

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29th day of SEPTEMBER 2005.

Original Application No. 1022 of 1998.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Hon'ble Mr. A.K. Singh, Member (A)

Dr. V.P. shukla, S/o Sri S.N. Shukla,
Posted as Divisional Medical Officer,
N.E. Railway,
GORAKHPUR.

.....Applicant

By Adv: Sri S. Agarwal & Sri S.K. Mishra

V E R S U S

1. Union of India through the Secretary,
Ministry of Railway,
NEW DELHI.
2. The Railway Board, Rail Bhawan, New Delhi,
through its Secretary.
3. The General Manager, N.E. Railway,
GORAKHPUR.
4. Dr. H.S. Patra, Presently posted as Sr.
Divisional Medical Officer, Cancer Institute,
N.E. Railway,
GORAKHPUR.
5. Dr. Devilal Mool Chandra Kumawat,
Posted as Sr. Divisional Medical Officer,
Western Railway, to be served through the
General Manager Western Railway Church gate,
BOMBAY.

.....Respondents.

By Adv: Sri D.C. Saxena.

O R D E R

By K.B.S. Rajan, JM

On hearing the counsel for the parties, the OA
was dismissed for reasons to be recorded separately.
This order spells out the reasons for the dismissal
of the O.A.



2. The applicant was functioning as A.D.M.O. w.e.f. 22-04-1987 and his position in the seniority list was 85 while that of the respondents 4 and 5 was respectively 87 and 86. The applicant was promoted as D.M.O. (Sr. Scale) in 1991. On 01-06-1993 the applicant was served with an extract of his ACR for the year 1992-93 containing certain adverse entries. The entries communicated were as under:-

"1. *Aptitude & potential: - the level of aptitude has to be cultivated more by him. He should develop more potential.*

2. *Interest taken in family welfare:-*

Family welfare achievement is only twenty percent.

II. *The administration expects you to improve in the direction indicated.*

III. *Please acknowledge receipt of this letter, on the duplicate copy attached within a week of its receipt."*


3. The applicant had, against the adverse remarks made a representation addressed to the General Manager, but the same was rejected by the authority and duly communicated. The applicant had thereafter penned another representation to the Railway Board, which according to the applicant remains unanswered.

4. In 1998, a promotion panel was published, in which the applicant's name was found missing while his juniors' names figured. As such, the applicant preferred a representation against his supersession

which, however, was rejected by the impugned order. The impugned order contains the reasons as, "the claim of Dr. V.P. Shukla Sr. Scale/IRMS/ NE Railway for empanelment to JAG Grade were considered in the panel approved on 25-01-1998 but he was not selected on the basis of his performance".

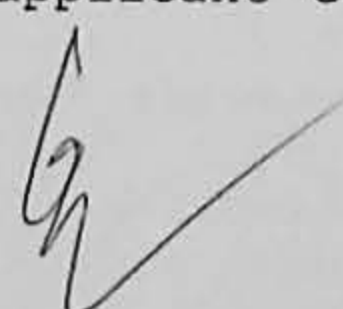
5. Aggrieved by the above, the applicant has moved the O.A. And, pleadings were complete.

6. Arguments were advanced. The applicant contended as under:-

- (a) The adverse remarks were only "suggestive" and as such, the same cannot be taken as adverse.
 - (b) The Railway Board having not disposed of the representation against the adverse remarks for 1992-93, the authorities should not have considered that year's ACR for considering the promotion of the applicant to the J.A. Grade in 1998.
 - (c) There has been no other adverse remarks against the applicant and as such, the applicant ought to have been considered and promoted.
 - (d) The applicant was promoted in 2001 which goes to show that his ACRs were comfortable in the past and as such, his supersession was illegal and unjust.
 - (e) The authorities had acted mala fide.
 - (f) The decision of the Tribunal reported in ATR 1988 (1) 379 is clear that consideration of the representation against the adverse ACR should be by an authority above Reviewing Authority applies in his case and in the instant case since the representation was not decided by the Railway Board, the supersession was illegal.
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7. None of the above arguments could be held as tenable. First, there is no question of suggestive remarks. The very communication of the adverse remarks would go to show that they were adverse. The words, "He should develop more potential" etc., form only adverse remarks that he did not possess adequate potential to suit his functional responsibilities and professional efficiency. Instead of putting the sentence in negative terms, the authorities had polishedly indicated that the applicant should develop more potential. Nothing less; nothing else.

8. That the Railway Board was addressed a communication which remained unanswered and therefore, the DPC should not have considered the ACR for the year 1992-93 is also not valid for the simple reason that the applicant clearly had stated to a pointed question as to who is the reporting and reviewing authorities, that it is the medical Department. Thus, the G.M. happens to be above the reviewing authority and hence, the applicant had rightly addressed his first representation to the G.M. who had rejected his representation holding that the remarks would stay. Further appeal before the authorities higher than the G.M. has not been provided for. Against the rejection order, the applicant could have approached the Tribunal, which

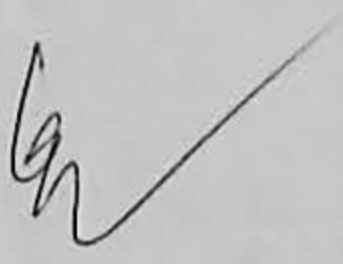


he chose not to. As such, the second contention also crumbles to the ground.

9. As regards the fact that there has been no other adverse remarks against the applicant and as such, the applicant ought to have been considered and promoted, it was the accepted principle that the reports for a period of five years should be scanned and as such, if the applicant had obtained comfortable reports for four years, there is no question of his being promoted on the basis of the fact four out of five ACRs were good.

10. The contention that the applicant was promoted in 2001 which goes to show that his ACRs were comfortable in the past and as such, his supersession was illegal and unjust again is not tenable since one of his ACRs considered for his promotion in 1998 was bad he could not be selected whereas, that ACR being the earliest, was not the subject matter when in 2001 the applicant was considered and promoted. In fact, the applicant should be happy that the respondents acted bonafide and in accordance with the Rules.

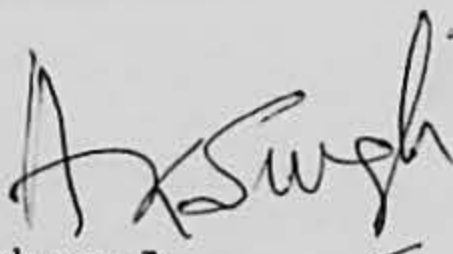
11. The contention that the authorities had acted mala fide also cannot be admitted as the applicant had not brought out any point as to malice in law nor did he specifically level malafide against any

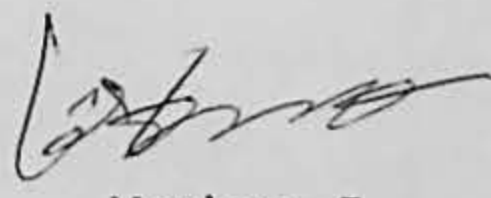


particular officer, much less impleaded such person in the OA.

12. The decision of the Tribunal reported in ATR 1988 (1) 379 is clear that consideration of the representation against the adverse ACR should be by an authority above Reviewing Authority applies in his case and in the instant case since the representation was not decided by the Railway Board, the supersession was illegal. The same applies in this case as well. However, what the applicant wanted is that the representation filed before the highest authority should have been considered. This has not been contemplated in law.

13. In view of the above the OA fails and is dismissed. No costs.


Member-A


Member-J

/pc/