

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.51/2012

Jodhpur this the 22nd day of July, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),

Hon'ble Ms. Meenakshi Hooja, Member (A)

Dr. B.R. Maru S/o Shri Ratana Ram, aged about 57 years, R/o Railway Training M-5, Sukhadiya Circle, Udaipur, Rajasthan. Applicant is presently working as Sr. DMO, SG IRMS, Zonal Railway Training Institute, Udaipur, Rajasthan.

.....Applicant

(Through Advocate Mr. Kuldeep Mathur)

Versus

1. The Union of India through the General Manager, North-Western Railways, Jaipur, Rajasthan.
2. The Secretary (E), Railway Board, Ministry of Railways, Government of India, New Delhi.

.....Respondents

(Through Advocate Mr. Manoj Bhandari)

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By way of this application, the applicant, Dr. B.R. Maru, has challenged the legality of the order by which he was not found fit for promotion to the post of Senior Administrative Grade for 2011, in spite of the fact that earlier he was cleared the process for 2009 and appointed in SA Grade vide order dated 19.01.2009 at Annexure-A/3.

2. The facts of the case in narrow compass, as averred by the applicant, are that the applicant Dr.B.R. Maru, is presently holding the post of Sr. Divisional Medical Officer, at Zonal Railways

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Training Institute, Udaipur. The applicant is a selection grade officer of Indian Railways Medical Services. The 6th Central Pay Commission in its report recommended for grant of Dynamic Assured Careers Progression (DACP) Scheme for the Doctors. The Government while accepting the recommendations of 6th Pay Commission, extended the Dynamic Assured Careers Progression Scheme upto Sr. Administrative Grade (Grade Pay of Rs.10,000/- in PB-4) to all officers of the Indian Railways Medical Services. The Railway Board vide RBE No.05/2009 dated 07.01.2009 while extending it to officers of IRMS under condition No.3 of the order dated 07.01.2009 clearly stated that the said promotions (under DACP Scheme) will be made without linkage to vacancies and other conditions for effecting promotions will be governed by the provisions of Indian Railway Medical Service Recruitment Rules, 2000 as amended from time to time. The copy of the order has been annexed with the OA as Annexure-A/2. The Railway Board, thereafter, issued another order dated 19.01.2009 appointing applicant along with a number of SG/ IRMS officers on the post of Sr. Administrative Grade (SAG) on officiating basis. The copy of the order has been annexed with the OA as Annexure-A/3. In order dated 19.01.2009 it was informed to the applicant that he will be transferred to Southern Central Railway, but the applicant due to some personal reasons, showed his inability to join at Southern Central Railway, and he requested the respondents for his posting on North-Western Railways on promotion. Meanwhile, the Director, Establishment Railway Board, New Delhi, issued a letter

dated 21.05.2009 (Annexure-A/4) to all the General Managers of All Indian Railways under subject "Refusal of promotion to Sr. Administrative Grade (SA Grade) by IRMS officers-clarification regarding'. In that order it was stated that after introduction of DACP Scheme to Sr. Grade Officer of IRMS it is observed that Railway Doctors who have been promoted under the Scheme have gained a impression that under DACP Scheme they shall be promoted in-situ i.e. on there present place of posting itself and on such a promotion they cannot be transferred . It is clarified that though the SA Grade promotion to Railway Doctors have been time bound under DACP Scheme but there is no pre condition specified in the DACP Scheme that an officer will become eligible for a promotion at the same place of posting. Thus, the Railway Board, clarified that refusal to move on promotion under DACP Scheme shall amount refusal of promotion resulting in debarment of the officers for one year. The copy of the order dated 21.05.2009 has been annexed with the OA as Annexure- A/4. The respondent No.1, thereafter, vide letter dated 18.06.2009 informed that the applicant cannot claim for a choice posting on his promotion in Sr. Administrative Grade. Therefore, his refusal to move on promotion under DACP will be treated as refusal of promotion for one year. The copy of the letter has been annexed with the OA as Annexure-A/5 and the application dated 05.07.2009 of refusal of promotion by the applicant has been annexed as Annexure-A/6. But after completion of one year period from his refusal for promotion to Sr. Administrative Grade, vide letter dated 10.07.2010, the applicant

requested the respondents to post him as Sr. Administrative Officer either on functional post or promotion in-situ under DACP Scheme, but no heed was paid to the same. The respondent department promoted much juniors officers to the applicant on the post of Sr. Administrative grade, therefore, by way of this application, the applicant has prayed for the following relief(s):-

- “(i) That the Original Application may kindly be allowed.
- (ii) That the respondents may be directed to grant applicant promotion to SA Grade of IRMS under DACP Scheme w.e.f. 07.01.2009 and his functional promotion already given vide letter dated 19.01.2009 w.e.f. 07.01.2009 should be revoked on completion of debarment of 01 year.
- (iii) That the respondents may be directed to extend benefit of revised grade pay and pay scale as per DACP Scheme to the applicant immediately. The respondents may further be directed to pay interest @ 12% for the unnecessary delay caused by them in grant of aforesaid benefit.
- (iv) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may kindly be granted.
- (v) Costs of this application be ordered to be awarded in favour of the applicant.”

3. By way of reply, the respondent department denied any right of the applicant for promotion to the post of Sr. Administrative Grade, after completion of one year period of service from the date of refusal, and further contended that the promotions are made as per Rule 209 (D) of Indian Railway Establishment Code (IREC), Vol.1, and the same is made by the very high level Selection Committee comprising of the higher officers of Railway Board. It has been further averred that the applicant refused his promotion from the panel of 2009 and the next panel was formed in August 2011, for which he was found unfit, therefore the question of him being considered for further post of Senior Administrative Grade (SAG) does not arise, and it has been further averred that he cannot be given promotion with reference to the panel for which he has

already refused to accept his promotion because the applicant cannot be permitted to approbate and reprobate and make prayer for which he himself has refused. The grounds averred in the OA have also been denied by the respondent department. The applicant was considered for promotion to Senior Administrative Grade in the next panel approved on 29.08.2011 under DACP Scheme and was found unfit by the DPC on the basis of his performance, and therefore he is not entitled to get any promotion under DACP Scheme.

4. Heard both the parties. Counsel for the applicant contended that when the applicant refused to avail the promotion in pursuance to the order dated 19.01.2009, in view of the order of the Government of India, Ministry of Railway, dated 21.05.2009, his refusal shall amount to deferment of his promotion for one year because this DACP Scheme was sanctioned by the Government of India to provide the benefit to the Doctors and in the case of SAG to those who inter-alia have completed more than 20 years service and due to stagnancy they could be promoted for a long period of service, therefore vide order dated 07.01.2009, the Government of India issued orders that the promotion under Dynamic Assured Career Progression shall not be linked to vacancies, and other conditions for effecting promotion will be governed by the Indian Railways Medical Service Recruitment Rules, 2000 as amended from time to time. Thus, the order of the Government of India that promotions will be made without linkage to vacancies intended to

remove the stagnation in the service and thus from the clear intention of the order dated 21.05.2009 it can only be inferred that the refusal to avail the promotions shall result in debarment of the official for one year means the deferment of the promotion of the officer for one year, and in such circumstances he will not be required to face or clear the fresh DPC, but simply on the basis of the earlier DPC he will be entitled to get the promotion on the post of Sr. Administrative Grade after completion of one year period from the date of refusal.

5. Per contra, counsel for the respondents contended that debarment in order dated 21.05.2009 means that the applicant was debarred for the year 2009 and subsequently his eligibility will be considered as per the rules and it does not amount to only deferment of one year and he is required to clear the DPC for the next succeeding years, whenever the panel is prepared. Counsel for the respondents contended that the case of the applicant was considered as per 209 (D) of Indian Railway Establishment Code (IREC), Vol.1, and the circular dated 03.06.2002 issued by the Government of India, Ministry of Railway and he was not found fit for such promotion, therefore, the claim of the applicant was rightly rejected by the respondent department and no case is made out in favour of the applicant to give him promotion from the date of the completion of one year from the date of his refusal.

6. We have considered the rival contentions of both the parties and also perused the records. It is an admitted fact that the Government of India, Ministry of Railway issued the extension of the Dynamic Assured Careers Progression Scheme for the officers of the Indian Railway Medical Services as per the recommendations of the 6th Central Pay Commission contained in para No.3.6.7 of its report, and the Government of India while accepting the recommendation of the 6th Central Pay Commission have issued orders and they have fixed the number of years of regular service required for upgradation to various grades upto Senior Administrative Grade under DACP Scheme to all officers of the Indian Railway Medical Service. It appears from the order dated 07.01.2009 that this order was issued to remove the stagnation in the Medical Services of the Indian Railway and that is why it has been further averred that in the same order that the promotions will be made without linkage to vacancies. When a particular order was issued for the welfare of the Railway Medical Officers a liberal interpretation should be adopted by the Railways; and when the applicant cleared the DPC for the year 2009, in our considered view as per letter dated 21.05.2009, it was a promotion resulting in debarment of promotion for one year because the intention of the department order was to defer the promotion of the official for one year, who for their personal difficulties or other reasons have refused to avail the promotion avenues, and in our considered view such officers cannot be asked to clear or face the fresh DPC for the year 2011 in which the panel was prepared.

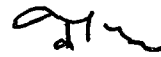
7. So far as the right of the medical officers to be posted in-situ, such right cannot accrue in their favour in view of the clear directions in order dated 21.05.2009 at Annexure-A/4. But so far as promotion is concerned, the applicant is entitled for his promotion from the date of completion of one year from the date of the refusal. Therefore, in our view the OA requires to be accepted.

8. Accordingly, the OA is allowed, and the respondents are directed to grant the promotion to the applicant on the post of Senior Administrative Grade, IRMS under the scheme of DACP Scheme w.e.f. the date of completion of one year of the refusal of his promotion, i.e. 04.07.2010 (refusal being on 05.07.2009 as at Annexure-A/6). Further, it is made clear that no right to in-situ promotion accrues in favour of the applicant.

9. The OA is allowed as stated above with no order as to costs.



(Meenakshi Hooja)
Administrative Member



(Justice K.C. Joshi)
Judicial Member