

(7) R3

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 1138 of 1988

Dr. V.K. Maurya Applicant.

Versus

Union of India Respondent.

...

Hon. Mr. Maharaj-Din, Member (J)

Hon. Mr. S. Das Gupta, Member (A)

(By Hon. Mr. S. Das Gupta, Member (A))

In this O.A. No. 1138 of 1988 filed under Sec. 19 of the Administrative Tribunals Act, 1985 the petitioner has challenged the orders dated 29.9.1987 (Annexure-1), 30.10.1987 (Annexure-2) and 13.4.1988 (Annexure-4) issued by the Headquarter office of the Northern Railway promoting a number of Assistant Divisional Medical Officers (A.D.M.O. for short) to the post of Divisional Medical Officer (D.M.O. for short).

2. The brief facts of the case are that the petitioner was appointed as A.D.M.O. on 22.3.1979 on his selection by the Union Public Service Commission. By its order dated 25.9.1987, the Railway Board upgraded 208 posts of A.D.M.O.s. to the grade of D.M.O.s. Subsequently, by the impugned order at Annexure-1, 170 persons ^{who were} ~~have~~ promoted as D.M.O.s. out of whom many ^{of} ~~of~~ them were A.D.M.O.s. junior to the petitioner. Latter, by the impugned order at Annexure-2, 13 more A.D.M.O.s. were promoted as D.M.O.s. and in this list also number of A.D.M.O.s. were junior to the petitioner. The petitioner submitted a representation to the competent authority

(B)

A3
2

- 2 -

against his supercession but the same was turned down stating that his case was considered along with other eligible A.D.M.Os. and he would be considered in future also. Thereafter, the impugned order dated 13.4.1988 (Annexure- 4) was issued by which 25 more A.D.M.Os, many of whom were junior to the petitioner, were promoted as D.M.O.s. It is this promotion of the juniors to the petitioner which is under challenged in this O.A.

3. The petitioner's case is that he was fully eligible for the promotion to the upgraded post having completed more than 5 years of service and his record of service for 5 years prior to promotion was unblamished.

4. In the counter affidavit, the respondents have stated that the ^{grade} and criterian for promotion was seniority-cum-suitability, the qualifying period of service being 5 years as A.D.M.Os. The petitioner could not ^{be} promoted to the upgraded post ^{why?} that he had completed 5 years ~~as~~ of service at the time of consideration for promotion partly because there were adverse entries in the C.Rs. for the earlier period of service and partly because of absence of C.R. for considerable period during which he was on the sick list on account of mental instability. In this regard, the respondents have contended that in his C.R. for the year ending 31.3.1980 there was an adverse entry which was communicated to him, the petitioner's representation against the adverse entry was considered by the competent authority and was rejected. Again in his C.R. for the year ending 31.3.1982 there

was an adverse entry which was got noted by him but he did not prefer any representation against the same. Moreover, during the periods 1.4.1982 to 31.3.1983, 1.4.1983 to 31.3.1984, 24.9.1985 to 31.3.1986 and 1.4.1986 to 31.3.1987, no C.R. could be rendered on account of non-performance of duty being on sick list due to mental instability. Thus, taking the totality of performance of the petitioner during the relevant period, he was not considered suitable for promotion.

5. The petitioner has not denied that the promotion is not automatic on completion of 5 years of service but is dependent on suitability. His contention, however, is that even during the periods of his absence, C.Rs. could have been rendered and in any case, C.Rs. for the period, he had actually worked should have been sufficient to entitle him for promotion. He has also raised the plea ~~and~~ of the absence of proper communication of adverse entries to him. He has further contended that even some A.D.M.Os. who had not completed 5 years qualifying period of service were listed for promotion. Thus, persons not eligible for promotion have been listed for promotion, whereas, he, who was fully qualified for promotion has not been promoted.

6. We have heard the learned counsel for the parties and carefully perused the records.

7. We are unable to accept the petitioner's plea of

Contd ... 4p/-

- 4 -

non-communication of the adverse entries in his C.Rs. since by his own admission, such entries were shown to him and he also signed in token thereof. It is for the competent authority to consider any representation against such adverse entries and come to a conclusion whether same should be expunged or retained. With regard to one adverse entry, the respondents have stated on oath that the representation against the same was considered by the competent authority and was turned down. There is nothing on record to show that such rejection of the representation was frivolous or malafide. As regards the other adverse entries, the petitioner has simply admitted that he chose not to represent against the same.

8. It is also clear from the averments of the respondents which has not been effectively rebutted by the petitioner that during 3 complete years from 1.4.1982 to 31.3.1984 and again 1.4.1986 to 31.3.1987 and also for the ^{part} period of the year from 24.9.1985 to 31.3.1986, it was not possible to render any C.R. due to non- performance. It is thus, clear that for the major ^{part} period of the relevant period prior to the date of impugned promotion, the petitioner either did not earn any C.R. or the C.R. he earned contained adverse entries. We do not, therefore, find any irregularities in the respondents' finding the applicant unsuitable for promotion.

- 4 -

non-communication of the adverse entries in his C.Rs. since by his own admission, such entries were shown to him and he also signed in token thereof. It is for the competent authority to consider any representation against such adverse entries and come to a conclusion whether same should be expunged or retained. With regard to one adverse entry, the respondents have stated on oath that the representation against the same was considered by the competent authority and was turned down. There is nothing on record to show that such rejection of the representation was frivolous or malafide. As regards the other adverse entries, the petitioner has simply admitted that he chose not to represent against the same.

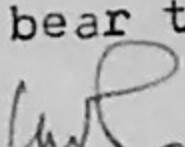
8. It is also clear from the averments of the respondents which has not been effectively rebutted by the petitioner that during 3 complete years from 1.4.1982 to 31.3.1984 and again 1.4.1986 to 31.3.1987 and also for the ^{part} period of the year from 24.9.1985 to 31.3.1986, it was not possible to render any C.R. due to non- performance. It is thus, clear that for the major ^{part} period of the relevant period prior to the date of impugned promotion, the petitioner either did not earn any C.R. or the C.R. he earned contained adverse entries. We do not, therefore, find any irregularities in the respondents' finding the applicant unsuitable for promotion.

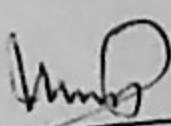
Contd ... 5p/-

9. As regards the petitioner's plea of some A.D.M.Os. being listed for promotion even before completion of 5 years qualifying service, we find that the A.D.M.Os. who were so listed were to complete 5 years of service on 30.9.1987, 19.10.1987 and 20.10.1987 respectively, whereas, the promotion order was issued on 29.9.1987. It is, thus seen that these persons were to complete 5 years of qualifying service within a period of less than 1 month from the date of order and promotion. We, therefore, find nothing irregular in this promotion, particularly when it was clearly mentioned in the relevant order that they would be promoted only on completion of 5 years.

10. In view of the foregoing discussions, we find no merit in this application and is, therefore, dismissed.

Parties to bear their own costs.


Member (A)


Member (J)

Dated: 21:12:1993

(n.u.)