

42

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.988 of 1999

DATE OF JUDGMENT:

no Feb
2 JANUARY, 2000

BETWEEN:

Dr.P.RAMASWAMY

.. APPLICANT

AND

1. The General Manager,
South Central Railway,
Secunderabad,

2. Union of India rep. by
The Secretary,
Railway Board,
Rail Bhavan,
New Delhi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. P.P.VITTAL

COUNSEL FOR THE RESPONDENTS: Mr.K.SIVA REDDY, Adl.CGSC

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

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

JUDGMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

R

A

Heard Mr.Krishna Mohan for Mr.P.P.Vittal, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA joined South Central Railway as Assistant Medical Officer (Dental) in Group 'B' on 2.9.1970. He was absorbed in Group 'A' (Junior Scale) with effect from 1.1.86 and was promoted to the Senior Scale (Group 'A') as Divisional Medical Officer (Dental) on 19.10.87 in terms of Office Order No.415 of 87, dated 19.10.1987 (Annexure A 7 at page 18 to the OA).

3. The Ministry of Railways have issued policy instructions for two time bound promotions, first one to the Senior Scale (Rs.3000-4500) and the second one to the Junior Administrative Grade (Rs.3700-5000) (both are IVth Pay Commission scales of pay), to officers in the Indian Railway Medical Services by the letter No.96E(GC) 10/8/149, dated 23.8.96 (Annexure A-2 at page 9 to the OA). Those instructions will also be applicable to the Dental cadre and those instructions will take effect from the date of issue of that letter i.e, dated 23.8.96.

4. The applicant submits that as he was promoted to the Junior Scale Group 'A' Service with effect from 1.1.86, he is entitltd to be promoted to the Junior Administrative Grade with effect from 1.1.96 i.e, after 10 years of service in Group 'A' as he also fulfils the criteria of two years of service in the senior scale by 1.1.96. He further adds that he is ^{the} senior most in the Junior Administrative Grade in the Dental Cadre of the Indian Railways Medical Service having put in more than 20 years of serice as per

R

[Signature]

the seniority list published vide letter No.E(O)I/96/SR-6/9, dated 13.8.96 (Annexure A-3 at page 11 to the OA. Hence his promotion as on 1.1.96 will not cause any supersession to any of his seniors as his ~~only~~ ^{been} ~~senior~~ had already/promoted earlier to that date two years ago.

5. Instead of promoting him as per the letter with effect from 1.1.96, he was promoted to the Junior Administrative Grade only with effect from 26.5.97. Retrospective promotions have been given to some of the officers in the selection grade and hence there is no irregularity if he is given retrospective promotion with effect from 1.1.96. As that was not done and he was given promotion to the Junior Administrative Grade only with effect from 26.5.97, he had submitted a representation on 18.5.98 (Annexure A-6 at page 17 to the OA) addressed to R2. It is stated that the said representation is not disposed of.

6. Aggrieved by the above, he has filed this OA praying for a direction to the respondents to accord promotion to him to the Junior Administrative Grade in the scale of pay of Rs.3000-5000 (RSRP)/Rs.12000-16000 (RP) with effect from 1.1.96 instead of from 26.5.97 and for consequential direction to the respondents to fix his pay accordingly and effect payment of consequential arrears of pay and allowances at an early date.

7. In the reply, the respondents accept the facts of this case. However, they submit that promotion to Junior

a

J

Administrative Grade is subject to assessment of eligible officers by a duly constituted DPC and approval by the competent authority. Promotions become effective after issue of orders and on assumption of charge by the incumbents. They also rely on the Ministry of Railways letter No.89/289-B/Secy/Admn, dated 26.9.89 (Annexure R-I to the reply) to state that for promotion from senior scale to Junior Administrative Grade, a Selection Committee should assess fitness for promotion on merit and then selected officers will be placed in the panel in the order of their seniority. Thereafter approval will be obtained from the competent authority. In the present case, in pursuance of the instructions issued in August 1996, the DPC met for the first time on 20.2.97 and orders for promotion were issued on 21.5.97. The applicant having been found fit was empanelled to the Junior Administrative Grade by the DPC and orders of his promotion were issued on 21.5.97. None of his juniors was promoted to the Junior Administrative Grade prior to him. The applicant was promoted to the Junior Administrative Grade in his turn along with the officers of his seniority and he should have no grievance in this connection.

8. Before various contentions of both sides are examined, it is necessary to recaptulate the preamble of the sanction of the Ministry of Railways in connection with the provisions of the two time bound promotions to Senior Scale and Junior Administrative Grade officers as per letter No.96E(GC) 1008/149), dated 23.8.96 (Annexure A-2 at page 9 to the OA).

R

A

9. It is necessary to note the relevant considerations in the preamble. It states that, "In order to further improve the promotional prospects of Railway Medical Officers, the matter of providing two promotions as a time-bound event, upto JA grade, to officers who have rendered ten years of service, has been under consideration in the Ministry of Railways. It has now been decided to provide two time-bound promotions i.e, to Senior Scale (Rs.3000-4500) and JA Grade (Rs.3700-5000) in the Indian Railways Medical Service. The time-bound promotion upto JA Grade will be allowed to such of the IRMS officer as have completed ten (10) years of service of which at least two years of regular service must have been rendered in the Sr. Scale."

10. From the above preamble, it is evident that these two time-bound promotions are given to improve promotional prospects of the Medical Officers, with a view to ensure that the competent medical officers are retained in Railways for the benefit of the Railwaymen. This time bound promotion is to be treated as restructuring of the Railway Medical Officers' cadre so as to avoid stagnation as well as as an incentive for better performance. If that be the case, it is not understood why promotions should be given belatedly after and not from the time when the Medical Officer had completed 10 years of service. In all ^{orders} of restructuring of Railway cadres, Railways are adopting a policy of promoting eligible officers with retrospective effect as issue of restructuring orders are delayed. The present instructions of 23.8.96 being restructuring of the cadre, should be looked into from that angle even if it

[Handwritten mark]

[Handwritten signature]

involves retrospective promotion. Being a cadre restructuring order, nothing prevents to give retrospective promotion as precedence existed in the Railways in this connection.

11. The Ministry of Railways has conveyed the following sanction:-

"(i) An ADMO (a Jr.Scale officer of IRMS) may be promoted upto JAG (Rs.3700-5000) after completion of ten (10) years of service of which at least two years of regular service must have been rendered in Sr.Scale. The promotion will be accorded on the basis of seniority-cum-suitability subject to the rejection of the unfit. The promotion will be personal to the officer without linkage to vacancies.

(ii) All the posts in the Junior Scale, Senior Scale and J.A.Grade may be considered together to form combined strength and the posts may be inter-changed depending upon the number of officers eligible to be promoted.

4. It must be ensured that implementation of these orders should not lead to further reduction in the mobility of IRMS officers.

2

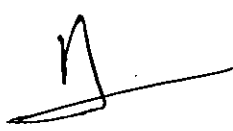
1

5. These instructions will also apply to the Railway Dental Cadre.

6. These instructions will take effect from the date of issue of this letter."

The above sanction clearly indicates that the promotion will be accorded on the basis of seniority-cum-suitability subject to rejection of the unfit and the promotion will be personal to the officer without linkage to the vacancies. That would clearly mean that the promotion to JA Grade is not by selection but by assessment of fitness. Hence a fit person can be promoted even if he is less meritorious compared to his junior as it is not a selection post. The second import of this sanction is that promotion is personal to the officer who had completed 10 years of service provided he is found fit and has worked at least for two years in the senior scale. That would mean that promotion is as is where is basis. No extra responsibility is involved due to grant of Junior Administrative Grade. Hence there would be no prohibition if the Department promotes an officer on adhoc basis on completion of 10 years of service subject to his assessment by DPC. If the DPC finds an officer unfit, he can be reverted or his pay may be fixed in the higher grade only after the assessment is over. Alternatively, promotion order of a Medical Officer to Junior Administrative Grade can be effected after empanelment on the basis of the recommendations of

JL



the DPC and to void any financial loss to the officer the said promotion can be given from retrospective effect as it is only a restructuring programme as stated above. In both the cases, Railways lose nothing. Alternatively, the employee gets satisfaction of having promoted in accordance with the letter dated 23.8.96 and that will enable him to devote his best in the medical service.

12. The letter dated 23.8.96 clearly states that those instructions will take effect from the date of issue of that letter i.e, from 23.8.96. Even if the procedure of empanelling the applicant is delayed due to some reason or the other, the applicant cannot lose the benefit of the letter dated 23.8.96 for getting promotion to the Junior Administrative Grade later than the issue of the letter dated 23.8.96. Meeting of the DPC and getting approval for the recommendations of the DPC are of administrative matters. The applicant has no hand in expediting the same. Nowhere it is stated in the reply that the applicant stood in the way of finalising the process quickly. It is a normal administrative delay that had resulted in issue of the promotion order to the applicant on 23.5.97 and he assumed charge on 26.5.97. The delay on the part of the administration cannot rob off the benefit accrued to the applicant by the letter dated 23.8.96. Hence even assuming that the order comes into force only from 23.8.96, the applicant has to get the benefit of promotion to the Junior Administrative Grade ~~not~~ not later than 23.8.96. That would mean that his promotion should be preponed to 23.8.96 and not on the date of his assuming the charge i.e, 26.5.97.

[Handwritten signature]

[Handwritten signature]

13. It is very clear from the preamble of the order dated 23.8.96 that there are going to be no extra duties involved by giving promotion to the applicant to the Junior Administrative Grade. In a restructuring of the cadre, duties held by the upgraded official remain same as he was doing earlier but the benefit of higher pay fixation has been given for improving promotional prospects. In the case of Scientists and Medical Officers, there can be no extra duties involved in promotion. They will be discharging the same duties entrusted to them. Medical prescriptions given by a Senior Doctor and a Junior Doctor are equally in honour and there is no ~~restriction~~ restriction to the issue of the prescriptions by a Junior Doctor. In the case of the applicant who is a Dentist, it is stated that he continues to do the same duties as a Dentist even when promoted to the Junior Administrative Grade Medical Dentist. Hence there is no reason for not giving him promotion at least from the date of issue of the letter i.e, from 23.8.96.

14. It appears that the Railways have not examined this issue very critically. It is also stated in the reply that the representation of the applicant was not routed through proper channel and hence as per the procedure no reply was sent to him. This remark appears to be very prefunctory. If the representation of the applicant was not routed through proper channel, the ^{same} could have returned back to the applicant to send it through proper channel instead of filing the same. An organisation with over 100 years of existence, cannot treat their employees in a

2

1

manner not befitting their stature. In our opinion, non reply to the representation has forced the applicant to come to this Tribunal. We deplore the attitude of the respondents in this connection. Such a scant respect to the representation of an employee should be avoided in future.


15. Considering the above, following direction is given:-

(i) The applicant should be deemed to have been promoted to the Junior Administrative Grade with effect from 23.8.96; and

(ii) His pay in Junior Administrative Grade should be fixed with effect from 23.8.96 and the arrears arising there of should be paid to him within a period of two months from the date of receipt of a copy of this order.

16. R-2 should ensure that the above directions are complied with without any deviation within the stipulated period.

17. The OA is ordered accordingly. No order as to costs.


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

2/2/2000



(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 2nd Feb. JANUARY, 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

1ST AND 2ND COURT

COPY TO:

- 1. HDHND
- 2. HRRN M (ADMN.)
- 3. HBSJP M (JUDL.)
- 4. D.R. A(DMN.)
- 5. SPARE
- 6. ADVOCATE
- 7. STANDING COUNSEL

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

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

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR. B. S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 2/2/2000

MA/RA/CP.NO.

IN

OA. NO. 988/99

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED~~

~~ALLOWED~~

~~CP CLOSED~~

~~RA. CLOSED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDER/REJECTED~~

~~NO ORDER AS TO COSTS~~

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
11 FEB 2000
हैदराबाद न्यायपीठ
HYDERABAD BENCH