

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00232/2015

Date of CAV : 17.03.2021

Date of Pronouncement : 25.03.2021



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

Dr. M.V. Ramana Reddy,
S/o. M. Venkateswarlu, aged 61 years,
Retd. Chief Medical Superintendent,
South Central Railway, Secunderabad,
R/o. H. No. 45-57-7, Narasimha Nagar,
Visakhapatnam – 530 024.

...Applicant

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

Vs.

1. Union of India, Represented by
The Chairman, Ministry of Railways,
Railway Board, Rail Bhawan, New Delhi.
2. The Member (Staff),
Ministry of Railways,
Railway Board, New Delhi.
3. The Director General of Railway,
Health Services, Railway Board,
Ministry of Railways, New Delhi.
4. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

....Respondents

(By Advocate : Mr. N. Srinatha Rao, SC for Railways)

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

2. The applicant filed the OA challenging the action of the respondents in not empanelling him for promotion to HAG for the year 2012-13.



3. Brief facts of the case are that the applicant joined the Indian Railway Medical Service (IRMS) in 1977 and retired on 30.6.2013 as Chief Medical Superintendent in Senior Administrative Grade. Applicant filed OA Nos. 353 of 2012 & 35 of 2013 wherein respondents were directed to reconsider upgrading of the ACRs of the relevant period and thereon if found justified, consider the applicant for the post of Chief Medical Director (CMD) & Higher Administrative Grade (HAG) cadre. On filing contempt, it was informed that a decision has been taken to comply with the order of the Tribunal. However, during the pendency of the CP, the case of the applicant was not considered for promotion to the post of HAG vide impugned letter 7.3.2014. Hence, the OA.

4. The contentions of the applicant are that the overall performance of the applicant was high and there were no adverse remarks in the APARs. Therefore, DPC finding him unfit for promotion needs to be reviewed and more so in the context of the observations of Tribunal in OAs 353/2012 & 35/2013 about the ACRs/ posting as Chief Head of Department (CHOD). The reasons for non consideration of the applicant for promotion to HAG have not been communicated and that the respondents are prejudiced against the applicant. The impugned order was issued without review of the ACRs as directed. The denial of promotion to the applicant is illegal and

violative of Principles of Natural Justice. The applicant has been put to financial loss as well as loss of status.



5. Respondents while confirming the career profile of the applicant state that as per Railway Board memo dated 19.6.2003 for posting as CHOD (Chief Head of the Department) from among the SAG officers the senior most officer with 20 points is considered subject to vigilance clearance. The applicant case was considered for empanelment to HAG for the years 2010-11 & 2011 -12 but was not empanelled by the selection committee as there were sufficient number of officers against the available vacancies above the applicant, who had the required bench mark. Applicant had below bench mark grading for the years 2004-05 to 2009-10 which were communicated and when the applicant represented, the competent authority decided to retain the grading awarded. Consequently, OA 353 of 2012 was filed and as per directions contained therein, the grading of the APAR for the years 2004-05 to 2010-11 were reviewed and the grading of 'Very Good' given in the APARs of 2007-08 & 2010-11 were upgraded to 'Outstanding' and retained the rest. Again, when the applicant was considered for the year 2012-13 he was found unfit by the DPC. In regard to posting of the applicant as CMD/ CHOD on par with the juniors in the SAG grade, the APARs of 2007-08 & 2010-11 were upgraded as 'Outstanding' on 29.8.2013, whereas applicant has retired on 30.6.2013.

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

7. I. The dispute is about not promoting the applicant to HAG and further not posting him as CHOD in the SAG grade. The facts of the case reveal that the applicant had below bench mark grading in the APAR for

the years 2004-05 to 2007-08 and challenging the same applicant filed OA 353/2012. As per the directions of the Tribunal respondents have reviewed the APARs from 2004-05 to 2010-11 and upgraded those for the years 2007-08 & 2010-11 from very good to outstanding and retained the rest.

As a result the APAR grading of the applicant from 2007 to 2011 is as under:



Year	2007	2008	2009	2010	2011
Grading	VG/F	O/#	VG/F	G/F	O/F#

For selection to the post of HAG, the minimum grading required is very good. Besides, as per letter 2002/SSC/3/1 dated 3.6.2002 of the respondents, the DPC makes its own review and does re-grade the APARs before making its recommendation.

Further, as per the resolution of the respondents dated 11.6.2010, the principles and procedures prescribed in making selection to the grade of HAG are as follows:

- i) Officers to be considered for empanelment should have worked in SAG for a minimum period of 3 years on regular basis and should be less than 59 years of age on the 1st April of the year for which the panel is made.
- ii) Only such of the empanelled officers would be appointed to these posts who had a year or more service left on the date of occurrence of vacancy falling in their turn.

II. The selection to HAG grade in the context of the minimum bench grading of very good + and with reference to the circulars stated above, DPC found the applicant unfit for promotion to HAG for the year 2012-13. Thereafter applicant retired on 30.6.2013. The Tribunal cannot sit on appeal over the decision of the DPC, since promotion is not just based on APARs, but the performance of the applicant will also be under scrutiny. The selection to the grade of HAG would be rigorous as one has to hold important and sensitive responsibilities in this grade. Selection/Promotion Committee recommendation cannot be reviewed by the Tribunal unless it is malafide, committee constitution is defective and the procedures & rules were not followed. None of the elements stated are found in the instant case in conducting the process of selection to the HAG grade. After a selection committee selects/rejects a candidate for promotion based on due assessment, then the selection/rejection is not subject to appeal. The fitness of a candidate for a particular grade or not, has to be decided by the duly constituted Selection Committee, which has the expertise on the subject and not the Tribunals, which do not have the required expertise. The Tribunal can examine if the procedure for selection as adopted by the respondents is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides. We do not find any such violations in the non selection of the applicant. In fact, after due review, the APARs for the years 2008 & 2011 were upgraded to outstanding on the direction of the Tribunal in OA 353/2012, and thereafter, the DPC met and rejected the case of the applicant. The discretion to select has been given to the Selection Committee only and Tribunal rarely sits as a court of appeal



to examine the selection of the candidates nor is it the business of the Tribunal to examine applicants performance and record its opinion. While making the above remarks, we rely on the observations of the Hon'ble Supreme Court in a catena of judgments as under:



(i) In Civil Appeal No. 6057 of 2010: DR. Basavaiah v. DR. H.L. Ramesh & Ors., decided on 29th July, 2010, the Apex Court has referred 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:*

"Xxxxx 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."

(ii) In *Satya Narain Shukla v. Union of India, (2006) 9 SCC 69*, the permissible extent of judicial intervention in selection process has been highlighted. The Court has held as under in that case:-

"It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides."

(iii) In *M.V. Thimmaiah & ors. v. UPSC & Ors, (2008) 2 SCC 119*, the ratio was that the Court cannot sit on appeal over the assessment made by the Selection Committee. The Court has, in that case, held as under:-



“.....Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion.

(Relied upon judgments (i) Surya Dev Rai v. Ram Chander Rai & Ors. (ii) P.M. Bayas v. Union of India & Ors. (iii) Ashok Kumar Yadav v. State of Haryana (iv) Ajay Hasia v. Khalid Mujib Sehravardi (v) UPSC v. S. Thiagaraja)

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*Keeping in view the ratio laid down by this Court in several decisions, now we shall examine the argument of learned Senior Counsel for the appellants which had been addressed. But we may at the very outset observe that **the Court while considering the proceedings of the Selection Committee does not sit as a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed.***

Xxxx

We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. “

Thus, based on the legal principles laid down on the subject as at above, the non-selection of the applicant to HAG grade by a duly constituted DPC cannot be questioned.

III. In regard to posting of the applicant as CMD/CHOD on par with the juniors in the SAG grade, the APARs of 2007-08 & 2010-11 were upgraded on 29.8.2013, whereas applicant has retired on 30.6.2013. Therefore, he could not be considered to the said post based on below benchmark gradings earlier to his retirement.



IV. The other contentions of the applicant that the respondents were prejudiced against the applicant are not in the realm of reason, since if it were to be true upgrading of the 2 APARs as outstanding would not have arisen. Besides, the Tribunal in OA 353/2012 has directed to review the upgrading the APARs in question and the respondents have done so keeping in view the extant rules and eligibility of the applicant for such upgrading. Hence, it is not correct to state that the respondents have not acted on the orders of the Tribunal as is required.

V. Therefore, in view of the aforesaid, there is no merit in the OA and hence we dismiss it with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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