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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1096/96.

Dt. of Decision: 19.11.98.

Dr.K.L.Vallabha Rao

..Applicant.

Vs

The General Manager (Personnel),
SC Rly, Rail Nilayam, Sec'bad.

..Respondent.

Counsel for the applicant : Mr.L.Ravichander

Counsel for the respondent : Mr.N.R.Devaraj,Sr.CGSC.

CORAM:-

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.)

The applicant was initially appointed as Asstt. Surgeon, in December, 1963 in DBK Railway Project, was absorbed in IRMS in SC Railway and confirmed in the post in 1966. In 1972 he applied for study leave for two years, was granted the leave applied for. On expiry of leave he rejoined his original post in 1974 which post had, however, been upgraded to ADMO during his absence on leave. In 1983, he applied again for a three-year Extra Ordinary Leave, was granted the leave upto 18-6-83. The officer applied for a further extension of leave by two years, and rejoined duty only on 23-3-88. No leave was, however,

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sanctioned for the period from 19-6-83 to 23-3-88. On rejoining, he was once again posted as ADMO on 18-7-88, whereas some of his juniors - Dr. Shreff, for instance - had been promoted as DMOs from 6-2-84 viz., ~~at a point during the period of his absence when no leave was granted to him, but 6-2-84, which was~~ at a point of time during the period of his absence which was not covered by any regularly granted leave, but the applicant was subsequently promoted as DMO on 12-7-90.

2. The applicant earlier filed OA.624/95 with a grievance that as many as five representations submitted by him between ~~and~~ August '91 to October '94 had remained undisposed. It was therefore directed by this Tribunal in the said OA (624/95) that the pending representations be examined and a comprehensive speaking-order be issued covering the points raised therein. Accordingly the Respondent disposed of the representations and the orders of the Chairman Railway Board were communicated to the Applicant in which it was held that the applicant was not eligible for placement in Selection Grade of the JAG and subsequent promotion to SA Grade from an anterior date as prayed for by him. This is the order which is impugned in the present OA.

3. It needs to be added here that certain proceedings initiated against the applicant on 18-11-88 for the imposition of a major penalty ... eventually ended in withholding of one annual increment at the stage of Rs.3,400/- in the scale of pay of Rs.2200 - 3500 for a period of six months without cumulative effect. The applicant does not appear to have preferred any departmental appeal against this penalty and the same has therefore become final.

4. The grievance of the applicant is that his immediate junior, Dr.S.K.Joshi, was given the Selection Grade on 14-5-90, and one other junior, Dr.B.P.Shreff, was promoted to Senior scale of IRMS from 6-2-1984 whereas he (the applicant) was promoted only on 12-7-90.

5. The Respondents in their counter-affidavit submit that the applicant had applied for three years EOL from 25-5-83 (but actually availed the same from 18-6-83) on the leave being sanctioned on 28-5-1983. On receipt of a further application for extension of EOL for two more years in continuation of leave already granted to him, the same was refused. The officer was informed that no leave could be granted to him beyond 5-6-86, and he was advised to report back for duty immediately. The officer, however, failed to comply with this order and joined duty only on 23-3-88. The period of his absence between 6-6-86 to 23-3-88 thus remained as one of unregulated absence from duty. Dr.Shreff, his erstwhile junior, in ADMOs cadre had in the meanwhile been promoted in the ordinary course to the senior scale on 6-2-84 when the applicant was absent from duty. The respondents state that since the applicant was on unauthorised absence during that period he could not be promoted to higher grades but was duly promoted to senior grade from 12-7-90 on expiry of the period of currency of the minor penalty imposed on him. He could, therefore, be empanelled to JAG only in April '91.

6. The Respondents also state that the impugned order clearly brings out that the reason for the delayed conferment of selection grade and promotion to senior administrative grade was solely his unauthorised absence for nearly 22 months. On

account of the applicant being on extra ordinary leave, followed by unauthorised absence, he could be promoted only on 12-7-90 to senior grade, after the expiry of the currency of the minor penalty imposed on him. When his case for promotion to Junior Administrative Grade came up for consideration the applicant was actually in the junior scale as ADMO and had been away from duty for several years. And since only Senior Scale Medical Officers with a total of 12 years of regular service in Group-A and a minimum of two years service as DMO were only eligible for consideration ^{for} JAG, he could not be promoted. The Officer became eligible for JA grade only in 1991, and could not therefore be promoted whereas the cases of his erstwhile juniors, who had been available on duty continuously, were duly considered and promoted. As regards promotion to SAG, it is added that the officers of his seniority in JAG (April, 1991 batch) have not yet become due for consideration for such promotion.

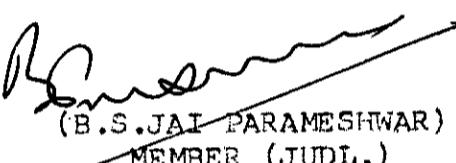
7. From the facts as revealed and recorded in the preceding paragraphs it can be seen that what actually caused the delay in this case was the Applicant's unregulated absence from duty which extended to almost 22 months. If his erstwhile juniors meanwhile earned their promotion, in the normal course and in their due turn, the applicant cannot make any grievance of the same. Also there was no delay in the Applicant's empanelment for promotion as soon as the currency of the minor penalty came to an end. The stand of the Respondents in this regard is that when an officer remained away from duty of his own volition and without proper authority, his case for promotion can be examined only when he rejoins duty ^{at least fresh AcR} and earns ^{one} reflecting his performance. This has been the consistent stand of the authorities as seen, as an example,

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from the case of one S.R.Mahapatra who too had been on unauthorised absence for a number of years and had made a grievance thereafter of his non-promotion/conferment of JA Grade/Selection Grade. Railway Board Lr.Ne.E(O)III97/AE/199 dtd. 2-11-98, which was filed by learned Senior Standing Counsel for our perusal, confirms this.

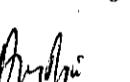
8. The impugned order adequately explains in great detail the reasons for the inability of the Respondents to accept the request of the Applicant. We cannot find any fault with the decision.

9. There is no merit in the OA and the same is dis-allowed.
No costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)
19.11.98


(H.RAJENDRA PRASAD)
MEMBER (ADMN.)

Dated : The 19th November, 1998.


MD/SPR
19.11.98
Dno

MD/SPR.

To

1. The General Manager (Personnel)
SC Rly, Railnlayam, Secunderabad.
2. One copy to Mr.L.Ravichander, Advocate, CAT Hyd.
3. One copy to Mr. N.R.Devraj, Sr.CGSC. CAT.Hyd.
4. One copy to HHRP.M.(A) CAT.Hyd.
5. One copy to DR(A) CAT.Hyd.
6. One spare copy.

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19/11/98
I COURT
COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE D.H.NASIR:
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:(A)

DATED: 19-11-1998.

ORDER/JUDGMENT

M.A/R.A./C.A.NO.

in
O.A.No. 1096/96
T.A.No. (W.P.)

Admitted and Interim directions
issued.

Dis-
Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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