



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.958/2020

This the 21st day of December, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Surajit Kumar Das, S/o Late Shri B.K. Das,
Aged about 59 years,
Working as Principal Chief Commercial Manager,
West Central Railway, G.M Office,
Indira Nagar, Jabalpur (M.P.), Pin Code 482001.

...Applicant

(through Sh. Sumeer Sodhi, Advocate)

Versus

1. Union of India, Through its Cabinet Secretary,
Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.
2. Railway Board, Through Chairman,
Railway Board, Railway Bhawan, New Delhi-110001
3. Secretary, Department of Personnel and Training,
Ministry of Home Affairs, Govt. of India, North Block,
New Delhi – 110001
4. Member Traffic, Railway Board,
Ministry of Railways, Rail Bhawan, New Delhi – 110 001
5. Establishment Officer, Department of Personnel and Training,
Ministry of Home Affairs, Govt. of India,
North Block, New Delhi – 110001
6. Sri Mukesh Nigam, Managing Director,
Centre for Railway Information Systems,
Chanakya Puri, New Delhi - 110021

... Respondents

(through Mr. Gyanendra Singh and Sh. V.S.R. Krishna, Advocates)

ORDER (ORAL)**Justice L.Narasimha Reddy, Chairman :**

The applicant joined the Indian Railways Traffic Service. He earned promotion to HAG and thereafter, he became eligible to be promoted to the post of Additional Member, Railway Board in the year 2019. The DPC met for that purpose on 10.12.2019. However it did not recommend the case of the applicant. As a result, the applicant was not promoted to the post of Additional Member and the selected officers were appointed vide order dated 21.02.2020. He attained the age of superannuation on 30.04.2020. The applicant filed this OA challenging the order dated 21.02.2020 in so far as it did not contain his name. The applicant contends that the respondents selected and appointed his juniors, even while denying him that benefit. He also stated that the criteria and parameters adopted by the DPC are contrary to law.

2. On behalf of the respondents a detailed reply is filed. It is stated that the applicant was one of the candidates considered by DPC for promotion and on analyzing his service record, it was

decided not to recommend his case and accordingly the applicant could not be appointed as Additional Member.



3. We heard Sh. Sumeer Sodhi, learned counsel for the applicant and Sh.Gyanendra Singh and Sh.V.S.R.Krishna, learned counsel for the respondents.

4. The appointment to the post of Additional Member, Railway Board is purely on selection basis. The applicant was within the zone of consideration and his name figured at Sl.No.5 in the list of eligible officers. However, the DPC, that met on 10.12.2019 did not recommend his case.

5. It is fairly well settled that the DPC has its discretion whether or not to select a person who is otherwise in the zone of consideration, even if fairly senior in the list. It is only when the malafides are attributed against the Committee as a whole or any individual member and such persons are made parties or to the proceedings eeownomin, that an occasion would arise to examine the recommendations made by the DPC. In the absence of such allegations, the judicial review is too narrow and minimum into such matter.



6. This is not a case in which the applicant was not considered at all. The DPC considered his case and the manner in which it dealt with him is mentioned in the minutes of the DPC, which are reproduced in para-8 of the counter affidavit. They read as under :

“The Committee noted that Shri Surajit Kumar Das was graded as ‘Very Good’ by the Reporting Officer in his APAR for the year 2017-18, which was upgraded to ‘Outstanding’ by the Reviewing Authority without adequately justifying the upgradation. For the purpose of assessment of performance, Committee has taken the grading for the period 2017-18 as ‘Very Good’. The Committee further noted that Shri Das was graded as ‘Good’ by Reporting Officer in Part-2 of his APAR for the year 2015-16, i.e. for the period 13.08.15 to 12.02.16, which was also accepted by the Accepting Authority. On subsequent representation by Shri Das, the APAR grading for the said period was upgraded to ‘Very Good’ by the Competent Authority. The Committee also noted that in a vigilance case, CVC had advised ‘Minor Penalty Proceedings’ against Shri Das. The allegations in the vigilance case relates to awarding contract with major technical deviations. Shri Das was, however, ‘Counseled’ on 04.04.2019 in the said case, i.e. after occurrence of vacancy for which he is being considered. In the assessment of the Committee as deliberated above, Shri Surajit Kumar Das has less than four ‘Outstanding’ gradings in his APARs for the preceding ten years and, therefore, does not fulfill the performance norms of ‘Very Good (+)’ as decided in para-5 above. Keeping in view the performance norms and the fact that Shri Surajit Kumar Das has been ‘Counseled’ on 04.04.2019, the Committee finds Shri Surajit Kumar Das not suitable for appointment to Level 16.”

7. From this it is evident that two factors weighed with the DPC. The first is that the ACRs of the applicant are not upto the



expected level. The second is that his having been counseled, as a sequel to the recommendation of the CVC for initiation of minor penalty proceedings. It is true that the ACRs of the applicant were downgraded by the DPC for certain years. That however is the discretion or power conferred upon the DPC. Almost in an objective manner, the DPC has also recorded the reasons in support of their conclusions, though it is not under any legal obligation to do that. The applicant is not able to demonstrate as to how and why the recommendations of the DPC are tainted in law. Once the name of the applicant did not find place in the list of candidates recommended by the DPC, the question of his being appointed does not arise.

8. At any rate, the applicant has retired on superannuation. The occasion to grant the relief to a retired person would arise if only the appointment to the higher post by way of promotion and a junior to him was promoted with effect from the date prior to the retirement of such person. Once the appointment is by way of selection, such an occasion does not arise. Time and again, the

Hon'ble Supreme Court has also held that the question of promoting a retired person does not arise.



9. Viewed from any angle, we do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs.

(MOHD.JAMSHED)
MEMBER (A)

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

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