

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00470/2017

DATED THIS THE 11th DAY OF DECEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Dr.Joglekar R.S.
S/o Sadashiv Rama Joglekar
Aged about 52 years
Working as Senior Divisional
Medical Officer, Railway Health Unit
Castle Rock, Karwar
Uttara Kannada.

....Applicant

(By Advocate Sri K.Sreedhar)

Vs.

1. Ministry of Railways
Represented by its Secretary
Railway Mantralaya
Rail Bhawan, New Delhi.
2. Railway Board
Indian Railways
Rail Bhawan, New Delhi
Represented by its
Director of Establishment.
3. Divisional Railway Manager
South Western Railway, Hubli.
4. The General Manager
South Western Railway
KSR Station
Bengaluru-560 002.
5. The Chief Medical Director
South Western Railway, Hubli.
6. Sri Praveen Mishra
Chief Civil Engineer
Western Railway HQ
Mumbai.

...Respondents

(By Advocate Sri.N.Amaresh)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant who is a MBBS Graduate was selected by UPSC in 1995 Batch as a Divisional Medical Officer on 18.11.1996 in the Indian Railways. Now presently, he is working as Sr.Divisional Medical Officer. Since his case for according Senior Administrative Grade(SAG) scale has been ignored, he filed the present OA seeking the following relief:

- i. *Call for the records from the 4th respondent pertaining to order dated 4.4.2014 vide Annexure-A10 and order for expunging the remarks made by the 6th respondent in the ACR for the year 2011-12 and treat the same as VERY GOOD in view of the opinion furnished by Chief Medical Superintendent and Chief Medical Director and quash the impugned order bearing No.SWR/APAR/RSJ/2014 dtd.4.4.2014 vide Annexure-A10 as the same is illegal arbitrary and unsustainable.*
- ii. *Quash by the issue of writ of Certiorari the impugned promotion order bearing No.E(O)III/2017/PM/27 dated 11.7.2017 vide Annexure-a2 in so far as it relates to not considering the case of the applicant for promotion to SAG scale for having completed 20 years of service in the Department and issue direction to respondents 1 to 4 to grant the applicant SAG scale with effect from 11.7.2017 and*
- iii. *Pass such other orders as may be deemed just and expedient in the circumstances of the case, including the award of costs of this application, in the interest of justice and equity.*

2. The case of the applicant is that under Dynamic Assured Career Progression Scheme(DACPS), he was entitled for next grade after completion of 4 years. Accordingly, in the year 2000, he got the next grade of Divl.Medical Officer. After 13 years of service, in the year 2009, he was given Junior Administrative Grade. On 11.1.2011, he got Selection Grade(Annexure-A1) wherein the applicant's name is found at Sl.No.43. But in the impugned order dtd.11.7.2017, persons below Sl.No.43 have been given SAG benefit. He submits that for the year 2011-12, the applicant submitted APAR which was certified by his immediate officer i.e. Chief Medical Officer indicating 'good' in all respects. But the DRM made it

'average' though the applicant is not directly working under him(Annexure-A3). The 6th respondent who developed animosity against the applicant for not meeting him at Vasco, had made unwarranted comments/remarks as a Reviewing Authority(Annexure-A4). The then Chief Medical Director, Dr.N.Parashiva Murthy had known the performance of the applicant but deliberately 6th respondent sat on the file for a number of days and after retirement of Chief Medical Director, made reviewing remarks as reviewing authority. Therefore, his work has not been looked into by Chief Medical Director. The applicant made a representation on 1.10.2013 for expunging the adverse remarks(Annexure-A5). But the same has not been considered and rejected by the 3rd respondent by his endorsement dtd.4.4.2014(Annexure-A10) which has now adversely affected the career prospects of the applicant. Regarding writing of APARs of Indian Railway Medical Service Officers, there were instructions by the Department(Annexure-A8). As per latest notification dtd.19.5.2017, the benchmark has been fixed as 'very good' without assigning marks(Annexure-A9). As per earlier guidelines of APAR, if any person earns 20 marks, he would be naturally eligible for getting the promotion in the scale after putting in the required number of years. Now at any rate those instructions have been superseded/changed by the latest communication 19.5.2017 thereby making the applicant ineligible to get SAG scale having completed 20 years of service. If earlier instructions had been followed, the applicant would not have been affected in any way in reference to remarks made by the 6th respondent in the CRs for 2011-2012. Now this requires to be 'very good' for all years, which deliberately denied for the year 2011-2012 on account of animosity developed by the 6th respondent who made the applicant to suffer for unwarranted ego by

referring that the applicant was not present when he visited. This is due to applicant not having prior information of the inspection and actually he worked in the department. Therefore, merely not meeting the 6th respondent could not have been treated as performance not satisfactory. The applicant's immediate officers and next officers have appreciated his work and have given 'very good' and 'outstanding' throughout in their reports. The 6th respondent is in no way concerned with Medical Department except being Head of the Division. In no other case, he has overruled the opinion of Chief of Medical Superintendent and Chief Medical Director. Only in the case of the applicant, he has done it deliberately to harm the service career of the applicant. Now it is affecting the applicant adversely to get SAG scale. Therefore, the order dtd.4.4.2014(Annexure-A10) requires to be reconsidered and also his case for grant of SAG scale w.e.f. 11.7.2017 has to be considered.

3. The respondents, on the other hand, have submitted in their reply statement that the applicant has arrayed Sri Praveen Mishra, Chief Civil Engineer as 6th respondent who is not a necessary party since 6th respondent is a reviewing authority and above him 4th respondent is there who is the accepting authority. The 6th respondent has to review the APARs of all the officers pertaining to Group-A and B of nearly 100 officers of the Hubballi Division and after recording the grading of the Accepting officer becomes ex-officio and the reviewing authority is barred from modifying his own order more so when there is accepting authority vested with the powers to modify/alter the grading given by the reviewing authority. Therefore, arraying of 6th respondent is not maintainable in law and therefore, the OA has to be dismissed for misjoinder of parties.
4. The respondents submit that the applicant joined Indian Railway as Assistant

Divisional Medical Officer w.e.f. 18.11.1996. Later he was promoted to Senior Scale w.e.f. 18.11.2000. He got his JAG and SG promotions under Dynamic Assured Career Progression(DACP) Scheme w.e.f. 18.11.2005 and 18.11.2009 respectively. In terms of Board's DACP Scheme dtd.7.1.2009(Annexure-R1), a Senior Grade Indian Railway Medical Service(SG-IRMS) Officer is eligible to be considered for promotion to Senior Administrative Grade(SAG) on completion of 7 years of service. In terms of para 12 of Board's letter dtd.3.6.2002(Annexure-R2), benchmark for promotion to SAG is 'Very Good'. Subsequently, vide board's letter dtd.15.12.2015(Annexure-R3), the minimum performance benchmark has been revised to 'very good' in each of the last five APARs. The applicant was considered for promotion to SAG under DACP scheme along with his benchmark in the SAG/IRMS panel approved on 10.7.2017(Annexure-R4) and was assessed 'Unfit' by the DPC on the basis of his performance recorded in his APARs for the period from March 2011 to March 2015. The representation submitted by the applicant for expunging the adverse remarks was considered and it was advised that the Competent Authority has decided to retain the grading/fitness of the APARs for the period 31.3.2012 as graded by the Reviewing Authority. The 4th respondent is the Accepting Authority for all the Group A officers of the Zonal Railway and there are about 478 Group A up to JAG grade officers in SWR and as such 4th respondent i.e. General Manager will not be able to pass speaking orders in each and every case. The averment of the applicant that the Chief Medical Director is his immediate officer is not correct. The applicant is working under the CMS and therefore the initiating officer of the applicant's APAR will be the CMS and not the Chief Medical Director. Though the applicant is under overall Administrative Control of Chief Medical Director but as the posting of the

applicant is to Hubballi Division, the applicant will be under Administrative Control of CMS/DRM. The applicant is not well versed with the rules. The averment of the applicant that he did not meet the 6th respondent at Vasco after the inspection is not substantiated and not within the knowledge of any of the respondents. All these are matter of routine administration and the allegation of the applicant that 6th respondent developed animosity etc., are unfounded. The contention that all six years the grading given to him 'very good' and 'outstanding' is not a guarantee that if the performance of the applicant does not reach the benchmark in the subsequent years, applicant cannot be graded 'very good/outstanding'. The notification dtd.19.5.2017 is issued as per the guidelines of the DoPT and the contention of the applicant that since the marks is not assigned, his case was not considered. The applicant without challenging the vires of the notification and asking for quashing of notification issued by Railway Board as per guidelines of DoPT for grant of MACP for Doctors, cannot seek for promotion to SAG. The applicant being highly aggrieved by the non-granting promotion to SAG because of not attaining the benchmark required under the rules cannot make the respondents liable for the career prospects of the applicant. The applicant being in the SAG grade accommodated in SG and as he was due for SAG, the records of APAR was forwarded to Railway Board being the competent authority to consider the APARs received from over all Zonal Railways and finally based on the bench mark to draw minutes and grant promotion to SAG. The Railway Board being the Competent Authority having found that the applicant does not reach the benchmark prescribed, Railway Board has not considered for promotion of the applicant to SAG and his juniors who were eligible to be promoted. Therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the 6th respondent has been made as a party with specific contention against him which cannot be answered by respondents No.1 to 5. The respondents 1 to 5 cannot raise any objection for impleading respondent No.6 in the case. The very fact that the 6th respondent had not denied the averments made against him amply proves that the contention of the applicant is substantiated. There was no reason for the 6th respondent to degrade the applicant for the year 2012 except 2 instances. Immediate officer over the applicant is Medical Officer who has given a correct report. The 6th respondent never analyzed the work of the applicant. The 6th respondent became disgruntled and developed ill will against the applicant only on the ground that he had not met when he suddenly visited the particular place. The DRM visited Vasco on 17.10.2011 at 6 'O' clock in the morning and left in the afternoon which was not known to the applicant. He issued a letter dtd.21.11.2011 to the applicant stating that the applicant was not available during inspection on that day and in the explanation dtd.30.10.2011, the applicant has clearly stated that he had not received prior information about DRM's visit and he was on duty and attending hospital and could not notice the arrival of DRM on that particular day and sincerely expressed regret for not attending DRM. Therefore, it is clear that merely because the applicant had not contacted the 6th respondent on 17.10.2011, the 6th respondent developed animosity even though regret was expressed by the applicant. Therefore, the then DRM(6th respondent) could not have found fault with the applicant in not meeting him on that day. The other incident was that the applicant was transferred and reported at that transferred place, which infuriated the 6th respondent and locked the office of the applicant

which was reported to the higher officer, who got the lock opened. Therefore, the 6th respondent developed animosity against the applicant. Except these 2 incidents, there are no other instances which formed foundation for drawing adverse inference against the applicant. If the 6th respondent wanted to make any adverse remarks, he should have consulted the CMD before making such irrational remarks against the applicant. The applicant's service throughout his career is exceptional and being a Doctor, no adverse conduct can be found in the service. Therefore, he is entitled for the relief in the OA.

6. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The applicant has filed written arguments note. The issue in this case relates to certain adverse entries in Annexure-A4 relating to the applicant which are as follows:

Reviewing Authority: "*The Officer is too careless besides being indisciplined & inefficient. Had been defying orders/instructions of superiors. Does not enjoy good working relations with colleague officers and Branch Officers. Did not show any improvement*".

The applicant would say that the Chief Medical Superintendent who is the immediate superior officer to him has always rated him high and the reviewing authority who has made the above comments was only in charge of the Division and due to certain minor incidents like not being present when he came on inspection to a particular place, not visiting a Station Master who was admitted in a private hospital etc., these remarks had apparently been passed and there was no other occasion for the reviewing authority to take such a strong stand in relation to the work of the applicant. The respondents have generally stated that there was no such bias and the applicant having higher gradings in the other years cannot be considered as a guarantee that the same should be given for

this particular year also and that the whole process has been reviewed and finally it has been decided not to expunge the adverse remarks or to modify the gradings. Apart from the single instance where the applicant was not present when the DRM visited and the DRM has expressed his displeasure vide Annexure-A7, the respondents have not brought in any further documentation to justify the very strong adverse comments made against the applicant by the DRM in Annexure-A4. Had he been functioning in such a shoddy manner, there would have been ample documentation on the part of the respondents to justify their stand since even if some infraction is noticed on the part of the officials like the applicant, it is necessary that they are warned of such infractions not being repeated and that a serious view is being taken on such infractions. Therefore, we have no hesitation in holding that the adverse remarks against the applicant are not justified and they need to be quashed. The applicant claims that because of the below average grading given to him in the year 2011-12, he has not been given the SAG when it was due from the year 2017 onwards. However, we find that the final grading given by his immediate superior officer in that year was only good and therefore we are unable to understand as to how the grading could have been upgraded when the immediate superior officer himself has graded him as only good and not very good which was the minimum benchmark required for him to have been considered for SAG in the year 2017 itself. However, we find from Annexure-R4 that but for this year, he has consistently been getting either very good or outstanding and therefore he is justified in having a legitimate expectation of being given SAG at least in the year thereafter. This the respondents shall do so within a period of two(2) months from the date of issue of this order if he is otherwise eligible.

7. The OA is disposed of with the above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00470/2017

- Annexure-A1: Copy of the promotion order dtd.11.1.2011
- Annexure-A2: Copy of the impugned promotion order dtd.11.7.2017
- Annexure-A3: Copy of the APAR of the applicant for the year 2011-2012
- Annexure-A4: Copy of the remarks made by Reviewing Authority dtd.1.8.2012
- Annexure-A5: Copy of the representation dtd.1.10.2013
- Annexure-A6: Copy of the inspection report dtd.16.11.2011
- Annexure-A7: Copy of the letter dtd.21.1.2011
- Annexure-A8: Copy of the Departmental instructions regarding awarding of marks for performance of officials
- Annexure-A9: Copy of the Notification dtd.19.5.2017
- Annexure-A10: Copy of the endorsement dtd.4.4.2014

Annexures with reply statement:

Annexure-R1: Copy of the Railway Board letter No.PC-V/2008/ACP/2 dtd.07.01.2009 regarding extension of Dynamic Assured Carrier Progression(DACP) Scheme for officers of the Indian Railway Medical Service

Annexure-R2: Copy of the Railway Board Letter No.2002/SCC/3/1 dtd.3.6.2002 regarding procedure for promotion to Administrative Grades in Railway Services

Annexure-R3: Copy of Railway Board letter No.201/3/1 dtd.15.12.2015 regarding Benchmarks for promotion to Administrative Grade in Railway Service

Annexure-R4: The copy of the Dynamic Assured Career Progression Scheme(DACP) proceedings of SAG/IRMS panel approved on 10.7.2017

Annexures with rejoinder:

-NIL-

Annexures with written arguments note filed by the applicant:

-NIL-
