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OA 695/2005

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CIRCUIT BECH AT RANCHI**

OA 695/2005

[Patna, this *Tuesday* the day of *24/4* May, 2011]

CORAM

HON'BLE JUSTICE SHRI ANWAR AHMAD, MEMBER[J]  
HON'BLE SHRI JUSTICE A.K. JAIN [MEMBER[A]


Dr. Rakesh Kumar, S/o late D.N. Mandal, resident of 11, Club Road, East  
Colony, P.O. and P.S Jamalpur, District- Munger

..... Applicant

**Advocate :** Shri Goutam Bose

Versus

1. The Union of India, through the Secretary Railway Board, Rail Bhawan, New Delhi.
2. The Secretary Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, Eastern Railway, Kolkata.
4. The Divisional Railway Manager, Eastern Railway, Malda.
5. The Chief Personnel Officer, Eastern Railway, Malda.
6. The Chief Medical Officer, Eastern Railway, Kolkata.
7. The Chief Works Manager, Eastern Railway, Jamalpur
8. Dr. Mahesh Lal Retired Medical Superintendent, Divisional Hospital Sonpur.



9. Dr. C.P. Gupta, Senior Divisional Medical Officer, Jamalpur.

.....Respondents.

**Advocate :** Shri Mukundjee

**ORDER**

**Mr. Justice Anwar Ahmad : Member [Judicial] :-**

This Original Application has been filed by Dr. Rakesh Kumar for the following reliefs :-

(a) For a direction on the respondent authorities to consider the case of this applicant for shifting back his date of promotion to the post of J.A. Grade from 19.1.2005 to the date from which his immediate juniors have been granted such promotion or at least from 15.5.1999 from which date his junior, namely Dr. C.P. Gupta was granted such promotion alongwith consequential benefits, including seniority etc.

(b) For a further direction on the respondents authorities to consider the case of this applicant for his further promotion to the post of Selection Grade from the date his immediate juniors have been so promoted.

(c) For any other relief/reliefs for which the applicant may be found entitled to in accordance with law and on the facts and in the circumstances of the case.

2. Learned counsel for the applicant referring the original application submits that the applicant is presently working on the post of Senior Divisional Medical Officer at Jamalpur under the Eastern Railway. He submits that he was initially



appointed as Assistant Medical Officer (Class-II) on Ad hoc basis and joined the said post on 18/4/1984. Thereafter he was appointed as Assistant Divisional Medical Officer in the junior scale (Group A) in the Indian Railway Medical Services under order dated 15/3/1989. He submits that the applicant alongwith others was promoted to the post of Divisional Medical Officer, Senior Scale (Class-I) by way of upgradation of existing post under order dated 11/1/1994 Annexure A/1 w.e.f. 15/3/1993. He submits that in the seniority list of Additional Divisional Medical Officer his name finds place at serial no. 43 Annexure A/2. He submits that as per time bond promotion scheme dated 18/9/1996 Annexure A/3, ~~he~~ <sup>he</sup> becomes eligible for promotion to the post of GA Grade after completion of 10 years of service. He submits that the confidential letter dated 3/5/99 Annexure A/4 was communicated to him on 22/6/99 with the adverse remark that "there are large number of complaints against him. ~~Not~~ <sup>He</sup> a dedicated Doctor. More interested in his personal gain.,” for the year ending 31/3/99.

3. He submits that the applicant made a representation dated 25/6/99 Annexure A/7 against the adverse remarks before the Chief Medical Officer, Eastern Railway, Calcutta. He submits that Dr. Mahesh Lal was the reporting officer of the applicant and gave the applicant "Good" rating with specific remarks "Fit" in the ACR for the year ending 31/3/99, Annexure A/6. So he submits that it is clear that the applicant's ACR for the year 1988-99 which was rated as "Good" and "Fit" was subsequently changed by Dr. Mahesh Lal, the reporting officer. He



submits that the applicant received no communication in spite of the representation made against adverse remarks. He submits that under order dated 18/11/99 Annexure A/9 many senior scale Divisional Medical Officer of IRMS including juniors to the applicant were promoted in the J.A. grade by way of upgradation of post under the time bond promotion scheme but the case of the applicant was not considered. The applicant, therefore, preferred an appeal dated 24/11/99 before the Secretary(Establishment) (Annexure A/10), Railway Board, New Delhi. The applicant under letter dated 25/4/2000 Annexure A/11 was intimated as under :-

**“The claims of Dr. Rakesh Kumar, D.M.O., Jamalpur and Dr. C.P. Gupta, D.M.O., Jamalpur were considered for empanelment in J.A. Grade in the panel approved on 20/10/99 but both the Doctors were not found suitable on the basis of their performance.”**

4. He submits that under order dated 30/5/2001 many senior scale Divisional Medical Officers including Dr. C.P. Gupta, junior to the applicant were granted promotion in JA grade under the time bond promotion scheme. He further submits that Dr. C.P. Gupta who is junior to him having adverse ACR was considered and was granted promotion to JA grade under the said order w.e.f. 15/5/99. He submits that the applicant therefore made a representation dated 30/6/2001 Annexure A/13 before the Chief Medical Officer, Eastern Railway, Kolkata but his grievances were not looked into. He submits that another list dated 5/4/2002 Annexure A/14 of senior scale DMO was released promoting many juniors to the applicant against the post of JA grade under time bond promotion scheme. He submits that



thereafter a new time bond promotion scheme was introduced on 03/6/2002 Annexure A/15 wherein Bench mark for promotion from senior scale to J.A. Grace was fixed as good and further all promotions to administrative grades were made by selection only. He submits that vide a circular dated 24/9/2002 Annexure A/16 Dynamic Assured career progression scheme for IRMS was introduced as per recommendation to 6<sup>th</sup> Central Pay Commission. He submits that by order dated 17/3/2003 Annexure A/17 many juniors to the applicant who were earlier granted promotion in JHA Grade were further granted promotion to the selection grade including Dr. C.P. Gupta. The applicant therefore preferred an appeal dated 4/8/04 Annexure A/18 before Secretary, Railway Board, New Delhi. He submits that by an order dated 18/5/2005 Annexure A/19 issued by the Secretary Railway Road, the applicant was ultimately granted promotion against the J.A. grade w.e.f. 19/1/2005 though he was eligible for his promotion from the date his juniors were granted such promotion or atleast from the date 15/5/99 from which date similarly situated Dr. D.P. Gupta, junior to him was granted such promotion. The applicant therefore filed a representation dated 6/6/05 Annexure A/20 requesting the authorities to shift back the date of promotion w.e.f.his juniors were granted promotion and his representation is still pending. The applicant, therefore, came up before this Tribunal.

5. The learned counsel for the applicant on the basis of the aforesaid facts submits that the reporting officer Dr. Mahesh lal gave the applicant "Good" rating

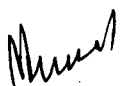


with specific remarks "fit " for the year ending 31/3/99 (Annexure A/16) but he subsequently changed the ACR and gave adverse remark. He further submits that the adverse remarks were given without following the procedure of giving adverse remark (Annexure A/8). So he submits that the alleged adverse remarks be set aside. Learned counsel further submits that the applicant and his junior colleague Dr. C.P. Gupta had the same adverse remark but the case of Dr. C.P. Gupta was considered and he was granted promotion under order dated 30/5/2001 w.e.f. 15/5/1999. He therefore submits that the case of the applicant should have been considered alongwith the case of Dr. C.P. Gupta and he should have also been granted promotion w.e.f. 15/5/1999.

6. On the basis of aforesaid submissions learned counsel for the applicant submits that the OA be allowed and relief be granted.

7. Written statement has been filed by the official respondent and also by the private respondent Dr. Mahesh Lal but no written statement has been filed by the private respondent Dr. C.P. Gupta. Private respondent Dr, Mahesh Lal. in his written statement stated that he forwarded the same ACR Annexure A/6 filed by the applicant in the OA to the reviewing authority and denied that he has changed the ACR as alleged by the applicant.

8. Learned counsel for the official respondents referring the written statement and submits that the applicant was firstly considered for promotion in JA grade of IRMS panel approved on 30/10/99 but he was found not suitable on the basis of



performance and other relevant factors. He submits that subsequently also the applicant was considered for promotion in JA grade for IRMS panel approved on 18/5/2001, 5/11/2001 and 25/7/2003 but he was not found suitable. He submits that the applicant was again considered in JA grade of IRMS on 30/1/2005 and this time he was found fit and was granted promotion in JA grade. He submits that Dr. Mahesh Lal was reporting officer who gave confidential report for the year ending 31/3/1999 grading him as good but adverse entries were communicated to the applicant for the said period. He submits that the applicant has annexed a photo copy of ACR for the period ending on 31/3/1999 containing the grading of reporting officer which is confidential document in which normally the applicant is not supposed to have any access. He refers to the photo copy of ACR filed by the applicant and submits that this is an incomplete ACR in as much as grading of two next higher authorities namely reviewing authority and Accepting authority are not available there. He therefore submits that other ACR is incomplete. He submits that the applicant should have filed the representation before the respondent no.6, Chief Medical Officer against the adverse remark in the ACR for the year ending on 31/3/1999, but it appears that he did not send any representation to the Chief medical officer directly or through proper channel within the date fixed from date of receipt of confidential letter no. AC 220 dated 31/5/1999. He further submits that this issue relates to six years ago and hence this issue can not be reopened <sup>now</sup>.  
Learned counsel for the respondents further submits that the case of the applicant



was considered on 20/10/1999, 1/5/201, 5/10/2001 and 25/7/2003 but he was found not suitable. He submits that his case was considered on 19/1/2005 when he was found fit and was promoted in the JA Grade. He submits that the case of applicant can not be <sup>equated</sup> ~~acquated~~ with the case of Dr. C.P. Gupta as the case of the C.P. Gupta was considered on 03/5/2001 when he was found fit and he was promoted in the grade under order dated 30/5/2011 Annexure A/19. Learned counsel further submits that the case of the applicant was considered on 30/10/1999, 18/10/201, 5/10/2001 and 25/10/2001 and he was denied the promotion. He submits that the applicant thereafter should have knocked the door of the Tribunal but he chose to sit idle. He submits that on 19/1/2005 the case of applicant was considered when he was found fit and granted promotion in the JA grade and thereafter he came up before the Tribunal on 4/10/2005. He therefore submits that the case of applicant is barred by limitation and fit to be dismissed.

9. Learned counsel for the respondents on the basis of the aforesaid submissions contended that there is no merit in the OA and hence the OA is fit for dismissal.

10. Learned counsel for the applicant in reply referred to the rejoinder to written statement and submitted that it is not correct to say on the part of respondent that The applicant did not send any representation to the Chief Medical Officer directly or through proper channel against the adverse remark. He submits that he has filed the representation against the adverse remark and his representation was received on 26/6/1999 by the Confidential assistant, Eastern Railway, Jamalpur, Annexure A/21 and his representation was forwarded by



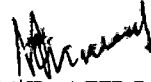


Junior works Manager Eastern Railway , Jamalpur to the Chief Medical Director Eastern Railway Kolkata under the latter dated 5/7/99 Annexure A/22. The learned counsel further submits that to meet the limitation a Miscellaneous application no. 587/2005 has been filed for condoning the delay in filing the OA. He submits that in the facts and circumstances of the case this is a fit case for condoning the delay and <sup>therefore</sup> ~~thereafter~~ the MA ~~is to~~ be allowed.

11. Considering the facts and circumstances of the case, ~~and~~ pleadings of the parties and rival submission made. From perusal of the MA no. 587/05 it transpires that facts of the case have been stated but no reason has been assigned for causing delay in filing the OA. No cause what to speak of sufficient cause has been shown in the MA or pointed out by the learned counsel during the course of his argument causing inordinate delay in filing the OA. We are therefore of the view that inordinate delay in filing the OA vis a vis no explanation of the delay, MA is fit to be rejected and delay is not <sup>to be</sup> ~~condoned~~. Apart from that we do not find any illegality in denying the promotion to the applicant in the face of adverse remark communicated to him prior to the date of alleged promotion granted to the other Doctors including the juniors to the applicant and also in view of the fact that the applicant has been promoted subsequently.

12. In the result, OA is dismissed. The MA is also dismissed. No order as to cost.

  
[A.K.JAIN]  
MEMBER[A]  
mks.

  
[ANWAR AHMAD]  
MEMBER[J]