

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH:JAIPUR

Original Application No. 48/2003
Jaipur:Date of decision : this the 15th day of April, 2004

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

Dr. Manoj Bhargava S/o Shri Pralad Kishan
Bhargav aged about 56 years, R/p 563/27
Hathi Bhata, Ajmer, at present posted as Sr.DMO
(Surgeon), Railway Hospital, Ajmer (NWR)
[By Shri P.S.Asopa, Advocate for the applicant]

.....Applicant

versus

1. Union of India through its Secretary,
Ministry of Railway, Railway Board,
New Delhi.
2. The Secretary, Railway Board,
Rail Bhawan, New Delhi.
3. The General Manager,
Western Railway,Church Gate Mumbai.
4. Dr. O.P. Santhanam, CMS,
Southern Railway through D.G.Railway
Medical health Services, Rail Bhawan,
New Delhi.
5. Dr. E.V. Henry (SC), North West Railway
through D.G. Railway Medical Health Services,
Rail Bhawan, New Delhi.

[By Shri U.D.Sharma, Advocate,for respondents]

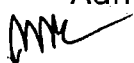
.....Respondents.

ORDER

[BY M.K. MISRA,ADMINISTRATIVE MEMBER

The applicant, Dr.Manoj Bhargava presently posted as
Senior D.M.O. (Surgeon) Railway Hospital, Ajmer, has filed this
O.A. 48/2003 assailing the order of Railway Board dated
10.4.2002 (Annex.A/1) and thus seeking the following reliefs :-

"I) by an appropriate order or direction, the respondents
be directed to hold the review DPC/Selection Committee
for Junior Administrative Grade, Selection Scale and Senior
Administrative and grant the performa promotion to the



applicant in the said scale, at least w.e.f. 7.3.1990, 1.4.1994 and 28.10.2000 by revising the orders dated 10.4.2002 or any other consequential order. The applicant also be granted consequential benefits w.e.f. the above mentioned date of respective promotions;

ii) that in case the revision is not possible then the above mentioned relief claimed in prayer No. 1 may kindly be granted by quashing the orders dated 10.4.2002 or any other consequential order;

iii) that in case of any prejudicial order is passed in the matter of grant of the Senior Administrative Grade then the same may kindly also be quashed and set aside;

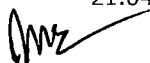
iv) any other appropriate order or direction, which this Hon'ble Court deems expedient in the facts and circumstances of the case, may kindly be passed in favour of the applicant;

v) cost of the suit may kindly be awarded in favour of the applicant."

2. Briefly, the facts of the case are that the applicant stands superseded and has lost his original position in the Junior Administrative Grade (JAG) of Indian Railway Medical Service, Senior Grade, Selection Grade (SG) and consequently in Senior Administrative Grade (SAG). The cause of grievance is given in the O.A. at page No. 66 (Annexure A/7) are reproduced below for the sake of convenience :-

"Prior to Refixation

(1)	Sh.Manoj Bhargava (2)	Dr.O.P.Santhanam (3)	Dr.E.V.Henry (4)
1.Date of Adhoc Appointment (Reference No. E(O)I/2001/SR-6/14 dated 04.02.2002)	04.11.1972	13.11.1972	06.12.1976
2. Date of Confirmation by UPSC (Reference No. E(O) I/2001/SR-6/14 dated 04.02.2002)	03.09.1982	24.12.1982	24.12.1982
3. Date of JA Grade (Reference No. E(O)III-92/PM/97 dated 17.12.1992. Ref. No. E(O)III/93/PM/43 dated 21.04.1993 and Ref. No. E(O) III/95/PM/38 dated 18.05.1995)	17.12.1992	21.04.1993	18.05.1995



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|---|------------|------------|-----------|
| 4. Date of Selection Grade | 06.06.2000 | 06.06.2000 | Not Given |
| (Reference No. E(O)III/2001/PM/03 dated 19.02.2001) | | | |
| 5. Provisional Refixation in Seniority | 823 CH | 823 CJ | 1103 T |
| (Reference No. E(O)I/2001/SR-6/14 dated 04.02.2002) | | | |

After Refixation

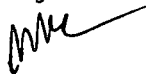
- | | (1) | (2) | (3) | (4) |
|--|----------------|--------------------------|------------------------|-------------------------|
| 1. JA Grade | | 13.05.1991
Sl.No.77 | 07.03.1990
Sl.No.30 | 07.03.1990
Sl. No.74 |
| (Reference No. E(O)III/2002/PM/43 dated 10.04.2002) | | | | |
| 2. Selection Grade | | 01.09.1998
Sl.No. 167 | 01.04.1994
Sl.No.89 | 01.05.1998
Sl.No.163 |
| (Reference No. E(O)III/2002/PM/42 dated 10.04.2002) | | | | |
| 3. Senior Administrative Grade | Not Considered | 25.10.2000
Sl.No.63 | | Not Considered |
| (Reference No. E(O)III/2002/PM/44 dated 12.04.2002)" | | | | |
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3. The seniority was revised in pursuance of and in compliance of Hon'ble Supreme Court's decision dated 10.4.2001 in the case of Union of India vs. Lalitha S. Rao reported in (2001) SCC (L&S) 829. The applicant submitted various representations before the competent authorities for consideration of his grievances for having been superseded in various grades and his juniors placed above him while refixation of the seniority on account of Supreme Court's direction in the above case. The competent authority communicated the decision on his representations in the following manner (Annexure A/2) :-

"Dr. Manoj Bhargava SG/IRMS was considered for empanelment to JAG by the Review DPC in JAG/IRMS panel approved on 01.3.90. However taking into consideration all relevant factors including his overall performance, he was not found suitable for empanelment/promotion in JA Grade. Thus, he lost his seniority, Dr. Manoj Bhargava is not yet due for consideration for empanelment in SAGrade."



4. Aggrieved with the above communication the applicant cycled to this Tribunal for the reliefs quoted above. The learned counsel for applicant submitted that the name of the applicant appeared in the seniority list at 823 CH above Dr. Jayanti Deo Srivastava whose name appeared at No. 823 C-I and Dr. O.P. Santhanam whose name appeared at sl. No. 823-CJ (respondent No. 4). The name of Dr. E.V. Henry has been mentioned at sl.No. 1103-T. Dr. Jayanti Deo Srivastava has taken voluntary retirement, therefore, Dr. O.P. Santhanam is being impleaded who is just below him in the revised seniority list and Dr. E.V. Henry, was just above him in the revised JAG (Annex.A/5). The applicant was granted JAG from 13.5.1991 and SG from 1.1.1998 whereas the junior officers mentioned above have been granted JAG from 7.3.1990 and SG from 1.4.1994 and 1.5.1998 respectively. Further. Dr. O.P. Santhanam, respondent No. 4, has been granted SAG on 20.10.2000 (Annex.A/6). It was further mentioned by the learned counsel for the applicant that before revision of the seniority list , the applicant was given promotions on due date and he was senior to Dr. O.P. Santhanam and Dr. E.V. Henry but, in the revised seniority list, he has been placed below them. The communication made to the competent authority on his representation sent from time to time for revision of seniority indicated that since his performance was not found up to the mark, he was not found fit/suitable for empanelment/promotion as JAG and since in the feeder grade i.e. JAG he has become junior to them and lost his seniority he was not empanelled in



the SAG. According to the applicant, the record of his performance is befitting of being empanelled because no adverse communication was made to the applicant by the superior authority and the revised seniority list was drawn on the basis of incomplete record despite the fact the applicant was exonerated and the same fact might have not been placed before the selection committee while holding the DPC. Therefore, the selection was made in violation of Article 14 and 16 of the Constitution and the impugned order deserves to be quashed.

5. In the reply, the respondents submitted that the applicant was earlier promoted to the JAG on 17.12.1992 and to the SG on 6.6.2000, however, consequent to the decision of the Hon'ble Supreme Court dated 10.4.2001 (supra), the seniority of the medical officers were revised by counting their ad hoc services rendered prior to their regularization by the Union Public Service Commission with the result applicant was assigned higher seniority as indicated in the seniority list of 4.2.2002 issued by the Railway Board. The name of the applicant was placed in para IV at No. 79 showing his earlier seniority at Sl. No. 1457 and the revised seniority at 823-CH. Due to direction of the Apex Court the seniority of the applicant along with others was got to be reviewed for promotion to the JAG, SG and SAG. On account of higher seniority, the applicant became eligible for being considered for promotion in the channel of JAG as on 1.3.1990. The Departmental Promotion Committee i.e. the selection committee after examination of the records including



the ACRs, came to the conclusion that the applicant was not found fit for promotion to JAG and he could not find place in the panel of JAG approved on 1.3.1990 whereas, Dr. O.P. Santhanam and Dr. E.V. Henry private respondents No. 4 and 5, were found fit by the Departmental Promotion Committee and were placed in the panel of JAG and were accordingly promoted vide order dated 10.4.2003 (Annex.R/1). However, the case of the applicant was again considered for empanelment in the JAG and at subsequent stage, he was found fit by the review selection committee on 27.4.1991 and was promoted vide order dated 10.4.2002. The JAG is a feeder grade and since his name was not in the panel dated 1.3.1990 he was not given promotion to selection grade. The applicant since lost his seniority in the JAG, he also lost seniority in the selection grade and placed at Sl. No. 167 whereas both the respondents No. 4 and 5 found their place at No. 89 and 163. It was vehemently contended by the learned counsel for the respondents that when the applicant was earlier promoted in JAG on 17.12.1992 the record of the applicant including the ACRs for the period of five years preceding the panel date i.e. 1988 to 1992 were considered but when due to the assignment of higher seniority he became eligible for being considered for promotion in respect of the panel as on 1.3.1990 the record of five years were of March 1985 to 1989. Therefore, it is obvious that the records in respect of the aforesaid two selections were not the same and the review selection committee after considering the preceding five years record found the applicant unfit for promotion to JAG in respect

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of panel as on 1.3.1990. Consequently on imposing the seniority in the JAG, the applicant could only be considered for interpolation in the selection grade panel approved on 24.6.1999 and was empanelled in the selection grade w.e.f. 1.9.1998. As regards the SAG to Dr. O.P. Santhanam, respondent No. 4, it is relevant to mention that panel for SAG which is a group 'A' service are prepared batch wise. As per the revision of the seniority of the medical officers two Doctors namely Dr. Kalyani Chatterjee and Dr. N.R. Roy at Sl. No. 83 and 84 in Part IV of the Revised Seniority List dated 4.2.2002 (Annex.A/5) who were junior to Dr. Santhanam at Sl. No. 81 but belong to 1975 batch, were considered for the SAG panel approved on 11.10.2000. By following the policy of considering a senior if his is junior is considered for promotion Dr. Santhanam was also considered for the aforesaid empanelment in the SAG and on being found fit, he was promoted to SAG from 20.10.2000 vide order dated 12.4.2002. Therefore, the applicant has no grievance as regards the promotion of Dr. Santhanam to the SAG. The applicant himself assessed his performance as very good or outstanding to which he is not competent at all. It is the review selection committee who is empowered to make assessment based on certain facts on their own about a particular candidate in the consideration zone.

6. We have considered the various averments made by the learned counsel for the parties. We have also gone through the records relating to holding of the D.P.C. carefully and their



findings with regards to performance of the eligible candidates including the applicant. It was noticed that the ACR of 1989 was not considered by the selection committee on account of the fact that it was not due by the time selection committee held the DPC. The period of five years was essential for consideration for the purpose of promotion and in the case of the applicant, the period to which the ACR required to be considered was 1985, 1986, 1987 and 1988 i.e. four years only; because ACR of 1989 was not due. To meet the requirement of five years it becomes necessary on the part of the selection committee to take the preceding year's ACR i.e. in this case ACR of 1984, the same should have been taken into account for consideration which was not considered by the selection committee. The result and the outcome of the five years would decide the further promotion in the senior grade as well as SAG because for the promotion in these two categories it would be made from the feeder cadre i.e. JAG in the case of the applicant. Further, it was observed that any adverse comment relating to the years 1985 to 1988 if any, were not communicated to the applicant and no opportunity was provided to him to controvert or to accept the adverse comments if any as per the information submitted by the respondents from the records brought by them during the course of hearing before the Tribunal.

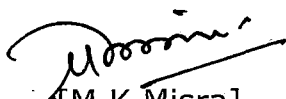
7. In the rejoinder to the reply of the respondents, the learned counsel for the applicant referred to the Circular No. DO 89/289-B/Secy/Admn. Dt. 26.9.1989. In Para 3 (ii) (b) it has

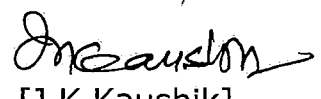


been mentioned that where one or more ACRs have not been written for a sufficient reason for a particular period, the ACRs of the years preceding the period in question, would be considered. If this is not possible, all available ACRs should be taken into account (Annexure R/2 page 116).

8. In view of the above discussions, respondents No. 1 to 3 are directed to hold a review D.P.C. in the case of the applicant for the purpose of including the ACR of 1984 which was not earlier considered and the ACR of 1985, 1986, 1987 and 1988 for the purposes of considering the empanelment of the applicant in the JAG cadre. If the applicant is found to be fit for the purpose of JAG then for subsequent promotion in the selection grade and SAG would follow, depending on the gradation of the ACRs for the relevant periods and as per rules and instructions issued from time to time by the competent authorities. This exercise shall be done within a period of three months from the date of receipt of a certified copy of this order.

No costs.


[M.K. Misra]
Adm. Member


[J.K. Kaushik]
Judl. Member

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