

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-300/02 Order sheet Pg-1 to 2

Disposed Date- 26/03/05

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O.A/T.A No. 300/2002

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SECTION OFFICER (Judl.)

( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

ORDER SHEET

Original Application No : 300 / 2002  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant (s) A. Roy

Respondent (s) UOP Ltd

Advocate for the Applicant (s) Mr G.K. Bhattacharyya

Advocate for the Respondent(s) Mr B. Choudhury

R.D. Counsel - B.K. Sharma

J.L. Sankar

Notes of the Registry

Date

Order of the Tribunal

13.9.02

Heard Mr. G.K. Bhattacharyya,  
learned counsel for the Applicant.  
The application is admitted.  
Call for the records.

List on 11.10.2002 for orders

soft

W.S. Samanta

mb

Vice-Chairman

Notices prepared  
and sent to D. Section  
for issuing of the sum  
to the respondents  
through Royal Post  
with A.D. Vicle D.No  
2777 to 2780

11.10.2002

On the prayer made by Mr. S. Samanta  
four weeks time is allowed to the  
respondents to file written statement.  
List on 26.11.2002 for order.

bb

I.C.Usha  
Member

Vice-Chairman

BB

(2)

25.11.02 Heard Mr. B.Choudhury, learned counsel for the applicant. On the prayer of Mr. S.Sarma, learned counsel for the respondents four weeks time is allowed to the respondents to file written statement. List on 24.12.2002 for orders.

No. written statement has been filed.

By  
23.12.02.

mb

Vice-Chairman

24.12.02 Further four weeks time is allowed to the respondents for filing written statement on the prayer of Mr. S.Sarma, learned counsel appearing on behalf of the Standing counsel for the Railway. List on 30.1.2003 for orders.

No. written statement has been filed.

By  
29.1.03.

Member

Vice-Chairman

mb

30.1.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra, Administrative Member.

On the prayer of learned counsel for the respondents further four weeks time is allowed to the respondents for filing written statement. List again on 3.3.2003 for written statement.

No. written statement has been filed.

mb

Member

Vice-Chairman

By  
13.3.03.

3.3.2003. Court did not sit today. The case is adjourned to 17.3.2003.

By  
Hajra

Notes of the Registry

Date

Order of the Tribunal

17.3.2003

Further four weeks time is allowed to the respondents to file written statement on the prayer of Mr. S. Sarma, learned counsel for the respondents. List on 22.4.2003 for written statement.

No. written statement has been filed.

Vice-Chairman

mb

3/3  
5.5.03  
22.4. Court did not sit today. The Cet'd adjourned to 6/5/2003.

My

6.5.2003

Present : The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S. Biswas, Member (A).

On the prayer of Mr.

S. Sarma, learned counsel for the respondents further four weeks time is allowed to the respondents to file written statement. List again on 3.6.2003 for orders.

S. Biswas

Member

Vice-Chairman

mb

3.6.2003

List again on 26.6.2003 to enable the respondents to file written statement.

Vice-Chairman

mb

No. written statement has been filed.

25/6/03

(4)

O.A. 300/2002

O.A. No.

Date

Order of the Tribunal

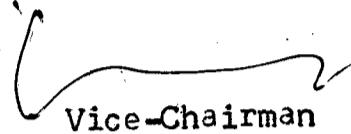
Notes of the Registry

26.6.2003

Written statement has been filed. The case may now be listed for hearing on 1.8.2003. The applicant may file rejoinder, if any, within two weeks from today.

No rejoinder has been filed.

31/7/03



Vice-Chairman

mb

1.8.2003

On the prayer of Mr. B. Choudhury learned counsel for the applicant the case is adjourned. Put up again on 27.8.2003, for hearing.



Member



Vice-Chairman

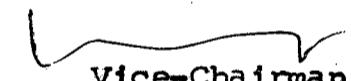
mb

27.8.03

List on 11.9.03 for hearing.



Member



Vice-Chairman

1m

11.09.2003 Present : The Hon'ble Sri K.V. Prahaldan, Member (A).

Bench  
No Division/ is sitting today.

List the matter before the Division Bench on 29.10.2003 for hearing.



Member

mb

Office Note	Date	Tribunal's Order
Order dated 29/10/03 Sent to D/section for issuing to both the parties.  <i>(Ans) 3/11/03.</i>	29.10.2003	Heard at length. Records are necessary for adjudication of the case. The respondents are directed to produce the connected records including the minutes of DPC to consider the promotion for the post of JAG (Sr. DMO). List again on 25.11.2003 for hearing.  <i>KV Prahadan Member</i>
No. responder has been filed.  <i>23.2.04</i>	19.1.2004	Present: Hon'ble Shri Bharat Bhusan, Member (J) Hon'ble Shri K.V. Prahadan, Member (A). Mr S. Sengupta, learned Railway counsel is present. Ms U. Das, Proxy counsel for Mr G.K. Bhattacharyya, learned counsel for the applicant, requests for adjournment. List the case for hearing before the next Division Bench.  <i>KV Prahadan Member (A)</i>
	nkm	<i>O</i> Member (J)

24.2.04 present : The Hon'ble Sri Shanker Raju,  
Judicial Member.

The Hon'ble Sri K.V.Prahladan,  
Admn.Member.

As the counsel for the respondents  
has some personal difficulty list the  
case again on 18.3.04.

Respondents to bring the relevant  
OR DPC  
records on the next date of hearing .

WBS has been  
billed.

*Mu*  
11.5.04

*KV Prahladan*  
Member(A)

*h*  
Member(J)

pg

12.5.2004 Present: Hon'ble Shri Mukesh Kumar  
Gupta, Judicial Member.

Hon'ble Shri K.V. Prahladan,  
Administrative Member.

Despite order dated 29.10.2003  
directing the respondents to produce  
the minutes of the DPC considering  
the applicant for the post of Junior  
Administrative Grade (Sr. DMO), the  
same has not been produced. The  
learned counsel for the applicant  
states that it would be necessary  
to look into the records as to whether  
the case of the applicant was fairly  
considered or not. Accordingly the  
case is adjourned and listed before  
the next available Division Bench.

The respondents shall now ensure  
that the records, so directed, are  
produced on the next date of hearing.

*KV Prahladan*  
Member(A)

*h*  
Member(J)

Received copy of  
Judgment &  
Alsha Das  
Advocate  
10/5/04

16.6.04 present : The Hon'ble Mrs Bharati Ray,  
Judicial Member.

The Hon'ble Shri K.V.Prahladan  
Administrative Member.

Mr S.Sarma, learned counsel for the respondents submits that he has received a letter dated 15.6.04 from the General Manager(P), N.F.Railway, Maligaon, Guwahati requesting him to seek adjournment for four weeks for production of record.

A copy of letter dated 14.6.04 from Railway Board is also submitted before us.

We, therefore, adjourn the case till next Division Bench. Respondents shall produce the relevant records as directed earlier.

*KV Prahladan*  
Member (A)

*B*  
Member (J)

pg

*21.7.04 Answer for tomorrow.*

*By  
K.V.*

21.7.2004 Present: The Hon'ble Shri K.V.Sachidanandar  
Member (J).

The Hon'ble Shri K.V.Prahladan  
Member (A).

Post on 22.7.2004. Registry is directed  
to receive the documents and to keep it  
in safe custody.

*KV Prahladan*  
Member (A)

*Member (J)*

bb

22.7.2004 Present: Hon'ble Shri K.V. Sachidanandan,  
Judicial Member

Hon'ble Shri K.V. Prahладan,  
Administrative Member.

Heard Mr G.K. Bhattacharyya,  
learned counsel for the applicant and Mr  
S. Sarma, learned counsel for the  
respondents. Hearing concluded. Order  
reserved.

  
Member (A)

  
Member (J)

nkm

16.8.04  
27.7.2004

Order pronounced in open Court, kept  
in separate sheets.

The O.A. is allowed in terms of the  
order. No costs.

  
Member (A)

bb

Copy of the Judgment  
has been sent  
to the D.P.C.C. for  
issuing the same  
to the applicant  
as well as to the  
Rly. Adv. for the  
respondent  
etc

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./RVA. No. 1111300 of 2002

DATE OF DECISION 27-7-2004

Dr Ajoy Roy .....APPLICANT(S).

Mr G.K. Bhattacharyya and Mr B. Choudhury .....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

The Union of India and others .....RESPONDENT(S)

Mr J.L. Sarkar and Mr S. Sarma .....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.300 of 2002

Date of decision: This the 27th day of July 2004

The Hon'ble Shri K.V. Sachidanandan, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

Dr Ajoy Roy  
S/o Suhas Ch. Roy  
Divisional Medical Officer  
Divisional Railway Hospital,  
Lumding, Nagaon. ....Applicant  
By Advocates Mr G.K. Bhattacharyya and  
Mr B. Choudhury.

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Railways (Railway Board) New Delhi.
2. Secretary (E) Railway Board, New Delhi.
3. Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
4. General Manager (P) N.F. Railway, Maligaon, Guwahati. ....Respondents

By Advocates Mr J. Sarkar and Mr S. Sarma.

.....

O R D E R

K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant who is a Divisional Medical Officer in the Railway Hospital was not considered for the Junior Administrative Grade as per Annexure-I order of the Railway Board dated 18.3.2002 and his juniors were promoted and included in the list and his legitimate claim for the promotion was rejected without stating any valid reason. His representation dated 3.5.2002 was replied to by the

W

Board stating that taking into account all the relevant factors the DPC did not find him suitable for empanelment/promotion to JA Grade. Aggrieved by the action of the respondents the applicant has filed this O.A. seeking the following reliefs:

"It is, therefore, prayed that Your Lordships would be pleased to admit the application, call for the entire records of the case, including the ACRs of the applicant and the minutes of the DPC held on 15.11.01, ask the respondents to showcause as to why the applicant should not be promoted to the Junior Administrative Grade and after perusing the cause shown, if any and after hearing the parties direct the Respondents to promote the applicant to the next higher post of Junior Administrative Grade from the date when his Juniors were so promoted with all consequential benefits and/or pass any other order/orders as Your Lordships may deem fit and proper so as to grant adequate relief to the applicant."

2. The applicant further averred in the O.A. that the next higher post after Senior Scale in Divisional Medical Officer (DMO for short) is Junior Administrative Grade (JAG for short) which is required to be filled up by promotion. The applicant has completed five years of service as required by the recruitment rules in the Senior Scale on 25.2.2001 and nothing adverse in the ACR was communicated to him. The Railway Board vide Annexure-I dated 18.3.2002 promoted ninetytwo DMOs, out of which eightysix were juniors to the applicant to JAG superseding the just and legitimate claim of the applicant to be so promoted. His juniors like Dr Gautam Bhandopadhyay, Dr S.K. Mukhopadhyay, Dr Bhaskar Basak, R Prabit Kr Deb etc. who were juniors were promoted and his representation was also rejected on the ground that the DPC did not find him

suitable.....

suitable. According to the applicant the selection must be on merit from amongst the officers ordinarily with not less than five years of service in the Senior Scale. But, in this case the Board had constituted a DPC which considered the candidates on the basis of scrutiny of ACRs of the last five years preceding the date of selection. Nothing adverse also was communicated to him.

3. The respondents have filed a detailed written statement contending that the selection was conducted under Rule 203 of Indian Railway Establishment (IREC for short) which are statutory rules framed under Article 309 of the Constitution of India. The posts in Administrative Grades are Selection posts. It is made wholly by selection and mere seniority does not confer any claim for such promotion. The procedure is laid down by the Ministry of Railways by letter dated 16.09.1989 (Anneuxre-RI) according to which advancement in an Officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance and potential for shouldering higher responsibilities, as reflected in the Annual Confidential Reports, and it should be based on a strict and rigorous selection process. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by the Selection Committee. The applicant was considered, but not found suitable for empanelment for JAG taking into account all the relevant factors including his overall performance. The right of the applicant is limited to be being considered for promotion and not to promotion itself. He was not found fit on the basis of the performance as reflected in his ACRs and he would be continued to be considered in the future JAG panels. The mere absence of adverse entries in the ACRs does not mean that the



applicant.....

applicant is otherwise fit for promotion. Such entries in the ACR which are considered to adverse are only required to be communicated and in the absence in any such entries or remarks the question of communicating does not arise. Being a selection post it is the comparative merit of all officers which are taken into consideration by the DPC. The applicant has not impleaded the other promoted officers who may be adversely affected in case his claim is accepted. Therefore, there is legal lacuna of non-joinder of parties.

4. Mr G.K. Bhattacharyya and Mr B. Choudhury appeared for the applicant and Mr J.L. Sarkar and Mr S. Sarma appeared for the respondents. The learned counsel have taken us to the various pleadings placed on record. The learned counsel for the applicant submitted that having fulfilled all the conditions, eightysix juniors have superseded the applicant and the respondents having violated the procedure in not communicating the entries in the ACRs which has turned adversed to the applicant. The learned counsel for the respondents, on the other hand, submitted that this being a process of selection and the bench mark for such selection has been fixed as 'Very Good'. The applicant has secured only 'Good', which is not invariably an adverse remark, had not been selected to the post. The ACR entries all through the years of the applicant being 'Good' cannot be said to be adverse and that need not be communicated, but however, he has not reached the bench mark of 'Very Good' for considering for selection.

5. We have heard the learned counsel for the parties and given due consideration to the arguments. When the matter came up for hearing the learned counsel for the respondents.....

respondents produced the selection records for the verification of the Court and on perusal of the same we have seen that the ACR entries of the applicant is 'Good', whereas the Selection Committee had fixed the bench mark as 'Very Good' for selection. The learned counsel for the respondents has taken our attention to circular dated 26.9.1989 of the Railway Board in regard to procedure for promotion for the Administrative Grades wherein Clause (d) of Assessment of Confidential Rolls reads as follows:

"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."

Again, on the down bottom regarding the procedure for selection the following observation is made:

"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."

Further, the learned counsel for the respondents had also taken us to the circular dated 3.6.2002 under reference No.2002/SCC/3/1 on the very same subject issued by the Railway Board. In para 9 it is stated as follows:

"The DPC would not be guided merely by the grading, if any, recorded in the ACRs but should make its own assessment on the basis of the entries in the ACRs, including the various parameters and attributes. The Committee shall also take into account whether the officer 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 ACRs. The DPC should also have regard to the remarks on the column of integrity."

Apart from that as per the circular Clause 12(a) the bench mark for promotion from Senior Scale to JAG and SC would be 'Good'.



6. The learned counsel for the applicant submitted that he has no quarrel with regard to the purpose for which these circulars are issued, but his contention is that though the circular dated 3.6.2002 cannot be strictly applied to in this case because the subject matter of the selection in the given case was on 15.11.2001 and the bench mark could have been 'Good' instead of 'Very Good'. His argument is that the Selection Committee had not applied its mind nor made any independent assessment on the merits of the candidates which should have been done as per these circulars. But the Committee has adopted once the ACR entries of the applicant as such without any further verification. Further, the case of the applicant is that even assuming that the entries of the applicant is 'Good' and the bench mark has been fixed as 'Very Good' that has adversely affected his consideration for promotion and it should have been communicated to him. We are fully aware of the dictum laid down by the Supreme Court that it is not the function of the Court to hear appeal over the decision of the Selection Committee and scrutinise the relative merit of the candidate since the Selection Committee is an expert body on the subject and such decisions can be interfered only when the procedure adopted is illegal and irregular affecting the selection.

(Ref. Durga Devi and another -versus- State of Himachal Pradesh and others, reported in AIR 1997 SC 2618).

Then what the Court has to evaluate is whether there is any illegality in the procedure adopted in the selection.

7. The guidelines for the preparation of Confidential Rolls are statutorily delineated in the IREC Vol. I which is reproduced as under:

"1607. Confidential reports on gazetted railway servants must contain a full and frank appraisal of his work during the year, the traits of character whether pleasant or unpleasant, aptitude, personality and bearing, &c. which contribute to quality of his work as a gazetted railway servant and his fitness for shouldering larger executive and administrative responsibilities. The reports must not be confined merely to general marks and off hand impressions so brief and casual as to convey little or no real meaning and the assessment must be based on failure of excellence in the work entrusted to the gazetted railway servant.

1608. A gazetted railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken, preferably at a personal interview or, if that is not practical, by means of a personal letter pointing out to him the direction in which his work has been unsatisfactory or the faults of character or temperament, &c. which require to be remedied. The manner and method of conveying to the gazetted railway servant that his work needs improvement in certain directions must be such that the advice given and the warning or censure administered, whether orally or in writing, shall, having regard to the temperament of the gazetted railway servant, be most beneficial to him. If, inspite of this there is no appreciable improvement and an adverse confidential report has to be made, the facts on which the remarks are based should be clearly brought out.

1609. As a general rule, in no circumstances, should a gazetted railway servant be kept in ignorance for any length of time that his superiors, after sufficient experience of his work, are dissatisfied with him where a warning might eradicate a particular fault, the advantages of prompt communication are obvious. On the other hand, the communication of any adverse remarks removed from their context is likely to give a misleading impression to the gazetted railway servant concerned. The procedure detailed in rule 1610 should therefore, be followed."

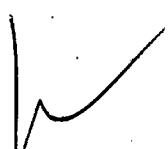
8. On going through the records submitted by the respondents and selection proceedings we find that the applicant has acquired grading as 'Good', whereas the benchmark for such selection as per the circular and by the Selection Committee has been laid down as 'Very Good'. Then the question that comes is whether the ACR 'Good' is

adverse or not. Learned counsel for the applicant has taken us to a decision reported in 1996 (2) SCC 363 in the case of U.P. Jal Nigam and others vs. Prabhat Chandra Jain and others, in which the Supreme Court has observed that "Confidential report - Adverse remarks - Downgrading of the entry - When can be adverse?" The gradation falling from 'Very Good' to 'Good' that may not be ordinarily an adverse entry since both are positive grading. Even a positive confidential entry can perilously be adverse and to say that an adverse entry should be quantitatively damaging may not be true and the entry 'Good' which is per se not adverse will amount to be adverse when the bench mark is being put as 'Very Good'. Such a state of affairs should not be permitted. Therefore, such information should have been informed to the employee and communicated the same. To fortify the above, it is also to notice a decision of this Tribunal reported in (1996) 33 ATC 802 of the Central Administrative Tribunal, Allahabad Bench of a similar and identical case and held that "Remarks which have potential of adversely affecting and employee's career, held on facts, are adverse - Such remarks have to be communicated to the employee - Grading an employee as 'Good' and 'Average' when bench-mark for promotion is 'Very Good', held, are adverse remarks which should have been communicated to the applicant." Admittedly, the same position prevails in this case and the confidential report of the applicant is 'Good' which was not communicated at any point of time to the applicant has adversely and prejudicially affected the selection of the applicant. <sup>18</sup> We also find from the record that the Selection Committee which consisted of only Railway Officials without even a single Member from the Medical Service has evaluated

without any application of judicious mind and found the applicant unfit. On going through the entire record we could not find any cogent reason recorded except the gradation of ACR in the non-selection of the applicant. The legal position of such an entry in the ACR should have been communicated is not, admittedly, done in this case which is a patent irregularity in the selection process, nor the Selection Committee made its mind applied. Therefore, we are of the considered view that the declaration that the applicant is unfit will not stand in its legs and the impugned action is to be set aside.

9. Regarding the other contention that the other selected candidates who may be adversely affected have not been made party to this O.A. also will not stand for the reason that the applicant is only challenging the matter of selection and he has no grievances against the other candidates.

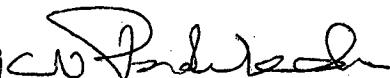
10. In the conspectus of facts and circumstances we are of the considered view that the non-selection of the applicant on the basis of an uncommunicated adverse entry is not justified as per the legal position discussed above. Therefore, without disturbing the other selected candidates we direct the respondents to consider the case of the applicant afresh by holding a review DPC taking 'Good' as the bench mark for selection in the case of the applicant and pass appropriate orders within a time frame of three months and grant the applicant all consequential benefits. In any case if the applicant is found fit for such a selection he may be promoted to the next higher post from the date when his immediate juniors in the selection list is promoted with all consequential benefits.



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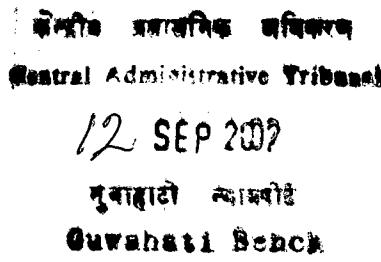
The O.A. is allowed with the above observations.

In the circumstances no order as to costs.

  
( K. V. PRAHLADAN )  
ADMINISTRATIVE MEMBER

  
( K. V. SACHIDANANDAN )  
JUDICIAL MEMBER

nkm



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH: GUWAHATI

(An Application under Section 19  
of the Administrative Tribunal Act, 1985)

O.A. NO. 300 OF 2002

Dr. Ajoy Roy ... Applicant

-Vs-

Union of India and others ... Respondents

I N D E X

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Filed by

*Bikram Choudhury*

Bikram Choudhury

Advocate

Filed by the applicant  
Bikram Choudhury  
Advocate

IN THE COURT OF THE ASSAM ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH: GUWAHATI

(An application under section 19 of the Administrative  
Tribunal Act, 1985)

O.A NO. 300 of 2002

Dr. Ajoy Roy

Son of Suhas Ch. Roy

Divisional Medical Officer

Divisional Railway Hospital,

Lumding,

District: Nagaon

.....Applicant.

-Vs-

1. Union of India

Represented by the Secretary

to the Government of India,

Ministry of Railways,

(Railway Board)

New Delhi.

2. Secretary (E)

Railway Board,

New Delhi.

3. Secretary,

Union Public Service Commission

Dholpur House, Shahjahan Road,

New Delhi.

4. General Manager (P)

N.F. Railway, Maligaon,

Guwahati-11.

...Respondents

1. PARTICULAR OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.

1. Railway Board's orders issued vide its XXR message No. E (O) III-2002/PM/ 24 dated 18.03.02 whereby 92 Senior Scale Officers of Indian Railway Medical Service were promoted to officiate in Junior Administrative Grade with effect from 17.03.02 superseding the claim of the applicant to be promoted.
2. Letter No. E/41/III/236-1 (O) Pt-II issued by the Respondent No.4 informing the applicant that in response to his representation dt. 3.5.02 the Board has stated that taking into account all the relevant factors the DPC did not find him suitable for empanelment/ promotion
3. Illegal and arbitrary action of the authorities in promoting person junior to the applicant to Junior Administrative Grade, by denying the just and legitimate claim of the applicant for promotion without stating any valid reasons.

*Aloty*

2. JURISDICTION OF THE TRIBUNAL:

The applicant declare that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal.

3. LIMITATION :

The applicant further declares that the application is within the limitation prescribed under Section 21 of the Administration Tribunal Act, 1985.

4. FACTS OF THE CASE :

1. That the applicant begs to state that after completing his MBBS from Assam Medical College, Dibrugarh in 1984, he was appointed as Assistant Medical Officer (ad-hoc) in the N.F. Railway and was posted at Lumding Divisional Railway Hospital on 26.02.86 subject to passing of the examination conducted by the U.P.S.C. from time to time.

2. That, thereafter, on the basis of a advertisement issued by the UPSC the applicant applied for one of the 19 posts of Assistant Divisional Medical Officers (hereinafter referred as ADMO) earmarked for N.F. Railway in the year 1991 and on being selected by the UPSC the applicant was appointed to the post of ADMO in the scale of Rs. 2200-4000/- on 25.2.92 and was posted at Lumding

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Railway Hospital. The applicant was promoted to the post of Divisional Medical Officer in the senior scale in grade Rs. 10,000-15,200/- on 25.2.96. Since the date of his joining service the applicant has been carrying out his duties sincerely and to the best of his abilities and there was no occasion when any adverse was ever communicated to him.

3. That the applicant begs to state that the next higher post after senior scale in Divisional Medical Officer (hereinafter referred as DMO) is Junior Administrative Grade, which is required to be filled up by promotion. Since the applicant had completed 5 years as DMO in the senior scale grade on 25.2.01 and nothing adverse in the ACR was communicated to him, the applicant was confident that when his turn would come, his case would be considered for promotion and he would be selected and promoted.

4. That the applicant was shocked and surprised when he came to know that the Railway Board vide its XXR message No. E(O)III-2002/PM/24 dated 18.3.02 had promoted 92 DMOS, out of which 86 of them were junior to the applicant, to the post of Junior Administrative Grade, superseding the just and legitimate claim of the applicant to be so promoted.

A copy of the Railway Board's XXR message dated

Abey

18.3.2002 is annexed

herewith and marked as

Annexure -I

5. That the applicant begs to state that as stated above, the applicant was never communicated any adverse remarks in his ACR in any manner and he was also never communicated about any downgrading in his ACR.

6. That thereafter the applicant filed a representation dated 3.5.02 before the Respondent No. 4 stating the above facts with the prayer for taking needful action as to why his case was not considered for further promotion. The Deputy Chief Personnel Officer/ Gaz on behalf of Respondent No. 4 forwarded the representation dated 3.5.2002 to ~~the Deputy Secretary (E), Railway~~ <sup>Board</sup> for disposal vide letter No.E/41/III/236-1(O) Pt.11 dated 16/17.05.02 and further mentioning that Dr. Gautam Bhandopadhyay, Dr. S.K. Mukhopadhyaya, Dr. Bhaskar Basak, Dr. Prabir Kr. Deb and Dr. Anuradha Goswami all from N.F. Railway who were junior to the applicant as per seniority list of ADMOs of All India Railways published vide Railway Board's letter No. E(O)1-98/SR-6/19 dated 25.9.98 have already been promoted to Junior Administrative Grade in terms of Railway Board's XXR message dated 18.3.2002.

Copies of the representation dated 3.5.2002 and letter

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dated 16/17.05.02 are annexed herewith and marked as Annexure - II & III respectively.

7. That the applicant has now received letter No.E/41/III/236-1 (O) Pt. II dated 2/5.08.02 from the office of Respondent no.4 informing him that in response to his representation dated 3.5.02 which was forwarded to the Railway Board vide letter dated 16/17.05.02 the Board has stated that the applicant's case was considered for empanelment to JA grade in the JAG/IRMS panel approved on 15.11.01. However taking into account all the relevant factors including the applicant's overall performance the DPC did not find him suitable for empanelment/promotion to JA Grade.

A copy of the letter dated 2/5.08.02 is annexed herewith and marked as Annexure-IV.

8. That the applicant begs to state that as per provisions of Indian Railway Establishment Code Vol-I, appointments to the post of Junior Administrative Grade is to be made by selection on merit from among the officers ordinarily with not less than 5 years' service in the senior scale. But instead the Railway board has been following a policy of constituting D.P.C for giving promotion

Abey

*eligible*  
to ~~eligible~~ candidates on the basis of scrutiny of ACRs of the last 5 years' preceding the date of selection. The applicant further states that as stated above, till date nothing adverse or down grading in his ACR has been communicated to him.

9. That the applicant has become highly aggrieved by the impugned action of the authorities in denying him promotion and as such he is approaching this Hon'ble Tribunal for relief.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

I. For that the action of the authorities in not promoting the applicant to the Junior Administrative Grade is illegal, arbitrary and in violation of Principle of natural justice and as such the impugned action of the authorities bad in law and is liable to be set aside.

II. For that an ACR which is adverse in nature for the purpose of promotion, much be communicated to the concerned incumbent immediately in the form of an advice so that there can be improvement in the performance. An adverse ACR which is not communicated, loses its very purpose and it is a settled proposition of law and a requirement of principle of natural justice that any adverse material acted upon for

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negating the promotion to the incumbent must be communicated, so as to give opportunity, to explain and represent against the adverse remark and this is a mandatory requirement of law and as such the impugned action of the authorities is not sustainable in law.

III. For that, at no point of time the applicant was ever communicated anything adverse in his service record and he was also never communicated any down grading in his ACR as is required under the service rules, if there had been any and as such the authorities could not have denied promotion to the applicant, there being not adverse remark ever communicated and as such the action of the authorities is illegal and arbitrary and is liable to be set aside.

IV. For that the authorities, while considering the case of the applicant did not make a fair assessment and the conclusions arrived at by taking into consideration extraneous matters, not related to the performance of the applicant in his service and as such the impugned action is bad in law and is liable to be set aside.

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V. For that, in any view of the matter, the impugned action of the authorities in denying the legitimate and just claim of the applicant for promotion is bad in law and is liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant had submitted a representation before the respondent No. 4 which was forwarded to the Railway Board and the same was rejected by order dt. 02/05.08.02.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, Writ petition or suit is pending before any of them.

8. PRAYER:

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, including the ACRS of the applicant and the minutes of

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the DPC held on 15.11.01, ask the respondents to showcause as to why the applicant should not be promoted to the Junior Administrative Grade and after perusing the cause shown, if any and after hearing the parties direct the Respondent to promote the applicant to the next higher post of Junior Administrative Grade from the date when his Juniors were so promoted with all consequential benefits and/or pass any other order/orders as Your Lordships may deem fit and proper so as to grant adequate relief to the applicant.

And for this act of kindness, the applicant as in duty bound shall every pray.

9. INTERIM ORDER IF ANY PRAYED FOR : Nil

10. DOES NOT ARISE:

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE.

(i) I.P.O No. : 4G 575141

(ii) Date. : 12-2-02

(iii) Issued by Guwahati Post Office.

(iv) Payable at Guwahati.

12. LIST OF ENCLOSURES :

As stated in the INDEX

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VERIFICATION

I, Dr. Ajoy Roy, Son of Sri Suhas Ch. Roy, aged about 42 years, Resident of presently serving as Divisional Medical Officer at Divisional Railway Hospital, Lumding, District- Nagaon, do hereby verify that the statements made in Paragraphs No. 1, 2, 3, 5 and 9 are true to my personal knowledge and the statements made in paragraphs No. 4, 6, 7 and 8 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 12th day of September, 2002 at Guwahati.

PLACE: GUWAHATI

DATE: 12.9.02.

Dr. Ajoy Roy  
(DR. AJOY ROY)

SIGNATURE OF THE APPLICANT

— 12 —

GOVERNMENT OF INDIA (BHARAT SARI AR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
(RAILWAY BOARD)

ANNEXURE - II

THE GENERAL MANAGERS  
CENTRAL RAILWAY/ MUMBAI  
EASTERN RAILWAY/ KOLKATA  
NORTHERN RAILWAY/ NEW DELHI  
NORTH EASTERN RAILWAY/ GORAKHPUR  
NORTHEAST FRONTIER RAILWAY/ GUWAHATI  
SOUTHERN RAILWAY/ CHENNAI  
SOUTH CENTRAL RAILWAY/ SECUNDERABAD  
SOUTH EASTERN RAILWAY/ KOLKATA  
WESTERN RAILWAY/ MUMBAI  
CLW/ CHITTARANJAN  
W & AP/ BANGALORE

WIRELESS/POST COPY  
ISSUED ON: 16/03/2002

NO. E(O)III-2002/PM/24 ( ) MINISTRY OF RAILWAYS HAVE DECIDED THAT THE FOLLOWING SENIOR SCALE OFFICERS OF IRMS SHOULD BE APPOINTED TO OFFICIATE IN JA GRADE WITH EFFECT FROM 17.03.02

S.NO	NAME (DR.s)	RLY./ UNIT
1.	PATHAK PRASUN KUMAR	NFR
2.	BUATTACHARYA JNANTILAK	NFR
3.	PATHAK MADHUMITA	NFR
4.	BHATTACHARJEE ANAMITA	NFR
5.	BAHADUR LAL	NFR
6.	KAUSHAL MAMTA	NR
7.	BANDOPADHYAY GAUTAM	NFR
8.	ALAM.A	ER
9.	KUMAR U.RAJENDRA	SR
10.	ROY SARADINDU	ER
11.	KALAIVANI.R.	SR

Attested by  
Chanchal  
J.D.  
Bhawan

... 2.

- 13 -

130	NAME (DR.s)	RLY/UN
12.	DEVI K.INDIRA	W&AP
13.	RAI SIDH NATH	W&AP
14.	GUPTA.P.K.	WR
15.	GOVINDARAJULU.V.	SR
16.	RAJESWARA.A	SR
17.	NIKHALA	SR
18.	SISODIA N.S.	NR
19.	GANGOTIA ANIL	CR
20.	PATIL.S.H.	CR
21.	ROY B.K.	ER
22.	KUMAR SUDHIR	CR
23.	HASSAN MISHABAUL	SER
24.	PANCHRATNA RAKESH	CR
25.	RAY DIPA (SANYAL)	SER
26.	SHARMA MANOJ KUMAR	WR
27.	SINHA.R.K.	ER
28.	KUMAR UMESH	ER
29.	MUKHOPADYAY.S.K.	NFR
30.	SHARMA VISHWANATH	WR
31.	VAUGH PRAVEEN.P.	WR
32.	AWASTI AVDESH KUMAR	WR
33.	RAI SINGHANI.K.L.	CR
34.	JAIN NIRMALA	NR

S.NO	NAME (DR.s)	RLY./UNFF
35.	MALHOTRA RAKESH	WR
36.	SINGH PRABHAT KUMAR	SER
37.	SANDHU N. (SAHA)	ER
38.	SAHAI D.K.	ER
39.	UPADHYAYA ANIL	WR
40.	KUMAR N.	ER
41.	ROY B.B.	ER
42.	KATARIA P.K.	NR
43.	CHAKRABORTY P.K.	ER
44.	SHARMA SUDHAKAR	WR
45.	ARORA D.K.	NR
46.	SEN SUDESHNA	SER
47.	MD. ANWAR KHURSHID	ER
48.	KAR SUBRATA KUMAR	SER
49.	CHOWDHURI ASIM KUMAR	SER
50.	HALDAR P.	CLW
51.	LAHA SUBRATA KUMAR	SER
52.	MONDAL NITISH KUMAR	SER
53.	SAVITHRI V.	SCR
54.	BASAK B.	NFR
55.	AGARWAL A.C.	NR
56.	CHAKRABORTY D.	ER

- 8 -

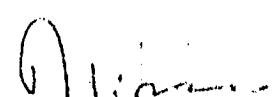
- 15 -

RLY/UNIT 30

S.NO	NAME (DR.s)	ER
57.	KUMAR M.	SR
58.	PADMALATHA	SR
59.	AMUTHAVALLI	WR
60.	ARICHWAL R.K.	SR
61.	JAYAMOHAN K.	WR
62.	SHARMA T.C.	NR
63.	MALHOTRA A.K.	ER
64.	SINGH V.V	SR
65.	SUKUMARAN C.	SR
66.	SWARNAPPAN M.	NFR
67.	DEB P.K.	SER
68.	ROY SUBHASIS	SER
69.	CHOWHAN SANDHYA	SR
70.	DHANALAKSHMI D.	NR
71.	KUMAR RAJEEV	NR
72.	SINDHI R.C.	ER
73.	ACHARYA A.K.	CR
74.	VAZALWAR SUBHA	SR
75.	MALLIKA P.	CR
76.	GAWANDE S.G.	NR
77.	JHA A.K.	CR
78.	JAISWAL ANITA EKTATE	SR
79.	SELVARAJ I.	5

ENO	NAME (DR.s)	RLY./UNIT
80.	SHUKLA A.K.	CR
81.	SINHA RANJEET KUMAR	ER
82.	HALDAR J.	ER
83.	KUMARI M. ARUNA	SCR
84.	GOSWAMI A.	NER
85.	GANAPATHI T.	SCR
86.	MATHUR ANURAG	SCR
87.	RAMAKRISHNA U	SCR
88.	MANJULA S.M.	SCR
89.	SUSHMA B.	SCR
90.	NIRMALA M.	SR
91.	SAHU R.A.	CR
92.	BALA SOWRI M.	SCR

RAILWAYS (.)

  
(D.R. MEHRA)  
DEPUTY SECRETARY (E)  
RAILWAY BOARD.

Copy to:-

1. PSs to MR, MOS(R), MSR (D), Sr. PPSs to CRB, MS, PS to Secretary, DG/RHS, ADV. E(GC) JS(G), JS (C), DIP, DS(C)/CRB, JDE(GC), DS(E), US (E), Vig. (C), ERB-I, US(C), E(O)-III CC, E(GR)-II, Health Dr, Railway Board.
2. The Principal Directors of Audit, All Indian Railways.
3. The FAs & CAOs, All Indian Railways & CLW & W&AP.
4. The General Secretaries, AIRF, R No. 248 & NFIR, R No. 256-C, Rail Bhawan, New Delhi.
5. The General Secretary, IRPOF, & the Secretary General, FROA, R No. 256-A, Rail Bhawan, New Delhi.

Letter no.—E/AR/LMG/01 dated 03.5.2002.

From:-  
Dr.Ajoy Roy.  
DMO/LMG/N.F.R.

Through proper channel.

To  
The General Manager(P)/Maligaon.  
N.F.Rly Hd.Qr. Guwahati—11.

Sub:-Promotion to J.A.G.(Sr.DMO.)

This is for your kind information that I have joined in the Rly service on 26.2.1986 as A.D.M.O(Adhoc) and subsequently after the regularization of my service I have been promoted to Sr.Scale(D.M.O) on 25.2.96,in which capacity I am still continuing under CMS/LMG.

Of the late, it is learnt that my contemporary colleagues have been promoted to Sr.DMO. But surprisingly my case has not been considered for further promotion to Sr.DMO, which is not in keeping parity to others.

So, you are requested to look into this matter and needful action may kindly be taken accordingly.



Dr.Ajoy Roy.  
D.M.O/LMG/N.F.RLY.

*Affected by  
Birendra Choudhury  
Adhoc  
12.5.02*

N.F.RAILWAY

Office of the  
General Manager(P)  
Maligaon, Guwahati-11

NO. E/41/III/236 - 1(O) Pt.II

Dated : 16-05-2002

TF

To  
Shri D.R.Mehra,  
Deputy Secretary (E),  
Railway Board,  
New Delhi.

Sub : Promotion to JAG (Sr.DMO)

A representation No. E/AR/LMG/01 dated 03.05.2002 received from Dr. Ajoy Roy, DMO/LMG/N.F.Railway for promotion to JAG, is forwarded herewith for Board's disposal please.

In this connection it is mentioned that Dr. Gautam Bhandopadhyay, Dr. SK Mukhopadhyay, Dr. Bhaskar Basak, Dr. Prabir Kr. Deb & Dr. Anuradha Goswami, who are junior to Dr. Ajoy Roy as per Seniority list of ADMOs of All Indian Railways, published vide Railway Board's letter No. E(O)I-98/SR-6/19 dated 25.09.98, have already been promoted to JAG in terms of Railway Board's XXR massage No. E(O)III-2002/PM/24 dated 18-03-02.

DA : as above

(P.K.SINGH)  
Dy.Chief Personnel Officer/Gaz  
For GENERAL MANAGER(P)

Copy to :-

← Dr. Ajoy Roy, DMO/LMG for information please.

*Via*  
16/5/02  
(P.K.SINGH)  
Dy.Chief Personnel Officer/Gaz  
For GENERAL MANAGER(P)

Attended by  
Chowdhury  
Ajoy Roy  
Adm.

## 1) ANNEXURE-IV

u<sup>0</sup>

## **NORTHEAST FRONTIER RAILWAY**

Office of the  
General Manager(P)  
Maligaon, Guwahati-11

No.E/41/III/236-1(O) Pt.II

Dated: 02.08.2002

DS

To  
Dr. Ajay Roy,  
DMO/LMG

Sub: Promotion to JAG (Sr.DMO)

Ref : Your letter No. E/AR/LMG/01 dtd 03.05.02.

In reference to your letter quoted above, which was forwarded to Board vide this office letter of even number dated 16/17-05-2002. In response to that Railway Board has communicated that your case was considered for empanelment to JA Grade in the JAG/IRMS panel approved on 15.11.2001. However taking into account all the relevant factors including your overall performance, the DPC did not find you suitable for empanelment/promotion to JA Grade.

**This is for your information please.**

(Asstt. Personnel Officer/Gaz)  
For GENERAL MANAGER(P)

Attested by Chandlers  
John John

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केन्द्रीय नियन्त्रित कार्यालयीय नियन्त्रित कार्यालयीय नियन्त्रित
6 JUN 2003
मुख्य नियन्त्रित सचिवालयीय नियन्त्रित
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL BOMBAY BENCH

20

Filed by respondents through  
Pradeep Kumar Singh  
5/6 (9th) Avenue  
Pradeep Kumar Singh

20

by Legal Personnel (G2)  
G. P. Roy, I. M. Roy  
G. N. Roy

O.A. No. 386/2003

Dr. Ajay Roy

-VS-

Union of India & Ors.

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS NO. 1 TO 4:

1. That respondents have received the copy of the OA and have gone through the same. Save and except the statements which are not specifically admitted herein below, other statements made in this OA may be treated to be total deny by the respondents and the statements which are not borne out of records are also denied and the applicant is put to the strictest proof thereof.

2. That the answering respondents before making the pairwise reply to the application beg to place the brief background of the case under relative facts for proper adjudication of the matter which are as under:

1. That on the Indian Railways there are 7 organised Group A services, namely:

i. Indian Railway Service of Engineers (IRSE)

ii. Indian Railway Traffic Service (IRTS)

iii. Indian Railway Service of Mechanical Engineers (IRSEME)

iv. Indian Railway Service of Electrical Engineers (IRSEE)

v. Indian Railway Stores Service (IRSS)

vi. Indian Railway Service of Signal Engineers (IRSE)

vii. Indian Railway Personnel Selection (IRPS)

viii. Indian Railway Accounts Service (IRAS)

ix. Indian Railway Medical Service (IRMS)

2. That the cadre of Group 'A' organised services on Indian Railway consists of posts in the following grades:-

i. Junior Scale: Rs.8,000-13,000/-

ii. Senior Scale: Rs.10,000-15,200/-

iii. Junior Administrative Grade Rs.12,000-16,500/-

iv. Selection Grade Rs.14,300-18,300/-

vi. Senior Administrative Grade Rs.18,400-22,400/-

3. That apart from the above, there are certain posts in scale Rs.22,400-24,500/- also.

4. That in terms of Rule 203 of the Indian Railway Establishment Code (IREC), Vol.1, which are statutory rules framed under Article 309 of the Constitution of India, posts in Administrative Grades are Selection posts.

5. That as per Rule 209(D)(1) of IREC, Vol.-1, "promotions to the Administrative Grades .... are made wholly by selection; mere seniority does not confer any claim for such promotion."

6. Posts in Junior Administrative Grade (Scale Rs.12,000-16,500/-) are filled up by a positive act of selection. The procedure for promotion to the Administrative Grades in the Railway Services, which includes Junior Administrative Grade, has been laid down in Ministry of Railways letter dated 16.09.1987 (Annexure R-1). In terms of this letter, "advancement in an Officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance and

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Pradeep Kumar Singh

potential for shouldering higher responsibilities, as reflected in the Annual Confidential Reports, and it should be based on a strict and rigorous selection process." It has also been laid down that " for promotion from Senior Scale to J.A. Grade, the Selection Committee shall consider all eligible Officers and assess their fitness for promotion on merit and the selected Officers shall be placed on the panel in the order of seniority." It has been further laid down that 'Confidential Rolls are the basic inputs on the basis of which assessment is to be made by the Selection Committee.' Further 'the Selection Committee would not be guided merely by the overall assessment, if any, they may be recorded in the CRs but will make its own assessment on the basis of the entries in the CRs.' The recommendations of the Selection Committee are placed before the Minister of Railways for approval.

7. The applicant was considered for empanelment in the J.A. Grade on IRMS in the JAG/IRMS Panel approved on 15.11.2001. The Applicant was, however, not found suitable for empanelment in J.A. Grade, taking into account all the relevant factors including his overall performance. Those who were found fit were empanelled and promoted to J.A. Grade.

8. The Applicant's claims will, however, continue to be considered in the future JAG/IRMS Panels. For this purpose, the Selection Committee will follow the guidelines as contained in Ministry of Railways' letter dated 03.06.2002 (Annexure R-II). It may be added that the right of the Applicant is limited to being considered for promotion and not to promotion itself. On

receipt of a representation dated 03.05.2002 from the Applicant in the matter of his promotion to J.A. Grade, the position has been explained to the Applicant by General Manager, N.F.Railway, in terms of letter dated 02/05.08.2002 (Annexure IV of the OA).

9. It would be seen from above that the Applicant was duly considered along with others for promotion to J.A. Grade, but he was not found fit on the basis of his performance as reflected in his ACRs. He will be continued to be considered in the future J.A. Grade panels. Thus, having been duly considered for promotion to J.A. Grade by the Selection Committee and having not been found fit on the basis of his own performance as reflected in his ACRs, the Applicant has no legitimate claims for promotion to J.A. Grade with effect from the date his juniors were promoted.

PARAWISE REMARKS

A. That with regard to the statements made in para 1,2,3, 4.1, 4.2 the answering respondents do not admit anything which are contrary to the relevant records. It is further stated, <sup>that</sup> the case of the applicant was duly considered by the selection committee, who has not found him fit for promotion to J.A.G. (Junior Administrative Grade).

B. That with regard to the statement made in para 4.3, the answering respondents while denying the contentions made therein beg to state that, as for the Applicant's contention that since nothing adverse in his ACRs were communicated to him he was confident that he would be selected and promoted to J.A. Grade, it is submitted that mere absence of adverse entries in the ACRs does not mean that the Applicant is otherwise fit for promotion to J.A. Grade which is done

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through a positive act of selection.

C. That with regard to the statement made in para 4.4. the answering respondent while reiterating and reaffirming the statements made above beg to state that, the Doctors, including juniors to the Applicant, who were promoted to J.A. Grade in terms of Railway Board's Order dated 18.03.2002 were found fit for promotion by the Selection Committee on the basis of their performance as reflected in their ACRs, while the Applicant, who was also considered, was not found fit on the basis of his performance as reflected in his ACRs.

D. That with regard to the statement made in para 4.5. of the OA the answering respondents reiterated that absence/non-communication of adverse entries in the ACRs does not necessarily mean that the Applicant is otherwise fit to be promoted to J.A. Grade which is done through a positive act of selection.

E. That with regard to the statement made in para 4.6. and 4.7 of the OA the answering respondents while reiterating and reaffirming the statements made above denying the correctness of the statements and put the applicant to the strictest proof thereof.

F. That with regard to the statement made in para 4.8 of the OA the answering respondents submitted that in terms of para 209 (D) (1) of Indian Railway Establishment Code (IREC) Vol.I, promotions to the Administrative Grade ..... are made wholly by selection; mere seniority does not confer any claim for such promotion. Further, in terms of para 209(D) (5) 'the Departmental Promotion Committee (DPC) for purposes of promotion from Senior Scale and above to the higher grade posts shall consist of Chairman, Railway Board,

Financial Commissioner, Railways and three other Members of the Railway Board.' Thus, constituting of DPC for the purpose of promotion from Senior Scale to J.A. Grade is as per the provisions of IREC Vol.I as mentioned above.

G. That with regard to the statement made in para 4.9. of the OA the answering respondents state, that there has been no denial of promotion to the Applicant as alleged by him. As already submitted in foregoing paragraphs, he has been duly considered by the DPC for promotion to J.A. Grade in the JAG/IRMS Panel approved on 15.11.2001, but he was not found fit for promotion. He will be considered again in the future JAG/IRMS Panels.

H. That with regard to the statement made in para 5.1 of the OA the answering respondents while denying the contentions made therein state that there is nothing illegal or arbitrary in not promoting the Applicant to J.A. Grade, nor any violation of principles of natural justice. As already submitted, the Applicant has been considered but has not been found fit for promotion by the DPC.

I. That with regard to the statement made in para 5.II, it is submitted that only those entries in the ADRs which are considered to be adverse are required to be communicated to the Officer Reported upon at the specific direction of the Accepting Authority. In the absence of any such entries/directions, the question of communicating the same does not arise. It may be added that while considering Officers for promotion to Selection posts, it is the comparative merit of all the Officers, which is taken into account by the DPC.

J. That with regard to the statement made in para 5.III it is stated that the contentions made in this para are

repetitive in nature and have already been replied to in the foregoing paragraphs.

K. That with regard to the statement made in para 5.IV the answering respondents deny the correctness of the same and beg to state that the Applicant is <sup>in</sup> no position to comment on the assessment made by the DPC while considering his claims for promotion to J.A. Grade.

L. That with regard to the statement made in para 5.V it is stated that the contentions made in this para are again repetitive and have already been replied to in the foregoing paragraphs.

M. That with regard to the statement made in para 6,7,8 that answering respondents beg to state that in view of the statement made above the OA deserves to be dismissed with cost. It is further stated that the OA is bared by limitation and bad for non-joinder of necessary parties so also same is hit by the principles of waiver, acquiescence and estoppel and same is liable to be dismissed with cost.

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VERIFICATION

I Shri . Pradeep Kumar Singh ....., aged about 37.....  
years, son of ..Bheup Lal Singh....., resident  
of .... Maligaon ....., presently working as ..Dy. Chof Gaz  
N.F. Railway, Maligaon do hereby verify and state that the  
statement made in paragraphs ... PARAWISE REPLY, (M) ..  
are true to my knowledge and those made in para 2 & A-1 being  
matters of records are true to my information derived  
therefrom, which I believe to be true and the rest of my  
humble submissions before this Hon'ble Tribunal. I am also  
authorised and competent to sign this verification on behalf  
of all the Respondents.

And I sign this verification on this ..4..th day of  
June , 2003.

✓  
Pradeep Kumar Singh  
Deponent

Dy. Chief Personnel Officer (G)  
B. P. RIV, / Maligaon  
Guwahati-19

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GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
( RAILWAY BOARD )

A. N. SHUKLA  
SECRETARY

D. O. No. 89/289-B/Secy/Admn  
Dated : September 26, 1989.

My dear

Sub : Procedure for promotion to Administrative Grades in Railway Services.

Ministry of Railways have reviewed the present policy of promotions to various Administrative Grades in railway services with a view to streamlining the procedure and to ensure greater selectivity and thus strengthen the middle and senior management cadres. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance and potential for shouldering higher responsibilities, as reflected in the Annual Confidential Reports, and it should be based on a strict and rigorous selection process.

2. For promotions from Senior Scale to J.A. Grade, the Selection Committee shall consider all eligible officers and assess their fitness for promotion on merit and the selected officers shall be placed on the panel in the order of seniority.

2.1 In promotions to posts which carry an ultimate salary of Rs. 5700/- p.m. in the revised scale, SC/ST Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion.

3. For promotions from J.A. Grade to S.A. Grade and from S.A. Grade to Additional Secretary's Grade (Rs. 7300-7600/-), the following principles will be followed :-

i) Field of Eligibility

For the purpose of determining the number of officers who will be considered from out of those eligible in the feeder grade, the field of choice

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*Attended  
M  
Adhoc cate*

will be restricted as under with reference to the number of vacancies proposed to be filled in the year:

No. of vacancies	No. of officers to be considered.
1	5
2	8
3	10
4	Three times the number of vacancies.

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, the following would be kept in view :-

*(CRs of the*

- 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) Where one or more CRs have not been written for a sufficient reason for a particular period the years preceding the period in question, would be considered. If this is not possible, all the available CRs should be taken into account.
- c) Where an officer is working against a higher grade and has earned CRs in that grade, his CRs in that grade would be considered by the Selection Committee only as an assessment of his work, conduct and performance and no extra weightage should be given merely on the ground that he has been officiating in the higher grade.
- 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 officer 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.

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*Attested  
by  
Advocate*

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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.

4. This letter supersedes instructions contained in Confidential D.O. letters No.86/289-B/Secy/Admin dated 6.3.1986 and 15.5.87.

Yours sincerely,

Sd/-

( A.N. Shukla )

Attested

J  
Advocate

भारत सरकार Government of India  
रेल मंत्रालय Ministry of Railways  
रेलवे बोर्ड Railway Board

No.2002/SCC/3/1

Rail Bhavan, New Delhi  
Dated : 03.06.2002

General Managers, All Indian Railways including Production Units.  
Director Generals, RDSO & RSC.  
OSDs/New Zones.  
CAOs, DCW & COFMOW.  
The Directors, IRISSET/Hyderabad, IRICEN/Pune, IREEN, Nasik, IRIMEE/Jamalpur

**Subject: Procedure for promotion to administrative grades in Railway services**

Ministry of Railways have reviewed the present procedure to be observed by Departmental Promotion Committees in case of promotions to various administrative grades for various services and have decided as under:-

1. Full Board shall function as Departmental Promotion Committee (DPC) for finalizing the select lists to all administrative grades on the Railways except for HAG, for which provisions of Resolution published vide E(O)III-93/PM/50 dated 28.3.2000 shall apply. Proceedings of the DPC shall be legally valid and can be acted upon notwithstanding the absence of any of its members other than the Chairman and each time DPC meets, it can decide its own method and procedure for objective assessment of the suitability of the candidates. These broad guidelines are issued in order to ensure greater selectivity and for having uniform procedure.
2. Hereafter, all promotions to administrative grades shall be by "selection" only and the element of selectivity (higher or lower) shall be determined with reference to the relevant benchmark prescribed for promotion.
3. The zone of consideration for the purpose of determining the number of officers to be considered out of eligible officers in the feeder grade(s) shall be twice the number of vacancies plus four. However, in case of only one vacancy, the number of officers to be considered shall be five. With regard to the number of officers to be included in the select list, the DPC may assess the suitability of eligible officers in the descending order for promotion upto a number adequate for filling up the number of vacancies. In respect of remaining officers, the DPC may put up a note in the minutes that the assessment of the remaining officers in the zone of consideration is not considered necessary as sufficient number of officers with prescribed benchmark have become available. However, for organized services etc., the present practice is to consider preparation of select list batch-wise and this shall continue.

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Attested

Advocate

4. While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance and potential for shouldering higher responsibilities, as reflected in the Annual Confidential Reports, and it should be based on a strict and rigorous selection process.

5. In promotions upto posts which carry an ultimate salary of Rs.5700/- p.m. (P.R.) SC/ST officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion.

6. Confidential Reports are the basic inputs on the basis of which assessment is to be made by the DPC. The DPC 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.

7. Where one or more CRs have not been written for a sufficient reason for a particular period, the CRs of the years preceding the period in question, would be considered. If this is not possible, all the available CRs should be taken into account.

8. Where an officer is working against a higher grade and has earned CRs in that grade, his CRs in that grade would be considered by the DPC only as an assessment of his work, conduct and performance and no extra weightage should be given merely on the ground that he has been officiating in the higher grade.

9. The DPC would not be guided merely by the grading, if any, recorded in the ACRs but should make its own assessment on the basis of the entries in the ACRs, including the various parameters and attributes. The Committee shall also take into account whether the officer 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 ACRs. The DPC should also have regard to the remarks on the columns of integrity.

10. The grading in the ACR represent the assessment of the superior officers during a particular year's performance in general. The overall grading to be assigned by the DPC shall encompass several years' performance and not merely relate with the entries/assessment recorded in the ACRs. It shall be borne in mind that the grading by DPC and in the ACR represent assessment of the officer by two distinct authorities for two different purposes.

11. DPC shall, considering the various factors, assign an overall grading for each of the officer. The grading shall be one among, 'Outstanding', 'Very Good+', 'Very Good', 'Good' and 'Unfit'.

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Attested

Advocate

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12. The benchmark for promotion to various grades shall be as under:-

- (a) From Senior Scale to JAG/SG
- (b) SAG
- (c) HAG

Good

Very Good.

Very Good+

Stringent criteria of selection shall apply for promotion to HAG.

13. While any performance below the benchmark shall not be termed as adverse in respect of an officer, it is only performance above average and is really noteworthy, entitle an officer recognition and suitable rewards in the matter of promotions. For any public servant and more so in higher positions of responsibility, it is expected that he will discharge his duties and responsibilities with best of his capabilities at all times and is not only that in order to achieve some gains in the matter of promotion etc., he would regulate the quality of his performance to that level.

14. DPC shall, for promotion to administrative grades, grade officers as "fit" or "unfit" only with reference to the benchmark mentioned above. Only those who are graded as "fit" shall be included in the select panel prepared by the DPC in order of their *inter-se* seniority in the feeder grade. There shall be no supersession in the matter of "selection" (merit) promotion among those who are found "fit" by the DPC in terms of the prescribed benchmark.

15. The recommendations of the DPC are advisory in nature and should be duly approved by the appointing authority and where the posts fall within the purview of Appointments Committee of the Cabinet (ACC), approval of ACC shall also be obtained.

16. This supersedes Board's letter Nos. 89/289-B/Secy./Admin. Dt. 26.9.89, 90/289-B/Secy./Admin. Dt. 6.4.90 and 91/289-B/Secy./Admin. Dated 19.2.91.

17. Please acknowledge receipt.

*Arjuna*  
*29/5/91*  
 (S. Regunathan)  
 Joint Secretary (C)  
 Railway Board.

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*Attested*

*Advocate*

Copy to:-

1. PSs to MR, MOS(R), MSR(D), Sr. PPSs/PPSs/PSs to CRB, FC, ME, ML, MM, MS, MT & Secretary, DG/RPF, DG/RHS, All Addl. Members, Adv E(GC), Adv (Vig.), Adv (L&A), All Exec. Directors, JS(G), JS, JS(E), All Directors/Joint Directors, DS(E), US(E), Railway Board.
2. The General Secretaries, AIRF, Room No. 253 and NFIR, Room No. 256-E, Rail Bhawan, New Delhi.
3. The General Secretary, IRPOF, Room No. 268 and the Secretary General, FROA, Room No. 256-A, Rail Bhawan, New Delhi.
4. RPF Association, 5<sup>th</sup> floor, Rail Bhawan, New Delhi.

Attested

Advocate