

**Central Administrative Tribunal
Hyderabad Bench**

OA No.021/793/2014

Hyderabad, this the 22nd day of January, 2020

**Hon'ble Shri Ashish Kalia, Member (J)
Hon'ble Mr. B. V. Sudhakar, Member (A)**

P. Ramakrishna Rao,
S/o Swamy Babu
Retd. Dy. CSTE, SC Railway
R/o 302,
H.No.10-1-5/3/C
Nehru Nagar, West Marredpally
Secunderabad – 500 026.

.... Applicant(s)

(By Advocate Shri M.C.Jacob)

Vs.

1. Union of India rep. by
The Chairman
Railway Board, Ministry of Railways
New Delhi.
2. The General Manager
South Central Railway
Rail Nilayam, Secunderabad. Respondent(s)

(By Advocate:Shri N. Srinath Rao, SC for Railways)

O R D E R (Oral)

By Shri B. V. Sudhakar, Member (A):

2. The OA is filed for not considering the case of the applicant by the Departmental Promotion Committee (in short, DPC) for empanelment to the post of Junior Administrative Grade (in short, JAG), the Indian Railway Service of Signal Engineers (in short, IRSSE), for the vacancy year 2012-13 and for inaction of the 1st Respondent to conduct the DPC in time.

3. Brief facts of the case are that the applicant joined the respondents on 15.04.1978 in Group 'C' cadre, and thereafter was appointed as Assistant Signal & Telecommunication Engineer (Group 'B' Gazetted) on 15.01.1998. He was also promoted as Divisional Signal & Telecommunication Engineer (Group 'B' senior scale) on ad hoc basis on 04.06.2002. As per the Scheme in vogue, Group 'B' Gazetted Officers are considered for conferment of Group 'A' status after due procedure by DPC and their seniority is interpolated with the direct recruit Group 'A' officers and Date of Increment in Time Scale (in short, DITS) is fixed. Thereafter, further promotions on ad hoc/regular basis in Group 'A' cadre would be considered based on DITS coupled with rendering of prescribed number of years of service and the level of service records. On completion of 5 years, Group 'A' officers of Organized cadres can be considered for promotion to JAG on ad hoc

basis by the General Manager of the Zonal Railways. In terms of the Recruitment Rules, for regular promotion to JAG, the residency period 8 years in Group 'A' is to be counted from DITS. The applicant was substantially appointed to Group 'A' junior scale of IRSSE w.e.f. 29.05.2009 in terms of Board's letter dated 17.09.2009. The inter-se seniority of the applicant vis-à-vis the promote officers of all zonal railways and the 2002 batch direct recruits was fixed as 29.05.2004 vide Railway Board's letter dated 28.07.2009 (Annexure A2). The applicant was promoted to JAG vide Office Order dated 18.01.2011. Applicant assumed charge of the post on 24.01.2011 and he retired in the said post on 30.06.2013. The applicant claims that since he was substantially appointed to Group 'A' Junior Scale of IRSSE and his DITS fixed on 29.05.2004 and for having completed 8 years service on 28.05.2012, he has attained eligibility for promotion to the JAG on regular basis w.e.f. 29.05.2012. However, the applicant's name was not included in the panel dated 01.01.2014 and, therefore, he submitted a representation on 05.05.2014 requesting to review the proceedings duly considering the applicant and empanel him. The representation was not responded to. Applicant affirms that his case was due for consideration by the Railway Board for empanelment to JAG on regular basis against vacancy of 2012-2013. It is submitted by the applicant that 67 officers, junior to the applicant, have been empanelled in the proceedings dated

01.01.2014 without considering the case of the applicant. The DoPT directions are to conduct DPC prior to the vacancy year regularly, so that the timely promotions would be given to the eligible officers. A model calendar was also issued on 08.09.1998. The applicant states that if he was considered for JAG in time, he could have got the benefit of pay fixation, as it was not done, the applicant being aggrieved, the present OA.

4. The contentions of the applicant are that juniors to the applicant have been considered for JAG and his case was ignored though he was eligible. The respondents have failed to follow DoPT model calendar issued vide OM dated 08.09.1998. In fact DoPT has directed vide OM dated 14.12.2000 to fix responsibility for the lapse in not following the time-frame in conducting the DPC. The applicant has rendered unblemished service and there were no adverse remarks against him. The applicant's name was not considered for promotion in proceedings dated 01.01.2004, conducted to fill up vacancies of 2012-2013 in spite of DoPT's OMs dated 17.9.1998 and 14.08.2003 wherein the crucial date of eligibility for consideration is the 1st January of the vacancy year. DoPT has also clarified on 12.10.1998 that retired officers are also to be considered and included in the panel. Applicant has rendered 2 years service as JAG on ad hoc basis and continued to be in service for more

than a year after completing more than 8 years of service in Group 'A'. Applicant retired in senior scale in PB 3 with Grade Pay of Rs.6600 albeit he was eligible for promotion to JAG on regular basis on 29.05.2012 with grade pay of Rs.7600 in PB-3. The loss to the applicant is on twin counts of status and pay.

5. Respondents, in the reply statement, have raised a preliminary objection by stating that the applicant is seeking relief for regular promotion to JAG, on par with juniors of 2002 exam batch, by filing the OA in the year 2014, i.e., after a lapse of 12 years. Therefore, the OA is barred by limitation. Respondents have relied on the Judgement of the Hon'ble Supreme Court In Nirmal Chandra Sinha v. Union of India, 2008(4) SCALE 839 (SC) wherein it has been ruled that promotion takes effect from the date of being granted and not from the date of occurrence of vacancy. The applicant cannot be considered for inclusion of his name for promotion to the post in question, because he has already retired from service w.e.f. 30.06.2013. Respondents also indicate that the applicant was found suitable by the DPC and was placed in the Group 'A' scale w.e.f. 25.09.2009 and assigned position in All Indian Railways seniority list w.e.f. 29.05.2005, vide Railway Board's letter dated 28.07.2009. Applicant was promoted on ad hoc basis as JAG and he joined the post on 24.01.2011. He retired on 30.06.2013 in

JAG post on ad hoc basis. The process of promoting juniors to the applicant by constituting DPC, occurred only after the applicant retired vide letter dated 01.01.2014. The DPC could meet only on 13.12.2013, as processing of relevant papers took some time, for empanelment of 2002 batch of IRSSE Officers to JAG. JAG panel is not an year-wise panel. There is no crucial date before which the panel is to be finalised. Promotion to JAG is given from the date of approval given by the Minister for Railways or based on the date of actual taking over, whichever is later.

6. Heard both the counsel and perused the pleadings on record.
7. (I) The issue is in regard to grant of promotion to JAG from the date applicant is eligible vis-à-vis his juniors, who were promoted to the said grade. It is not disputed that the applicant seniority vis-a-vis promotee officers of zonal and the 2002 batch direct recruit was fixed on 29.5.2004 as per Rail Board's letter dated 28.07.2009 (Annexure A2). The juniors, numbering 67, have been empanelled on 01.01.2014 without considering the case of applicant (Annexure 4 and 5). Respondents stated that by the time the DPC could meet and declare the result on 01.01.2014, applicant had retired from service on

30.06.2013, therefore, his case could not be considered. In this regard it has to be mentioned that the DoPT has given strict guidelines that the model calendar in respect of conducting DPCs is to be followed vide letter dated 8.9.1998. In fact, DoPT as ordained vide letter dated 14.12.2000 desired that any delay in conduct of DPC should be viewed seriously and responsibility be fixed on those concerned. The crucial date for consideration to promote employees as per DoPT OMs dated 17.09.1998 (Annexure 9) and 14.08.2003 (Annexure 9) is 1st January of the vacancy year. Respondents have conducted the DPC for the vacancy year 2012-2013. The eligibility criteria is that all those officers, who are on the rolls by 1st January of the vacancy year are necessarily to be considered. Applicant was in service till 30.06.2013. Had the respondents taken prompt action as per the DoPT guidelines (supra), the applicant could have been promoted, if found other wise eligible. The respondents claimed that the processing of ACRs has taken time and therefore, the DPC could meet and issue proceedings only on 1.1.2014. This explanation of the respondents does not impress the Tribunal since they cannot thrust their mistake on to the applicant and thereby make the later suffer the adverse consequences. In fact, the Hon'ble Supreme Court has observed that the mistake of the respondents should not recoil on to the applicant. The relevant Judgements are extracted hereunder:

(a) **A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust**, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) **Rekha Mukherjee v. Ashis Kumar Das**, (2005) 3 SCC 427 :

“36. The respondents herein cannot take advantage of their own mistake.”

(c) The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna** (C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.

(d) In yet another recent case of **M.V. Thimmaiah vs. UPSC** (C.A. No. 5883-5991 of 2007 decided on 13.12.2007), it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(e) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

(II) The above Judgments squarely cover the case of the applicant.

Applicant was eligible while in service for JAG grade, however, because of the delay in conducting DPC, benefit of promotion to the JAG was denied to the applicant. Further, DoPT vide letter date 12/10/1998 (Annexure 8) has clarified that eligible retired officers have also to be considered and included in the panel. Therefore, in view of the facts and law as discussed above, the applicant need to have been considered for promotion along with his juniors by the DPC which met and issued proceedings on 1.1.2014. Respondents not doing so, is against Rules and as well as law.

(III) In view of the aforesaid circumstances, respondents are directed to conduct a review DPC and consider the case of the applicant for promotion to JAG, and if found eligible otherwise, grant notional promotion w.e.f. the date on which his immediate junior was promoted vide proceeding dated 1.1.2014. As the applicant has already retired, the pension of the applicant has to be re-fixed, if found eligible by the review DPC and the consequential benefits flow thereof, are to be granted. Time allowed to implement the above order is 5 months from the date of receipt of a copy of this order.

With the above directions, the OA is allowed with no order to costs.

(B. V. Sudhakar)
Member (A)

(Ashish Kalia)
Member (J)

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