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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1801/2001

New Delhi this the 4th day of February, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

Dr. Gadadhar Rath
Chief Medical Officer,
Narayana Vihar Dispensary,
Narayana, New Delhi.

..Applicant

(By Advocates Shri Y. Das, learned
senior counsel with Shri Sanujit Misra)

VERSUS

1. Union of India, through the
Secretary, Govt. of India,
Ministry of Health and Family
Welfare, Nirman Bhawan, N/Delhi.
2. Additional Director of CGHS
(North Zone), New Rajendra Nagar,
Shankar Road, New Delhi.
3. Under Secretary,
Ministry of Health and Family
Welfare, Nirman Bhawan, New Delhi.

..Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R (ORAL)

(Hon'ble Shri S.A.T. Rizvi, Member (A))

The applicant, who is a Chief Medical Officer in the scale of Rs.12,000 to Rs.16,500/-, is an aspirant for promotion to the Non Functional Selection Grade (NFSG) in the scale of Rs.14,300/- to Rs. 18,300/-. His claim was considered by the Departmental Promotion Committee (DPC) held on 13.7.2000 but he failed to make the grade. Hence the present OA.

2. We have heard the learned counsel on either side at length and have perused the material placed on record.

We have also perused the various judgements relied upon by

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the learned senior counsel appearing on behalf of the applicant.

3. Learned counsel appearing on behalf of the respondents submits that in accordance with the relevant rules (Ann.R 1), the claim of the applicant has been considered on the basis of ACRs earned by him during the years 1994-95 to 1998-99. According to the rules, Chief Medical Officer (CMO) with two 'very good' ACRs during the relevant period of five years, is entitled to be considered for NFSG. There is no bench mark of 'very good' prescribed for such promotion. All that is required, as stated, is that out of an aspirant's ACRs pertaining to the relevant years, at least two must be of 'very good' grade. In the applicant's case, the ACRs earned by him during each of the relevant years are consistently of 'good' grade. In the circumstances, he could not qualify for promotion to NFSG.

4. The learned senior counsel appearing on behalf of the applicant, on the other hand, places reliance on the judgement rendered by the Supreme Court in U.P. Jal Nigam and Others Vs. Prabhat Chandra Jain and Others decided on 31.1.1996 and reported as 1996(2) SCC 363) to contend that the present case involves down gradation of ACRs of the applicant in respect of the relevant years, and going by the ratio of the aforesaid judgement, the ACRs should have been communicated to the applicant by way of adverse remarks to enable him to represent in the matter. This

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has not been done and, therefore, the consideration of the applicant's claim based on 'good' ACRs is hit by the law laid down by the Supreme Court in the afore-mentioned case. In order to appreciate the contention raised by the learned senior counsel, we have perused the aforesaid judgement. This is what has been provided therein.

" as we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading".

5. If one has regard to the aforesaid observations, it clearly implies that a 'good' grade entry after a 'very good' grade entry may not amount to a step down in gradation so as to necessitate communication of 'good, grade ACRs as a matter of obligation. On facts, the applicant's claim is, therefore, not tenable inasmuch as he has been graded 'good' consistently not only during the five years in question but also even during the period of one or two years preceding the aforesaid period..It is not even a case of down gradation from 'very good, to 'good'. The applicant's record is consistent. He has been a 'good' performer throughout the relevant period and no down-gradation at all is involved. The aforesaid plea raised on behalf of the applicant ~~thus~~ fails and is rejected.

6. Learned senior counsel appearing on behalf of the applicant next proceeded to rely on Delhi High Court judgement dated 19.7.199 in Havildar Sedu Ram Vs. Chief of
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Army Staff (page 49-51 of the paper book). We have perused this and find that the facts relevant to that case are entirely different from the facts of the present OA. In the aforesaid case it was the ACR entry in respect of one and the same year which had been considered and it was found that the 'high average' remark given by the initiating officer had been down graded by the review /accepting officer to 'average', thereby affecting the promotional chances of the petitioner in that case. The ratio of the judgement of the aforesaid case will, therefore, not apply in the present case. The judgement rendered by this Tribunal on 12.11.2001 in OA 1936/2001 also relied upon by the learned counsel will also not apply in the facts of the present case. In the aforesaid OA, decided by the Tribunal, the applicant had been down graded from 'very good' to 'good', in the relevant years and this is not the case in the present case. The applicant herein has been awarded 'good' gradings consistently and throughout the relevant period.

7. Insofar as the communication of adverse entry is concerned, whether in the circumstances of the instant case or otherwise, the learned counsel appearing on behalf of the respondents has relied on the instructions issued by the DOP&T. We have considered the same and find that since 'good' grade ACRs are also positive ACRs not worthy of communication as adverse, in the facts and circumstances of the case, a view contrary to what has been provided in the aforesaid instructions cannot be taken even if reliance is placed on the aforesaid judgement relied upon by the learned

senior counsel for the applicant, and the reason for this have already been elaborated in paragraph 6 above.

8. The learned counsel appearing on behalf of the respondents has brought to our notice that the applicant was not found fit for the grant of NFSG even in the DPC held on 24.5.2001. He also submits that the applicant has succeeded in earning a 'very good' grade entry for the year 1999-2000. Since that was the only ~~one~~^{re} 'very good' grade entry during the relevant period of five years the applicant could not be promoted to the NFSG. According to him, if the applicant succeeds in getting one more 'very good' entry in the immediate future he is likely to be considered for promotion to NFSG in accordance with rules and instructions. Having observed as above, this matter, we find, need not detain us any longer as we ^{are here} ~~are~~ concerned with the period from 1994-95 to 1998-1999 only, and based on it the merit of the case has already been discussed.

9. In the light of the foregoing, the present OA is found to be devoid of merit and is dismissed. No order as to costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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