

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 954 of 2004

Jabalpur, this the 14th day of Dec, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Radha Charan, S/o. Shri Yad Ram,
Chief Commercial Manager, Western
Railway Center Railway, Jabalpur. Applicant

(By Advocate – Shri S. Paul)

V e r s u s

1. Union of India, through it's Secretary,
Railway Board, Government of India,
New Delhi.
2. General Manager, Northern Railway,
New Delhi.
3. General Manager, West Central Railway,
Jabalpur.
4. Sri S.K. Budhlakoti, (SDGM), Northern
Railway, Baroda House, New Delhi. Respondents

(By Advocate – Shri H.B. Shrivastava for respondents No. 1, 3 & 4 and
Shri M.N. Banerjee for respondent No. 2)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main relief :

"ii) issue another order or direction quashing the adverse entry of ACRs as it has never been communicated to the applicant,

iii) issue a further order or direction holding that the applicants suppression for Senior Administrative grade was bad in law and in consequence thereof allow the Senior Administrative Grade to the



applicant with effect from the date when the respondent No. 5 i.e. Shri Budhlakoti has been promoted and to fix seniority accordingly by holding a review DPC,

- iv) issue a further appropriate order or direction directing the respondents to fix the applicant's pay according to the seniority and to pay the arrears of difference of salary also,
- v) set aside orders dated 12.5.2004."

2. The brief facts of the case are that the applicant is presently working as Chief Commercial Manager (WCR) and is working under the respondent No. 4. The applicant initially joined the Indian Railway as an officer of Indian Railways Traffic Service in July, 1975 after becoming successful in the examination held by the UPSC in the year 1974. In July, 1994 the Senior Administrative Grade (in short SAG) of 5900-6700/- was allowed to Sri S.K. Budhlakoti i.e. the respondent No. 5, the junior to the applicant but this scale was denied to the applicant which clearly reveals that the applicant has been superseded for grant of such scale. The applicant preferred a representation on 1.10.1994 (Annexure A-2). Again in December 1994, 18 juniors have been promoted to the SAG grade and at this time also the applicant has been ignored. When the aforesaid representation of the applicant had not been decided, he filed the OA No. 447/1996 before the CAT, Lucknow Bench. Vide order dated 10.3.2004 it was held that the only remedy open to the applicant is to approach the Railway Board with proper representation. The applicant has represented before the Railway Board vide Annexure A-4 but the respondents have ignored all the points raised by the applicant in his representation and they have passed the order wholly on distinct ground and by twisting the facts of the case likewise to their own. The performance of the applicant was outstanding in past several years for which nothing has been communicated adversely but according to the language used in the counter reply filed by the respondents in previous Original Application it appears that one or some of the ACR of the reporting year has been down graded because of which the applicant is suffering. Nothing has been

communicated officially about the reasons for applicant's supersession but he understands that in the reporting years 1989-90 and 1990-91 the applicant has been awarded and graded as excellent/outstanding officer by the reporting officers. This assessment was correctly based upon excellent performance and achievement of the branch in which the applicant was placed for his working but the accepting authority had down graded his official reports by grading to be a good officer and this is the reason for applicant's supersession. There is no reason for down grading the applicant in the matter of character roll entries and that too without any notice to him or without giving any opportunity. The DPC assigns over all grading to individual officer by taking into account the totality of the performance as reflected in the ACRs only. The moment, it is admitted to the respondent authorities that the DPC has to act in accordance with the entries of the ACRs then there is no scope of this argument that a DPC has own wisdom to assess even against the ACRs. If there is any down gradation in ACRs, below than the bench mark required for promotion the same should be communicated to the officer and in such cases where no such communication has been made the down grading of the ACRs must be ignored by the DPC while considering them for promotion. The respondents authorities are acting in such an arbitrary manner that they have not followed even circulars issued by the Railway Board from time to time. The adverse ACR has not yet been communicated to the applicant for the reasons that had it been communicated, the applicant would be in position to challenge the same before the Tribunal. But at this point of time the specific adverse ACR had not been communicated to the applicant that is why the applicant is unable to specify a particular year's ACR and to make a prayer to quash a specific ACR. The applicant is fully entitled for SAG grade from the date when the respondent No. 5 junior to the applicant has been promoted to the SAG grade. It is well established fact that the DPC always recommends on the merits in accordance with the ACRs. It was the very claim of the applicant that the DPC was biased and prejudiced that is why down gradation of ACRs which were not

communicated to the applicant have also been taken into account by the DPC. Hence, this Original Application is filed.

3. The respondents have contended in their return stating that the selection to the post of SAG is made by a very high level committee comprising of the members of the Railway Board, who are of the rank of Chairman, Railway Board. The recommendation of the committee are approved at the highest level in the Ministry of Railways. The procedure of holding such selection is contained in the Ministry of Railway's letter dated 26.9.1989. It will be seen there from that the bench mark for promotion from Junior Administrative Grade to SAG is very good and those graded outstanding by the DPC are placed above all those graded very good. The applicant's claim for empanelment to SAG of the Indian Railway Traffic Service was considered in the panels approved on 23.12.1993, 29.12.1994 and 22.2.1996. However, he was not selected on the basis of his performance as reflected in the ACR and service records. He was again considered in the panel approved on 26.4.1997 and on being found fit was promoted to SA grade. The applicant was considered in the aforesaid 3 meetings of the DPC. However, he was not selected on the basis of the performance. The respondent No. 4 junior to the applicant was found suitable and was recommended for promotion to SAG grade by the DPC. The applicant's apprehension is that some of his confidential reports have been down graded, has no basis. The confidential reports are privileged documents and the applicant could not have had access to his own confidential reports and as such his apprehension is hypothetical and imaginary. The applicant cannot be judge of his own performance. The DPC has an independent role to assess the suitability of an individual and recommend his name for promotion. If the applicant feels that the DPC was biased at the time of recommending the promotion of respondent No. 4 he should have impleaded the members of the DPC as necessary parties which has not been done and as such it is not considered correct to explain further role of DPC in not selecting the applicant. The action of the



respondent is perfectly legal and justified. Thus the OA deserves to be dismissed.

4. Head the learned counsel for the parties and carefully perused the pleadings and records.

5. It is argued on behalf of the applicant that the performance of the applicant was outstanding and excellent. He was never communicated about any adverse ACR but he apprehends that his certain ACRs have been down graded by the concerned authority and it is adversely affecting his promotion while he was not informed by the respondents about such down grading of his ACRs which is legally required according to the principles laid down by the Hon'ble Supreme Court in various rulings. The private respondent No. 4 has been promoted ignoring the promotion of the applicant who was senior to him. The applicant is kept in dark by the respondents as to why he has not been promoted and superseded in comparison with his junior because he has never been communicated any adverse remark so that he can explain the actual position. He further argued that in his case the ACR is down graded by higher authorities and have it adverse affected the promotional avenues of the applicant and if such down gradation is not ignored by the DPC then it should be informed to the applicant. Our attention is drawn towards the order passed by the Tribunal in the case of Dr. J.P. Srivastava Vs. Union of India & Ors., 2003(2) ATJ 393. It is further argued on behalf of the applicant that the respondents have not followed the mandatory rules and procedure while down grading the concerned ACRs of the applicant.

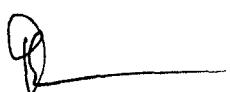
6. In reply the learned counsel for the respondents argued that the selection to the post of SAG is made by a very high level selection committee. The apprehension of the applicant that his ACR has been down graded while his performance was excellent and outstanding, is imaginary and baseless. The ACR of the officer is considered by the three authorities and it is not necessary that the reviewing authority may accept



the remarks of the reporting officer or the accepting authority may accept the remarks of the reviewing officer. If the ACR of the employee is down graded by the higher authorities mentioning genuine reasons, it is not required to be communicated to the concerned person unless it is adverse. The applicant might not have been intimated by the respondents regarding his ACRs on the ground that his ACRs might not have been adverse. Hence, this OA deserves to be dismissed.

7. We have considered the rival contentions of both the counsel and have also carefully perused the ACR dossier of the applicant as well as the records relating the SAG Panels of IRTS officers. We find that the applicant has been considered for empanelment for SAG of IRTS on 26.12.1993, 29.12.1994, 22.2.1996 & 26.4.1997.

8. On perusal of ACR dossier of the applicant we find that in the relevant years from 1986-87 to 1992-93 the applicant has been consistently graded as 'good' only. The bench mark for promotion to the SAG was 'very good'. Therefore, his name has not been included in the panels which were approved on 26.12.1993, 29.12.1994 and 22.2.1996, since he was not graded at least for three years as 'very good'. The applicant has started earning 'very good' reports only after 1993-94 and, therefore, he has been graded as 'very good' in the DPC held in the year 1997 and his name was included in the panel which was approved on 26.4.1997. After going through the relevant records, we find that the respondents have rightly graded the applicant as unfit/unsuitable for promotion for SAG level on 26.12.1993, 29.12.1994 and 22.2.1996. We do not find any illegality in the action taken by the respondents by not promoting him on the basis of the recommendations made by the DPC on these dates. In view of this we do not find any merit in this Original Application.

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9. In the result, the Original Application is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

Issued

20.12.05