

6. Assessment of suitability

The Selection Committee will assess the suitability in all respects of officers belonging to the Group 'A' Services listed in Appendix-II on merits, based on the record of their service and experience and any special requirements of the post(s) for which selection is to be made. In judging the suitability of the officers, the Selection Committee will give due consideration to their performance, as Divisional Railway Managers and as Principal Heads of Departments in the Railways.

7.

8.

9. Periodicity of meeting of Selection Committee and currency of panels

The Selection Committee shall normally meet once a year at a suitable time after 1st April as soon as the reports for the year ending March of that year are available for consideration. They may meet at intervals of less than a year, if the circumstances so require. They will draw up a panel, consisting of such number of names as may be necessary for appointment to the existing and anticipated vacancies in the posts of General Manager and equivalent during the period from 1st July of the year to the 30th June of the next year."

15. The amendment shifting the date when the Selection Committee has to meet as per clause 9 aforementioned which was brought into force on 5.6.2007 may be reproduced. Relevant part thereof reads as under:-

"AMENDMENT TO RESOLUTION DATED 16.07.1986
REGARDING SCHEME FOR MAKING APPOINTMENT TO

THE POSTS OF GENERAL MANAGERS IN SCALE OF
₹24,050-26,000/- UNDER THE MINISTRY OF RAILWAYS

1.

2. Further, under the heading "Periodicity of meeting of Selection Committee and the panel year" appearing in Para 9 of the said Annexure to the resolution dated 16.07.1986, the existing Para shall be amended to read as under:-

"The Selection Committee shall normally meet once a year between 15th July and November of the preceding financial year and take into consideration the Confidential Reports upto March of that year. They may meet at intervals of less than a year, if the circumstances so require. They will draw up a panel, consisting of such number of names as may be necessary for appointment to the existing and anticipated vacancies in the posts of General Manager and equivalent during the period from 1st April of the year to 31st March of the next year. The panel drawn up by the Selection Committee shall be valid for vacancies arising during the period 1st April of the year to 31st March of the next year."

16. The core pleadings of Rajeev Bhargava were responded to by the Railways in paras 2, 7, 9 and 10 of the counter reply filed, which pleadings read as under:-

"2. That it is submitted that the appointments to the posts of General Managers/equivalent posts are made under the provisions stipulated in Resolution of Railway Board dated 16.07.1986, as amended from time to time. It is submitted that though in some places the word 'promotion' is used in the said Resolution, but in effect the posts of General Manager/equivalent are not promotional posts but are appointments made by a strict process of selection. Therefore, the mere use of the word 'promotion' in some places in the Resolution cannot be taken as if the posts of General Manager/equivalent are promotional posts.

x x x x

7. In the Selection for the panel under consideration, 32 officers belonging to the various organized Group 'A' Railway Services were considered. For the purpose of assessment, ACRs of these officers for the five year period from April, 2003 – March, 2004

to April 2007 – March, 2008 were taken into consideration by the Selection Committee. The name of the Applicant appears at Sr.No.20 among the 32 officers considered.

x x x x

9. It is submitted that the Selection Committee makes its own assessment in regard to the suitability of the officers on the basis of the entries, including gradings as recorded in the ACRs. For the posts of General Managers and equivalent, no specific benchmark has been laid down. However, keeping in view the fact that these posts are key positions on the Railways, and are required to be manned by officers of proven ability, competence with unblemished record of service, stringent criteria of selection are followed to ensure smooth and efficient running of the Railway system. For posts in HA grade on the Railways, which are below the level of GM, stringent criteria are followed and bench mark is 'Very Good+', equivalent to 22 points. Therefore, for the higher position of GMs/equivalent, more stringent criteria are followed so that only those officers with proven record of ability and suitable in all respects are only selected.

10. As per the extant guidelines of Department of Personnel and Training, the Selection Committee has full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidates for appointments to the posts in the higher grades. The Selection Committee for the selection under consideration decided, inter-alia, that only those officers having three 'Outstanding' and two 'Very Good' grading in the previous five years ACRs were to be considered for empanelment and appointment."

17. Averments in para 8 of the counter reply accepted the pleadings of Rajeev Bhargava with respect to the controversial periods aforementioned i.e. the period 8.8.2003 - 5.11.2003, the period 31.7.2006 - 31.3.2007 and the period 1.4.2007 - 24.8.2007 insofar the controversy centered on the grading awarded for said periods and taken into account by the Selection Committee. Thus, we reproduce averments made in para 8 of the counter reply. The same read as under:-

“8. It will be seen that for the year 2003-2004, there were three part CRs written in favour of the Applicant. In Part-I, he was graded as ‘Outstanding’ and ‘Fit’ for the various categories of posts mentioned in the relevant column. In Part-II, he was graded as ‘Good’ & ‘Fit’ for promotion in his department only. In part-II, he was graded as ‘Very Good’ & ‘Fit’ for the various categories of posts mentioned in the relevant column. For the year 2004-2005, there were two Part CRs written in favour of the Applicant. In Part-I, he was graded as ‘Very Good’ & ‘Fit’ for the various categories of posts mentioned in the relevant column. In Part-II, he was as ‘Outstanding’ and ‘Fit’ for the various categories of posts mentioned in the relevant column. For the year 2005-2006, there were two part CRs written in favour of the Applicant. In both the Parts, he was graded as ‘Outstanding’ & ‘Fit’ for the various categories of posts mentioned inn the relevant column. For the year 2006-2007, the Applicant was graded as ‘Very Good’ & ‘Fit’ for the posts of Additional Member, DG/RDSO & DG/RSC. For the year 2007-2008, there were two Part CRs written in favour of the Applicant. In Part-I, he was graded as ‘Good’ & ‘Fit’ for DG/RDSO & DG/RSC. For Part-II, he was graded as ‘Outstanding’ & ‘Fit’ for the various categories of posts mentioned in the relevant column.”

18. It is apparent that at the fore-front were the issues, whether the mandate of the scheme framed on 16.7.1986, vide clause 6 thereof which stated that *the Selection Committee will assess the suitability in all respects of officers on merits based on the record of their service* was violated inasmuch as service record of preceding 5 years only was considered and further, whether the Selection Committee acted post haste by meeting on 18th March 2009 and 8th May 2009 resulting in latest ACR grading for the period 1.4.2008-31.3.2009 being ignored and whether these meetings were held in the teeth of clause 9 of the scheme dated 16.7.1986 as amended on 5.6.2007, requiring Selection Committee to meet after 15th July. If it is held in favour of Rajeev Bhargava, the obvious conclusion would be that by violating the norms set

prejudice has been caused to Rajeev Bhargava who admittedly has been graded outstanding for the period 1.4.2008 - 31.3.2009, which grading certainly matters. The other issues would be pertaining to the 3 parts of the 3 controversial years in respect whereof the controversy projected has been noted by us in para 13 above.

19. Three unnecessary issues came to be raised before the Tribunal in respect whereof we find a reflection by the Tribunal in the impugned order but what was the effect thereof has not been brought out. We note the same only as a matter of record because Mr.J.L.Gupta learned Senior Advocate for Rajeev Bhargava and Sh.Parag P.Tripathi learned Additional Solicitor General for the Union conceded that the said issues were unnecessarily raised; probably due to the over-enthusiasm of the advocates on record for the two parties. The first irrelevant issue raised was in the rejoinder affidavit filed when Rajeev Bhargava relied upon a DOPT OM dated 8.2.2008 pertaining to the benchmark for promotion in Group A services being 'Very Good'. Contention urged was that the Selection Committee had wrongly adopted the Bench Mark of 3 'Outstanding' and 2 'Very Good' gradings. Needless to state the said issue required a sur-rejoinder for the reason for the first time in the rejoinder affidavit filed the said issue was raised. The Tribunal has referred to the submission predicated on the OM dated 8.2.2008 in para 6 of the impugned decision, but has rendered no finding thereon. Learned Senior Counsel conceded before us that the said issue be not decided as it is not being pressed. Two issues were projected by the Railways in the written submissions filed and in respect whereof there are admittedly no pleadings and these have been referred to by the Tribunal in para 10 of the impugned decision. The over enthusiastic counsel for the Railways before the Tribunal,

ignoring that there were no pleadings, highlighted that there existed a secret note doubting the integrity of Rajeev Bhargava which was a part of the ACR dossier for the year 2004-05 and further that a charge sheet was issued to Rajeev Bhargava. It is apparent that an attempt was made to justify non-empanelment of Rajeev Bhargava by bringing out two taints against him. The response of Rajeev Bhargava to the written submissions was that the rules required the secret note to be intimated to him for his response before being placed in the ACR dossier upon response being found inadequate and qua the charge sheet he submitted that he was exonerated. Indeed, if the Selection Committee had considered said two facts as projected by the Railways in their written submissions before the Tribunal, the same would be serious procedural improprieties, for the reason a charge sheet which resulted in no penalty could not be placed before the Selection Committee and the secret note could not be kept in the ACR dossier without contents thereof being required to be replied to by Rajeev Bhargava and the reply found unsatisfactory. Learned Additional Solicitor General made a statement at the bar that these were never considered by the Selection Committee and were the submissions of an over enthusiastic counsel and the facts on which the submissions were founded did not exist.

20. The Tribunal has unfortunately not dealt with all the issues which were urged. Of the issues urged only, four have been dealt with. The Tribunal has held that the ACR grading for the period 8.8.2003-5.11.2003 could not be considered and for which submissions made by Rajeev Bhargava and as noted by us in para 11 above have been accepted. The two submissions pertaining to the ACR for the year 2006-07 part II i.e. the period 1.8.2006-31.3.2007 has been held to be suffering from two infirmities. Firstly, that the Chairman

Railway Board had no authority to pen a note downgrading the grading recorded by the Reviewing Authority which was 'Outstanding' to 'Very Good' which was recommended by the Reporting Authority. Secondly, for the reason the Tribunal found that there were no reasons recorded to downgrade the grading. The Tribunal highlighted that the Reviewing Authority had recorded specific reasons to upgrade the grading. The Tribunal has held that for the entire period 1.4.2006 till 31.3.2007 Rajeev Bhargava would have to be treated as having been graded Outstanding. The Tribunal rejected the submissions that the grading 'Good' for the period 1.4.2007-24.8.2007 had to be ignored by holding that it was not a case of any benchmark prescribed. The Tribunal held that the procedure followed was that awarding 5 marks for grading Outstanding, 4 marks for the grading Very Good and 3 marks for the grading Good and considering only previous 5 year ACRs those who obtained 23 marks out of 25 were empanelled. Though not expressly stated, what the Tribunal seems to be saying is that a candidate with 4 'Outstanding' and 1 'Good' would obtain $4 \times 5 + 3 = 23$ marks and thus in this context ACR grading 'Good' does not operate as a negative grading in the context of non-suiting a person for empanelment. Thus, partly allowing OA No.2201/2009, the Tribunal has directed Review Selection Committee to reconsider the matter by ignoring ACR grading for the period 8.8.2003 to 5.11.2003 as also the remarks of the Chairman Railway Board which were accepted by the Hon'ble Railway Minister for part ACR from 1.8.2006 to 31.3.2007. Lastly, the Tribunal has held that pertaining to the ACR grading Good for 5 months i.e. from 1.4.2007 - 24.8.2007 the Selection Committee would consider the overall record of Rajeev Bhargava. We may highlight that this direction seems to be founded on clause 6 of the scheme for making appointments

to posts of General Manager and equivalent notified on 16.7.1986; though not so expressly stated by the Tribunal. Our reason for so inferring is that clause 6 of the scheme states that assessment of suitability would be on the basis of record of service and experience. Needless to state, the railways challenge the findings returned against it and Rajeev Bhargava challenges the finding against him.

21. Mr.Parag Tripathi learned Additional Solicitor General, did not dispute the existence of the scheme for making appointments notified on 16.7.1986 and did not dispute the mandate of clause 6 thereof but urged that the same was only a guideline and there was no harm if the Selection Committee considered the record of the preceding 5 years and no more. The argument was strengthened by urging that empanelment was for the top job and thus common sense guides that the rating of the officer in the next below job, being proximate in point of time as also to the post for which empanelment had to be done, was more important vis-à-vis the grading during tenure held or spent on lower posts. Learned Additional Solicitor General urged that no mala-fides have been alleged. Not disputing that the scheme framed on 16.7.1986 as amended on 5.6.2007 required Selection Committee to meet after 15th July by which time the latest ACR grading would be available and that in the instant case by meeting in the month of March and May 2009 the Selection Committee was deprived the benefit of the latest ACR grading, learned Additional Solicitor General urged that it is too minor an aberration and in any case being applied across the board to all the candidates, none have been discriminated. With respect to the period 8.8.2003 - 5.11.2003 learned Additional Solicitor General urged that the requirement of 90 days as the minimum period for reckoning an ACR grading had not to be read as urged by

Rajeev Bhargava but had to be read in light of a Railway Board circular, (existence whereof was not disputed by Sh.J.L.Gupta learned Senior Counsel for Rajeev Bhargava) which stated that if the officer reported upon was on leave for 15 days, said period did not make non-applicable the 90 days period set as the minimum period as the sine qua non for grading. Applying the logic, learned Additional Solicitor General urged that this meant that even where the Reporting Officer took short leave, it hardly mattered. Repelling the contention that the Chairman Railway Board was an interloper it was urged that the standard practice adopted was for the Chairman Railway Board to pen his note on the ACR Proformas. As regards the period 31.7.2006 - 31.3.2007 where the Chairman had downgraded the grading recommended by the Reviewing Authority from 'Outstanding' to 'Very Good' learned counsel urged that reasons were to be found in the grading awarded by the General Manager i.e. the Reporting Authority which had graded Rajeev Bhargava 'Very Good' and the Chairman Railway Board had penned that he agreed with the comments of the Reporting Authority, which comments have been noted by us in para 7 above it was urged that the Accepting Authority need not have written more than '*I agree*', for the reason when one agrees with the opinion of the preceding officer the reason for the previous opinion need not be recorded in extenso. Pertaining to the plea that the grading for the period 1.4.2007 - 24.8.2007 which was 'Good' had to be ignored on the plea of being below the benchmark, learned Additional Solicitor General urged that there was no benchmark as conventionally understood counsel urged that the selection was on the criteria pleaded in para 9 and 10 of the counter reply.

22. We would be failing not to note that Sh.J.L.Gupta learned Senior Advocate appearing for Rajeev Bhargava urged before us that the scheme for making appointments to the post of General Manager and equivalent, in para 4.4 expressly referred to the empanelment to be by way of promotion and thus counsel urged that the Selection Committee could not adopt a criteria for selection based on merit, but very fairly conceded that the criteria for promotion to a promotional post could also be based on selection if the post is listed as a selection post and merit is stated to be the criteria. That apart, learned senior counsel did not dispute that as a matter of fact the ACR appraisal was to assess suitability but questioned the same being premised on ACR grading for preceding 5 years alone being considered resulting in the empanelled candidates securing 23 marks and above out of 25 and all those who secured 23 and above were ranked as per their seniority. Thus, we need not bother ourselves much on said issue except with the issue of whether it was permissible to assess suitability with reference to the preceding 5 years only.

23. Before we deal with the legal submissions urged we feel that the facts of the instant case require us to look around and see the latest developments in the field of Performance Appraisals and what do the experts have to say on the current method of Performance Appraisals followed all over the world.

24. In a developing country, if it fails to measure up to the expectation of the people, democracy would lose its significance. The general perception is that poor governance is due to the political climate and bad administration. But few realize that the root cause of poor governance may lie in the design of the democratic-administrative form adopted by a country. If the design is inappropriate, wrong kind of people

will keep in exercising authority and wrong kind of conduct would be perpetuated. The solution lies in not abandoning democratic-administration but to purge it of its disease inducing genes. Many in India hope that the 21st Century will be India's century. We have the Human and Material Resources, a vast market, a vibrant civil society, great entrepreneurial talent and growing technological and management competence capable of achieving global primacy but it will remain a distant dream if the quality of public administration remains as unsatisfactory as it is today.

25. If there is a demand for good governance, there must be a road map for how to secure it and clarity on the means of pursuing it.

26. Good governance, with reference to the systemic flaws of the political system which what many perceive with the undesirable traits like criminalization of politics, vote bank politics, short terms considerations, wide spread corruption i.e. negative traits of politics, cannot form and should not form the subject matter of a judicial verdict; as they need a public debate and a judicial forum is hardly the appropriate place for such a debate. But, the tools of Public Management, with emphasis on accountability for output, social justice and quality of life and not just procedural correctness; with further emphasis on efficiency, productivity and service quality requiring professional management by domain experts chosen on basis of merits, in an open and transparent manner, are matters within the domain of judicial debate – *judicial review over administrative decisions is recognized as a branch of administrative law.*

27. Do we need to strengthen administrative law principles when we find more and more authority being granted (rightly

so) to the public sector bodies, some of whom took over functions of the Government. If yes, can administrative law play a role in ensuring that professionally managed public sector bodies, with a specific mandate and accountability for performance, is set in place as vibrant partners of a public sector – civil society partnership?

28. We think yes. How?

29. The quality of leadership determines the quality of an organization. The managers form the core and the fulcrum which catalyses the pace of activities in an organization. If judiciously manageable standards can be found to insulate leadership identification in public sector from power games, it would be a welcome step – so we feel!

30. And this takes us straight into the lap of ‘Human Resource Strategy and Performance Appraisals’. Internationally acknowledged experts like Michael Porter and C.K.Prahalad have defined the specific business capabilities required by the organization as ‘Core Competence’. In order to achieve the required core competence for business, the Human Resource function has the role of identifying the people capabilities, since; essentially, it is these that constitute the business capabilities of the organization.

31. The learned authors have opined that traditional appraisal approach is flawed on account of many reasons, which have been listed at seriatim in the book ‘*Human Resource Management*’ by P.Jyothi and D.N.Venkatesh 1st Edition at page 249. They read as under:-

(i) It is incongruent with the value-based, vision-driven, and participative modern organizations.

(ii) It promotes the legacy of the top-down and bureaucratic approach, which is out of sync with the current requirements.

(iii) The traditional appraisal has a subjective element, and most often, is influenced by the recent events rather than the performance of the employee during the entire appraising period.

(iv) The modus operandi of appraisal systems has more to do with being judgmental and finding faults, with little focus on performance improvement.

(v) The above-mentioned nature of appraisals perpetuates the distance and differences between the appraiser and appraisee, rather than providing the forum or opportunity for a healthy discussion.

(vi) The employee as well as the reporting authority is more inclined towards defending their own viewpoints, rather than arriving at any common platform which is acceptable to both.

(vii) In case of a majority of the organizations, the appraisal process is more of a ritual being practiced to avoid getting into trouble with the HR departments.

(viii) Theoretically speaking, the appraisal process is a way of safeguarding the position-power of the reporting authority.

(ix) Quite often, the appraisal formats are poorly designed, or once designed; they become so sanctimonious that organizations refuse to acknowledge the need to change the structure, to stay in tune with the changed requirements.

32. It is trite that Performance Appraisal requires, to holistically view, the performance of the appraisee and align the individuals objectives with that of the organization. The ultimate objective is to facilitate the organization to achieve

higher levels of growth and performance. As opined by Michael Porter and C.K.Prahalad, performance appraisals have become *'more of a tool for politicking and have become a pawn in the corporate power games'*.

33. Thus, the disease inducing genes have unfortunately permeated not only the public sector but even the private sector and today we find that the private sector is actively implementing the corrective methods suggested by Michael Porter and C.K.Prahalad. Why not even the public sector!

34. Conscious of the fact that it would not be within our domain and jurisdiction to issue directions to the executive to implement the corrective steps taken by the private sector; but insofar the language of the existing policy guidelines framed by the executive permits and without violence to the language of the guidelines, if it is possible for us to read the guidelines in a manner which kills the disease inducing genes and makes grow the disease free genes, being in furtherance of good governance, such interpretation requires to be adopted by us and consequential directions to be issued to the executive. Enrichment must come to the field of law from all disciplines and indeed a forensic court battle is a place where ideas merge to create new ideas and where different streams of reasoning pool their waters into the ocean of knowledge. It is from the ocean, as is the mythical Hindu belief, that poison and nectar was separated. It is from the ocean of knowledge that Judges separate nectar and poison, of course, it is nectar which is distributed. The third deficiency in the current performance appraisal methodology adopted is the subjective element which is the result of being influenced by recent events rather than the performance of the employee during the entire appraising period. The experts in the subject of 'Human Resource Development and Performance Appraisal'

agree that short term appraisals have a disease inducing genes because of the influence of recent events rather than the actual performance of the employee. This attracts the fact of the instant case pertaining to the period 8.8.2003 - 5.11.2003. Excluding 8.8.2003 since the Reporting Authority joined in the afternoon, the appraisal period gets reduced to 89 days and out of which the Reporting Authority remained absent for 3 more days. Experts in the field have frowned upon short term appraisals and this requires us to strictly read DOPT OM dated 22.5.1975 which states: *'The officers at both reporting and reviewing level are required to have at least 3 months' experience of supervising the works and conduct of the government servant reported upon'*. The reason for strictly interpreting it is that, as such, a three month appraisal is by its very nature disease inducing and any interpretation of the executive policy which kills the disease inducing germs has to be preferred vis-à-vis an interpretation which allows these germs to grow. Thus, on a different process of reasoning, we accord our concurrence with the view taken by the Tribunal that the ACR grading 'Good' for the period 8.8.2003 - 5.11.2003 has to be ignored.

35. Before proceeding to deal with the other submissions, we feel, that the subject of short term appraisal demands a little more attention with reference to the empirical data we have before us in the instant case. The empirical data has been tabulated by us in para 3 above which shows that after the first four formative years in service when Rajeev Bhargava was graded 'Very Good' he was constantly graded 'Outstanding' for 16 consecutive years, with a drop to 'Very Good' in the year 2000-01 and for further 2 years being once again graded 'Outstanding'. Even for the period 1.4.2003-7.8.2003 he was graded 'Outstanding' and suddenly we find a drop to the

grading being 'Good' for the period 8.8.2003-5.11.2003. Does not the empirical data bring out the facet of the negative feature of a short term appraisal? It does.

36. Pertaining to the issue as to what grading should be adopted for the period 31.7.2006-31.3.2007, as noted in paras 7 and 8 above, the Reporting Authority graded Rajeev Bhargava 'Very Good' to which the Reviewing Authority penned a note enhancing the same to 'Outstanding'. The Chairman Railway Board downgraded the grading to 'Very Good' by recording: *I agree with the GM's assessment as given in part II which is clearly spelt out. I also agree with GM's overall grading as Very Good.* The Accepting Authority wrote: *'I agree'.*

37. Now, in para 7 above, we have already noted what has been done by the Reporting Authority. We reproduce the same. The box numbering and the note penned can be reproduced in the following words: *'The (1) Knowledge, conceptual ability, communication skill (written and oral) (2) industry (3) speed of disposal, willingness to accept responsibility and take decision, courage, ability to withstand mental/physical pressure (4) public relations, interest in training and (5) development of subordinates and in the development of Scheduled Castes/Scheduled Tribes and weaker section of the society and attitude towards Raj Bhasha of the officer are Outstanding. Whereas they are substantial ones, lack of detail, time/timing has affected targets, their timings. At times, he gives a feeling of hiding facts at his end. Relationship with others are also not quite sound and also the style of management is not healthy.*

38. In direct contradiction of the aforementioned comments of the Reporting Officer are the comments written by the Reviewing

Authority who has recommended upgrading from 'Very Good' to 'Outstanding' by recording: *'I do not entirely agree. The officer has Outstanding initiative and technical ability to finalized designs of mega-bridges and thus bringing down considerable saving. He has worked under a great deal of pressure and in difficult working situation. He is rated as Outstanding and fit as O-L GM also'*. The Chairman Railway Board has thereafter penned a note stating that he agrees with the opinion of the Reporting Authority, but recording no reasons as to why he disagrees with the note of the Reviewing Authority and why does he agree with the reasoning of the Reporting Authority.

39. Learned Additional Solicitor General did not dispute that the Chairman Railway Board was required to give reasons for downgrading, but urged that by stating that he agreed with the assessment of the Reporting Authority was sufficient and one could safely infer that his reasons were the same as those of the Reporting Authority.

40. Now, if two subordinate officers have given two reasons, at variance with each other, and have reached different destinations; one being favourable to the employee and the other not so favourable; the reasoning required from the superior officer, if he agrees with the not so favourable reasoning of the subordinate, would be to give reasons as to why he did not agree with the favourable reasoning. To put it pithily, the reasoning expected would be to show that the superior officer has come to grips with the conflict inter se the two subordinate officers. We do not find any. That apart, we find it strange that the Reporting Authority has penned that his observation qua Rajeev Bhargava was of a person who could not maintain sound relationship with others and that the style of management was not healthy. We have found a very

interesting thing. The ACR Proformas till the year 2003-04 had a distinct head under the caption '**Management Qualities**' having five Characteristics, with the first four having three sub-heads and the last seven. In each and every ACR Proformas till the year 2003-04 where these individual traits pertaining to management qualities were to be listed, pertaining to the second characteristic: **Inter-Personal Relations** relatable to quality of leadership to inspire and motivate others, team work requiring participation, co-operation and tact and ability to inform, conceive and lead, Rajeev Bhargava has consistently been marked in the box listed next to the various columns as 'V.G.' meaning 'Very Good' or 'E' meaning 'Excellent'. It strikes us that such an officer, who for 22 years was found to be an excellent team leader with ability to motivate others and a good team worker and able to extract co-operation and participation by all with whom he worked, suddenly become a person who earns the remark: *'relationship with other are also not quite sound and also the style of management is not healthy'*.

41. We note that, as noted in para 4 above, for the controversial year 1.4.2003-31.3.2004, the Reviewing Authority had penned a somewhat similar negative note by commenting that Rajeev Bhargava was a stubborn and an obstinate person having quarrelsome nature and he was unfit as a team leader. We find the aforementioned comments in the two ACR Proformas completely out of sync with the box grading recorded in as many as 25 other ACR Proformas pertaining to the other 25 years and surprisingly even pertaining to the year 2003-04, where we find the period split into 3 portions and thus 3 ACR Proformas used. Pertaining to interpersonal relationship, the box grading has been recorded 'G' i.e. 'Good' and yet in spite thereof we find a stinging

negative comment which is totally destroyed by the box gradings.

42. What does this bring out? There are traces of politicking and corporate power game.

43. The other day we had commented in a judgment that we have suddenly noted a hitherto-fore unknown trend of alleged skeletons being dug out from the cupboards of senior officers who were nearing the destination of their career. We had expressed an uncanny feeling of there being a possibility of a power struggle: ensnare a competitor in the procedures of the law i.e. have a charged memo issued against him and even if he comes out clean, the damage would be done for the reason till he comes clean, he earns no promotion and the competitor gets through. It hardly matters that ultimately the charges failed and the poor fellow earns his due, though belatedly. But the power broker has eaten away the ill-gotten fruit. In the instant case it assumes significance to note the career profile of Rajeev Bhargava till he reached the crucial phase of his career. In the year 2001 he became the Divisional Railway Manager Jhansi followed by being appointed as the Chief Bridge Engineer, South Central Railway in August 2003 and then being appointed as the Principal Chief Engineer, South Central Railway in November 2003 followed by the appointment in October 2004 as Chief Administrative Officer (Construction) East Central Railway and finally in the September of the next year as the Additional DG RDSO. These were the posts where persons in equivalent posts could possibly be motivated to pull the hidden strings.

44. We have no positive evidence of power struggle ensnaring Rajeev Bhargava. But what we have noted hereinabove by reflecting upon the ACR Proformas of Rajeev

Bhargava, gives us an uncanny feeling which is induced by our bones, that something is amiss. But what it is; we are unable to fathom.

45. But we leave it at that and revert immediately to the principles of administrative law for it is here that we have to decide whether Rajeev Bhargava is entitled to the relief prayed for or not.

46. As noted by us, at the heart of the matter is the **‘SCHEME FOR MAKING APPOINTMENTS TO POSTS OF GENERAL MANAGERS AND EQUIVALENT IN THE RAILWAYS’**. The relevant clauses of the scheme have been noted by us in para 14 above and we highlight clause 6 of the scheme which requires Assessment of Suitability as follows:-

“6. Assessment of suitability

The Selection Committee will assess the suitability in all respects of officers belonging to the Group ‘A’ Services listed in Appendix-II on merits, based on the record of their service and experience and any special requirements of the post(s) for which selection is to be made. In judging the suitability of the officers, the Selection Committee will give due consideration to their performance, as Divisional Railway Managers and as Principal Heads of Departments in the Railways.”

47. As noted by us in para 21 above, Mr.Parag P.Triptahi, learned Additional Solicitor General did not dispute the existence of the scheme for making appointments to the post of General Manager and equivalent and the mandate of clause 6, but urged that common sense guides that grading of the officer in the next below job, being proximate to the point of time as also to the post for which empanelment had to be done, said grading in the next below post was more important and thus urged that there was nothing wrong in adopting the procedure to consider only the preceding 5 year ACR grading.

48. It is no doubt true that while interpreting a policy, sufficient ply in the joints has to be given to the executive. But, as we have already held, it becomes the duty of a Judge to enrich law with the riches of other subjects of specialized knowledge and thus requiring the Judge to interpret an executive policy to bring out the best in the subject to which the executive policy relates and to kill the disease inducing germs which are detected by experts in the subject concerned.

49. We are dealing with the subject of 'Human Resource Development and Performance Appraisal'. Clause 6 of the policy guideline deals with judging the suitability of the officer i.e. it deals with Performance Appraisal. If current social thinkers and management gurus in the subject of 'Human Resource Strategy and Performance Appraisal' view short term appraisals as disease inducing germs and bring out that Performance Appraisals adopted as of today promote the legacy of the top-down and bureaucratic approach which is out of sync with the current requirements and the modus operandi of appraisal is becoming judgmental with little focus on performance improvement and further the system becoming more of a ritual, it would be our duty to interpret clause 6 to rule out, as far as possible, the 9 negative traits in the current Performance Appraisal Methodology. Management gurus have found Performance Appraisals becoming more of a tool for politicking and corporate power games. An interpretation of clause 6 which given minimum scope for politicking and corporate power games has to be preferred as long as the same finds sustenance from recognized field of knowledge accepted world over by the experts in the field of knowledge i.e. the field of Human Resource Strategy and Performance Appraisals.

50. Commencing from year 1979-80 till the year 2008-09, the journey covers 31 years and when we reflect upon the ACR grading of Rajeev Bhargava, 24 years of which stands tabulated in the table in para 3 above and the remaining have been profiled in paras 4 to 10 above, we find that for 24 years he has been graded 'Outstanding' and in the remaining years he has been graded 'Outstanding' and 'Very Good' for different periods of the years and only twice has he been graded 'Good'. These are the periods 8.8.2003 - 5.11.2003 and the period 1.4.2007 - 24.8.2007. These two short periods have entered in the most crucial phase of appraisal if we were to accept that it is a good management strategy to appraise officer with reference to their recent performance i.e. restrict the appraisal to the preceding 5 years ACR grading. The facts of the instant case highlight how a brilliant career can be completely destroyed.

51. We speak not with emotions, but on firm principles which we have extracted with reference to the deficiencies found in the appraisal methods by experts in the field and which deficiencies are accepted today by all experts in the field of 'Human Resource and Performance Appraisals' and it is our duty to enrich administrative law with the knowledge which has been acquired by the experts in the subject. Thus, we hold that clause 6 of the scheme notified on 16.7.1986 requires to be interpreted giving effect to each and every letter of the clause, giving effect to each and every word in the clause, giving effect to each and every phrase in the clause, giving effect to each and every sentence in the clause and collectively giving effect to the clause as a whole. Even otherwise, law requires plain words of English language to be understood plainly and as per common parlance. Clause 6 clearly states that the Selection Committee will assess the

suitability in all respect of officers on merits, based on the record of their service and experience. Plain English reading means simple that the record of service to be considered has to be the full and not the part. Of course, the last sentence of the clause requires the Selection Committee to give due consideration to the performance of the candidate as Divisional Railway Manager or as the Principal Head of the Department. The first and the second sentence of clause 6 must co-exists in harmony. The first requires the entire record of the service to be assessed while determining suitability and the second requires due consideration to the performance of the officer as Divisional Railway Manager or as the Principal Head of the Department. The latter cannot be read to oust the former as has been done in the instant case. By restricting the Performance Appraisal to the previous five years while determining suitability and ignoring all others, the mandate of clause 6 has been breached. If read as we have done requiring the first and the second part of clause 6 to co-exist in a symbiotic relationship, the interpretation would be in harmony with the current thinking in the field of 'Human Resource Strategy and Performance Appraisal'. Principles of administrative law need to be enriched by imbibing the nutrients from the theories accepted by the experts in the field of Human Resource Development and Performance Appraisals.

52. The interpretation we have resorted to is of an executive policy and we have simply harmonized it with the current thinking of the experts in the field and thus we are required to extract no principle of our own and least bit to become an expert, which we are not, and hence we have avoided the charge of having entered into the domain of the executive.

53. If a cut-off date has been prescribed for the Selection Committee to meet, and indeed a date has been prescribed, being after 15th July, (refer paras 14 and 15 above), we see no reason why the Selection Committee met on 18.3.2009 and 8.5.2009 when ACR grading for the immediate preceding year was not even available. Indeed, great prejudice has been caused to Rajeev Bhargava for the reason if the Committee had met after 15th July his ACR grading for the previous year i.e. the year 1.4.2008-31.3.2009 which graded him 'Outstanding' would have replaced the ACR grading for the year 1.4.2003-31.3.2004 which, as noted above has 3 portions and the ACR grading is 'Outstanding', 'Good' and 'Very Good' thereby earning him 4 marks as against 5 which he would have earned if said period was ignored and the latest included. We find that for the period 1.4.2007 – 24.8.2007 Rajeev Bhargava has been graded 'Good'. In view of the fact the Department has admittedly used the benchmark 3 'Outstanding' and 2 'Very Good' (a fact admitted as per the pleading in para 10 of the counter reply and as extracted in para 16 above) the inevitable conclusion has to be that by not communicating the same to Rajeev Bhargava to enable him to file a representation there against, corrective action as per the decision of the Supreme Court in Dev Dutt's case (supra) was required to be directed by the Tribunal.

54. Now, what should be the final relief?

55. The procedure of evaluation followed by the Screening Committee and accepted by the Appointment Committee of Cabinet has been found to be faulty, but we find no malice or ill will. Thus, the entire process i.e. the entire selection need not be struck down but relief has to be granted to Rajeev Bhargava as per our findings above.

56. Two alternatives can be adopted and we accordingly direct that it would be open to the Department to follow any one of the two alternatives.

57. Alternative one would be to convene a Review Screening Committee which shall consider the entire record of service of Rajeev Bhargava which shall ignore the ACR grading for the period 8.8.2003 - 5.11.2003 and for the period 31.7.2006 - 31.3.2007 would treat Rajeev Bhargava's ACR grading as 'Outstanding'. The Review Screening Committee would comply with the mandate of the first sentence of clause 6 of the scheme notified on 16.7.1986 i.e. would base its assessment with reference to the entire record of the service of Rajeev Bhargava and would also give due consideration to his performance as the Divisional Railway Manager Jhansi, Chief Bridge Engineer, South Central Railway, Principal Chief Engineer, South Central Railway, Chief Administrative Officer (Construction) East Central Railway and Additional D.G.RDSO, the posts held by him as Principal Head of various departments in the Railways for this is the requirement of the latter part of clause 6 of the Scheme for making appointments notified on 16.7.1986. It would be open to the Committee to devise a suitable methodology of giving weightage to the entire service record of Rajeev Bhargava vis-à-vis his performance on the posts held by him as Head of the Department. The review would be as of the date when the panel in respect whereof Rajeev Bhargava has a grievance was prepared i.e. the panel notified on 11.08.2009 and if found fit for empanelment, name of Rajeev Bhargava would be placed in the said select list at the appropriate serial number.

58. Alternative two would be to grant an opportunity to Rajeev Bhargava to submit a representation against the ACR

grading 'Good' for the period 1.4.2007 – 24.8.2007 and after disposing of the representation the Review Screening Committee would consider the matter afresh but restricting the consideration to the preceding 5 years' ACR grading and while so doing would ignore the ACR grading for the period 8.8.2003 – 5.11.2003 and for the period 31.7.2006 – 31.3.2007 would treat Rajeev Bhargava's ACR grading as 'Outstanding' and for the period 1.4.2007 – 24.8.2007 would consider the ACR grading which would be maintained after disposing of Rajeev Bhargava's representation against the existing ACR grading which is 'Good'.

59. We clarify our reason for directing a course of conduct to be followed in the alternative is that the first alternative would be in conformity with the requirement of the 'Scheme for making appointments to posts of General Managers and equivalent in the Railways' as interpreted by us by the present decision and logically should be required to be followed. We have permitted the second alternative to be followed for the reason the logic thereof is that Rajeev Bhargava should be appraised for purposes of his merit on the same procedure which was followed while appraising the merit of the others in the year 2009.

60. We have directed as afore-noted in the alternative keeping in view the fact that the Scheme for making appointments to posts of General Managers and equivalent in the Railways has been interpreted at a judicial forum for the first time and the interpretation finds a fault in the procedures adopted in the past and that the logical step required of quashing the entire selection is not being followed by us as we have found no mala fide on the part of the department.

61. The two writ petitions stand disposed of in terms of paras 57 and 58 above but without any orders as to costs.

62. Needful would be done as expeditiously as possible and in no case beyond 60 days from today.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

October 08, 2010
mm