

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/00423/2020

**Reserved on: 01.04.2021
Pronounced on: 16.04.2021**



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

D. Sanjeeda Rao, IRSME,
S/o. D. Sesha Rao, Aged 60 years,
Occ: Deputy Chief Safety Officer (Mechanical) (Retd.) (Group 'A'),
O/o. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 071,
R/o. Railway Qtrs No. 610, Lancer Lines,
Opp. To Apollo Hospital, Secunderabad – 500 003,
Permanent Address: H. No. 280, Narayana Puram Colony,
Poranki, Vijayawada – 521137, Krishna District, AP.

...Applicant

(By Advocate: Mr. K.R.K.V. Prasad)

Vs.

1. Union of India rep by
The Secretary, Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi – 110 011.
2. The Director (Estt.,),
Railway Board, Rail Bhawan,
Ministry of Railways,
New Delhi – 110 011.
3. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad – 500071.

....Respondents

(By Advocate : Mr. S.M. Patnaik, SC for Railways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to grant of promotion to the selection grade w.e.f 1.1.2020.



3. Brief facts of the case are that the applicant belongs to the 2006 batch of Indian Railway Service Mechanical Engineering (IRSME) and is working in the Junior Administrative Grade. He was due for selection grade after 13 years of service as on 1.1.2020 but was found unfit by the DPC. Aggrieved the OA is filed.

4. The contentions of the applicant are that his juniors were selected. The last 5 years CRs from 2014-15 to 2018-19 have to be considered instead those from 2013-14 to 2017 -18 were considered which is incorrect. The benchmark for selection was changed from 'Good' to 'Very Good' by the Railway Board on 15.12.2015. The changed bench mark of 'very good' prescribed in the Railway Board memo would not be applicable to the APARs of previous years as per the Hon'ble Bangalore Bench decision of this Tribunal in OA 727/2016. The minimum bench mark of 'good' as laid down in Railway Board memo dated 3.6.2002 is the yard stick to be adopted. Changing the rules after the game has started is impermissible under law. The applicant was given the grade of 'good' in the APAR of 2013-14 and in the first part of 2016-17, against which the applicant did not represent for personal reasons. Applicant was promoted to JAG after the reviewing authority modified the remark in APAR 2013-14 and therefore, when promotion could be given to JAG (Junior Administrative Grade) on

the basis of 2013-14 the same cannot be a hurdle to promote him to the Selection grade. DPC has not given reasons for grading the applicant as unfit. Applicant belongs to the SC community and hence relaxed standards as per DOPT guidelines are to be applied to ensure adequate representation of the SC community officers in the Selection grade. The Railway Board memo 26/2019 clarified that the bench mark of 'good' given in the APARs prior to 25.7.2016 are to be treated as 'very good' for the purpose of MACP. By not gaining the promotion due, applicant is put a monetary loss of Rs.3900 per month. Articles 14 and 16 of the Constitution have been violated.

5. Respondents while confirming the career particulars of the applicant state that as per the Railway Board memo dated 16.4.2018 the last 5 years APARs have to be considered and the grading has to be 'very good'. Out of the APARs considered from 2013-14 to 2017-18 the bench mark was 'good' in the 2013-14 and the first part of 2016-17 and hence was not considered for promotion. Applicant did not represent against the 'good' bench mark grading given to him. Issue is being raised after 6 years of the 'good' grading given in 2013-14. Reservation does not apply to Group A category. The instructions issued in the letter dated 16.4.2018 supersede those issued earlier.

6. Heard both the counsel and perused the pleadings on record.

7. I. The issue is in regard to non grant of promotion to selection grade to the applicant. The applicant belongs to the 2006 batch of IRSME and was due for promotion to the selection grade as on 1.1.2020. The Railway Board memo dated 16.4.2018 has laid down that the 5 years

APARs are to be considered for evaluation. The grading of the applicant in the APARs from 2013-14 to 2018-19 are as under:



Year	Grading
2013-14	Good
2014-15	Very Good
2015-16	Very Good
2016-17 (in two parts)	Good / Very Good
2017-18	Very Good
2018-19	Outstanding

II. As can be seen from the table the applicant was awarded the grading of 'good' in 2013-14 and in the first part of 2016-17. The bench mark for promotion to the selection grade was changed to 'very good' by the Railway Board on 15.12.2015. The applicant cited the Hon'ble Bangalore Bench judgment in OA 727/2016 to support his contention that the change in bench mark should not be applied to APARs of the years prior to the issue of the Railway Board order cited. The judgment is reproduced for reference hereunder:

"7. Even a cursory perusal of the documents produced makes it clear that the respondents for reasons that are quite incomprehensible have chosen to follow the OM dated 25.06.2015 with retrospective effect instead of prospective effect. There can be no doubt that the OM dated 09.10.1989 (Annexure A2) held the field since Annexure A3 was issued only on 25.06.2015. The period of service for which the applicant's APARs were relevant related to 2010-11 to 2014-15, well before the criteria were revised. The copies of the APARs produced by the applicant give the impression that he satisfied the criteria prescribed in Annexure A2. Nothing in Annexure A3 gives the impression that it was applicable with retrospective effect. The Justification provided by the respondents for their action is weak and deserves to be dismissed at first sight. The judgment cited by the respondents also makes it clear that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. We are sure the DOPT's objective was to make the selection process more stringent; there can be no quarrel with this intention. However, we doubt that the intention was to make Annexure A3 applicable with retrospective effect. Such a move would be grossly unfair. "

Ld. Counsel for the applicant made a feeble attempt to claim the Bangalore ratio applies to all the CRs, which is not in step with the ratio laid, as seen from the above. Even if the APARs of 2014-15 to 2018-19 were to be considered as contended by the applicant, the first part of the APAR of 2016-17 had the bench mark of 'Good' and from this year onwards, the benchmark to be had is 'very good' even by applying Bangalore Bench verdict. Hence, the applicant was found unfit by the DPC. The performance of the applicant is reassessed by the DPC by taking into consideration the information available in the APARs including the bench marks. DPC found the applicant to be unfit for selection to the selection grade. The Tribunal cannot sit on appeal over the decision of the selection committee as observed by the Hon'ble Apex Court in Civil Appeal No. 6057 of 2010: **DR. BASAVAIAH V DR. H.L. RAMESH & ORS**, decided on 29th July, 2010, by referring to the case of Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others (1990) 1 SCC 305, and held as under:-

37. *In Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others (1990) 1 SCC 305, the court in somewhat similar matter observed thus:*

"...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material



before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

III. Further, the decision of respondents to consider the bench mark of 'very good' by Railway Board letter dated 15.12.2015 is a policy matter. The Tribunal has a very narrow band to intervene in a policy matter unless it is malafide. The respondents have applied the same yardstick of 'very good' to all others and therefore, even the juniors to the applicant who had the required benchmark were selected. Hence, there is nothing malafide about the decision nor any irregularity alleged in the constitution of the Committee. Recently, the Hon'ble High Court of Uttarakhand, relying on a number of judgments of the Hon'ble Apex Court has held that it is not the forte of the courts to interfere in matters of policy in **Prakash Chandra vs State of Uttarakhand And Others** on 10 October, 2019 in Writ Petition (S/B) No. 467 of 2019 as under:

10. While it has the power to strike down a law on the ground of want of authority, this Court would not sit in appeal over the policy of the State Legislature in enacting a law. [[Rusom Cavasiee Cooper v. Union of India](#): (1970) 1 SCC 248]. Just as it cannot direct a legislature to enact a particular law, (Supreme Court [Employees' Welfare Association v. Union of India](#): AIR 1990 SC 334), the High Court, under [Article 226](#) of the Constitution of India, cannot direct the Executive to exercise power by way of subordinate Legislation, pursuant to the power delegated by the Legislature to enact a law, in a particular manner. ([Indian Soaps and Toiletries Makers Association vs. Ozair Husain](#) and Ors: (2013) 3 SCC 641; [Dhananjay Verma vs. State of Uttarakhand & others](#): Full Bench judgment in Writ Petition (S/B) No.45 of 2014 dated 21.05.2019).

The applicant did not even represent against the 'good' grading and raising the issue of the 'good' grading after the passage of several years, has made his case very weak. The applicant used the numerical values



given to the grades to justify that he is eligible for the relief sought. The APARs are adjudged based on the grading as per Railway Board letter dated 10.4.2018 and not the numerical values self professed by the applicant. There is no rule which supports the approach of numerical summation of the APAR values as has been attempted by the applicant.



IV. Further, the applicant has also added the numerical values of the 2 parts of the APARs of 2016 to justify that the overall grading is 'very good' and not 'good'. The assertion is not backed by any rule. However, applicant cited the OA 3817/2012 adjudicated by the Hon'ble Principal Bench of this Tribunal in support of the looking at 2 parts of the APAR of an year together to justify his contention. However, the observations in the cited OA are in support of the respondents as extracted hereunder:

"10. XXXXX

On the basis of the above, the following questions need to be asked so that the existing issue may be resolved:-

- 1) *Whether the grading system followed by the respondents is contrary to what has been provided in the Recruitment Rules dated 2.02.2006 in terms of assigning marks?*
- 2) *Whether the respondents have received the missing second part of ACRs for the year 2002-2003 which they have previously used in promoting the applicant to the post of Chief Commissioner of Income Tax?*
- 3) *Assuming that the argument of the respondents is correct that second part of the ACR for the year 2002-2003 has not been received whether the DPC should have gone back to the 1st year when the next ACR was available?*

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19. *In consideration of the above facts, we find that the applicant was promoted to the rank of CIT despite the concerned ACR being not available. This fact had already been considered by the DPC held on 01.10.2010. It was for the applicant to have challenged the non-availability certificate at that point of time. However, having not done that, no ground emerges vide which the applicant could ask for setting aside the Recommendation of the DPC in this respect on the ground of non-availability of his ACR for the period 01.04.2002 to 31.12.2002. We, therefore, decide this issue against the applicant as well.*



20. Now we consider as to what relief could be given to the applicant. Having decided all the previous issues against the applicant, we find that the applicant has failed to substantiate any of the grounds on basis of which the proceedings could have been set aside. On the other hand, we also find that the question of ACR being missing for the period 01.04.2002 to 31.12.2002 is an old story which had been considered by the Government and a non-availability certificate issued. This Certificate forms the basis of his promotion as CIT. Therefore, the applicant cannot now turn around and say that he challenges his missing ACR in the instant Original Application.

21. In the facts and circumstances of the case enumerated above, we find that there is no merit in the instant Original Application and the same is ordered to be dismissed without any order as to costs.”

In the case on hand, the CRs are not missing, but the grading below the benchmark was not challenged and therefore, the judgment is in support of the respondents' stand.

V. Besides, in view of the observation of the Hon'ble Supreme Court cited supra, which reign supreme, the applicant does not qualify for promotion to the Selection Grade. The further contentions of the applicant are that since he is an 'SC' candidate, relaxed standards are to be applied as per DOPT instructions, does not hold good, since relaxed standards are not applicable to Group 'A' organized services. Further, the RBE No. 26/2019 applies to MACP scheme and not for regular promotion.

VI. Therefore, in view of the aforesaid circumstances, there being no merit in the OA, the same is dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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