

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 23rd September, 2001

OA No.579/1994

Dr. V.K.Vashishth s/o Shri Kapil Dev Vashishth r/o Tilak Nagar, Ban Marg, Jaipur now-a-days Medical Supdt. (Admn.), Divisional Railway Hospital, W/Rly, Jaipur

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
3. The Railway Board through its Secretary, Railway Board, Rail Bhawan, New Delhi.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. Hemant Gupta, briefholder for Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

Vide Railway Board's letter No.E(G) III-93 PM/13 dated 8.7.93 promotion orders of Medical Officers were issued to Senior Administrative Grade. These included, inter alia, the name of Dr. (Smt.) Q.M.Scot. The applicant was senior to Dr. Scot, but his name does not appear in this promotion order. Based on these orders of the Railway Board, posting orders have been issued vide order dated 28.7.1993 (Ann.A6). The applicant submitted a representation to the Railway Board dated 14.9.1993. The same has been disposed of vide letter dated 13.4.1994



issued by the General Manager, Western Railway, intimating the applicant that his claim for promotion to Senior Administrative Grade in the panels approved in January, 1993 and August, 1993 was considered by the Railway Board, but he was not selected on the basis of his performance. The applicant has filed this OA challenging this communication dated 13.4.1994 (Ann.A1). His prayer is that this impugned order dated 13.4.1994 be quashed and that the applicant be declared promoted to the Senior Administrative Grade w.e.f. January, 1993, the date when his juniors were promoted, with all consequential benefits.

2. The learned counsel for the applicant assailed the action of the respondents for not placing the applicant on the panel of Senior Administrative Grade on the ground that the applicant was never communicated any adverse remarks in his ACR. The learned counsel submitted that promotion to Senior Administrative Grade is by seniority-cum-suitability and since the applicant had no adverse ACR, his case for promotion could not have been ignored. The learned counsel also stated that in a number of cases the Apex Court has held that where the adverse remarks are not communicated to the employee, the same have to be ignored while considering his case for promotion. Thus, the learned counsel contended that the action of the respondents was violative of law and the rules.

3. In their reply the respondents have stated that promotion to Senior Administrative Grade is on seniority-

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cum-merit basis. The criterion to be followed for the purpose of preparing the panel has been laid down in the Railway Board's letter dated 26th September, 1989 (Ann.R1). On the basis of the criterion the applicant was not found suitable to be placed on the panel. The respondents have also refuted the contention of the applicant that no adverse remarks were ever communicated to him, by stating that, in fact, certain adverse remarks were recorded in the ACR of the applicant for the year ending March, 1989 were communicated. At the time of hearing, the respondents placed before us a copy of the confidential letter dated 11th May, 1989 communicating adverse remarks to the applicant for the year ending 31st March, 1989. These were duly communicated to the applicant on 25.5.1989 and this acknowledgement is available on record. It has been further stated that mere absence of adverse remarks does not give automatic entitlement to an officer to be placed on the panel, as he has to be adjudged alongwith others as per the norms prescribed.

4. The applicant has also filed a rejoinder to the reply of the respondents. In regard to the fact that adverse remarks of the year ending 31st March, 1989 were communicated to him, he has merely made a plain denial but in view of the facts available on record, this denial is of not worthy/giving any consideration. Another ground taken by the applicant in the rejoinder is that the procedure for promotion to Administrative Grade as enumerated in Railway Board's letter dated 26th September, 1989 was never published in the Gazette nor has been brought to the notice of the employees concerned and thus, it cannot

become a rule of law and cannot be enforced.

5. The learned counsel for the applicant assailed the action of the respondents mainly on the ground that promotion to the Senior Administrative Grade was on seniority-cum-suitability. The applicant is senior to Dr. Scot and has every right to be placed on the panel. There was nothing adverse against him. The learned counsel placed reliance on the case of Ramkumar Singh v. State of Rajasthan, 1986 (2) Judicial Surveyor 196 and State of Kerala v. N.M.Thomas, 1976 SC 462 to contend that a senior needs merely minimum necessary requisite efficiency in administration and the senior though less meritorious shall have priority for promotion.

6. The learned counsel for the respondents in his arguments stated that it has been held by the Courts and Tribunals in a catena of cases that the scope of judicial intervention in the proceedings of the Selection Committee for departmental promotion is only restricted to examine whether any malafide exists, otherwise the decision is best left to the Selection committee, who assess and place only those on the panel, who are considered suitable as per the prescribed norms. The learned counsel referred to the guidelines at Ann.R1 and stated that the benchmark for being promoted to Senior Administrative Grade is "very good". In the case of the applicant adverse remarks were communicated to him in the year 1988-89 and his general performance for the other years has also not been found up to the mark. Because of record of performance, the applicant was not considered suitable to be placed on the



panel.

7. We have given our careful consideration to the rival submissions as also the record of the case. In the case of Mrs. Anil Katiyar v. Union of India in OA No. 2538/94 decided on 8.6.95, the Principal Bench of this Tribunal, New Delhi had held that the Tribunal was not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it would not go into the recommendations made by the DPC which has been accepted by the Government. In SLP in this matter Hon'ble the Supreme Court while upholding the view of the Central Administrative Tribunal in this regard observed as under:-

" Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it would not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated mala fides."

8. In the case before us, there is no allegation of mala fide and the applicant has based his claim only on the sole ground that he is senior and suitable. We have

perused the Railway Board's letter dated 26.9.1989. Para 3(ii) and (iii) relate to assessment of confidential rolls. (We consider it necessary to reproduce the relevant extracts as under:

"3(ii) Assessment of Confidential Rolls

Confidential Rolls are the basic inputs on the basis of which assessment is to be made by the Selection Committee. While evaluating the CRs, following would be kept in view:-

- a) The Selection Committee will assess the suitability of the officers for promotion on the basis of their service records and with particular reference to the five preceding years.
- b).....
- c).....
- d) The Selection Committee would not be guided merely by the overall assessment, if any, that may be recorded in the CRs, but will make its own assessment on the basis of the entries in the CRs.
- e) Before making the overall grading after considering the CRs for the relevant years, The Selection Committee would take into account whether the officers has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the CRs.
- f) Due regard to the remarks recorded against the column on "Integrity" would be given.

iii) Selection Procedure



For the purpose of promotion from J.A. Grade to S.A. and S.A. grade to Additional Secretary's Grade (Rs. 7300-7600), the Bench Mark shall be 'Very Good'. For this purpose, the Selection Committee will grade the officers who are considered suitable for promotion as 'very good' or 'outstanding'. Officers graded 'outstanding' will rank senior to all those who are graded 'very good' and placed in the select panel accordingly. Officers with the same grading will maintain their existing inter-se seniority."

It is thus clear that specific guidelines have been laid down which the Selection Committee is expected to follow according to the procedure prescribed therein. The Senior Administrative Grade is the Joint Secretary level position and the Selection Committee comprises of officers at a very senior level. We do not find any reason for scrutinising the proceedings and recommendations of the Selection Committee. Suffice to say that the Selection Committee had followed the guidelines in the case of promotion to Senior Administrative Grade where the benchmark is 'Very Good'. If the selection committee has assessed the applicant as less than 'very good', he cannot have any claim to be placed on the panel. In this case it is moreso when it has come on record that in the year ending 31.3.1989 even adverse remarks have been communicated to the applicant. In his averments the applicant had not only had not mentioned about this fact, but went on to assert that no adverse remarks were ever communicated to

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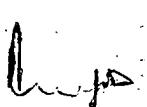
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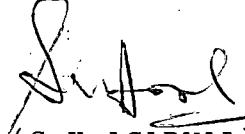
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him. We are not impressed with the averments of the applicant that the procedure for promotion to Sr. Administrative Grade has not been circulated and thus cannot be enforced. The applicant appears to be saying that if only he had known that the benchmark for promotion to SA Grade was 'Very Good' he would have made efforts to improve his performance. For any public servant and moreso in higher positions of responsibility, it is expected that the public servant will discharge his duties and responsibilities with the best of his capabilities at all times and it is not ~~only~~ that in order to achieve some narrow selfish gains only he would regulate the quality of his performance. We do not find any merit at all in this application and the same is liable to be rejected.

9. We, therefore, dismiss this Original Application, but with no costs.


(A.P. NAGRATH)

Adm. Member


(S.K. AGARWAL)

Judl Mmber