

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 13th day of August, 2008

ORIGINAL APPLICATION No.425/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Dr. O.P.S.Luthra,
Senior Divisional Medical Officer,
North Western Railway,
M-48, Near Railway Hospital,
Rewari-123401

.. Applicant


(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India,
Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. Director (Estt.),
Railway Board,
Rail Bhawan,
New Delhi.
3. The Director General (RHS),
Railway Board,
Rail Bhawan,
New Delhi.

... Respondents

(By Advocate: Shri Tej Prakash Sharma)



O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- i) To direct the Respondents to appoint the applicant to officiate in Senior Administrative Grade w.e.f. the date his immediate juniors were so promoted, by including the name of the applicant at Sl.No.28A in the order dated 10.2.2006 by placing him below Dr. P.P.Khandelwal and above Dr. Arun Kumar Srivastava.
- ii) To direct the Respondents to pay the arrears of pay and allowances of the difference of Senior Administrative Grade and the Selection Grade w.e.f. the date of promotion of his next junior.
- iii) To award the cost of this O.A. in favour of the applicant.
- iv) To pass any other order (s) to do complete justice in the facts and circumstances of this case.

2. Briefly stated, facts of the case are that the applicant was initially appointed on ad-hoc basis and consequently joined in Northern Railway on post of Assistant Medical Officer on 14.12.1976. While working as Assistant Medical Officer at Tuglaquabad, he was implicated in a trap case and was proceeded under Railway Service (Disciplinary and Appeal) Rules, 1960 as applicable to the railway servants. Consequently, he was removed from service w.e.f. 27.11.1982 vide order dated 12.10.1982. The applicant has challenged the removal order before the Principal Bench of the Tribunal and his TA No.852/85 was decided vide order dated 17.10.88 by quashing the impugned order and directing the respondents to reinstate the applicant with consequential benefits including arrears of pay and allowances. The SLP filed by the respondents against the aforesaid order was also dismissed by the

Hon'ble Supreme Court. Consequent to this, the applicant was reinstated in service vide order dated 27.10.1989 with all consequential benefits and the period of absence of the applicant from 27.11.1982, the date of removal, to 29.10.88, the date of reinstatement, was treated as duty.

It is further case of the applicant that the applicant was further promoted in Class-I category in December, 1991 with retrospective effect from 24.12.1982. In Class-I category he was placed senior to Dr. Smt. Gayatri Guha and Dr. Jayashree Rana. According to the applicant, his name was placed at Sl.No.1538-A above Dr. Gayatri Guha. It is further stated that he was granted Senior Scale only on 9.12.1992. The case of the applicant is that for the purpose of granting promotion to Junior Administrative Grade (JAG) and Senior Administrative Grade (SAG), it is the seniority in Class-I which is relevant and grant of Senior Scale is of no consequence. According to the applicant, by not granting promotion to the applicant in JAG when juniors were promoted to that grade vide order dated 21.4.1993 from back date, the respondents have violated the order of the Tribunal dated 17.10.1988. The applicant was promoted to JAG vide order dated 6.5.94 (Ann.A-VI/1) and not from the date when such promotion was given to his juniors. According to the applicant, he kept pursuing for grant of benefit from the date of promotion as was granted

to his next junior. It is further stated that officer of IRMS were being inducted from various sources like some on ad-hoc basis, some on temporary basis and normal course of recruitment against Class-I post of ADMO has been through UPSC. There were various disputes regarding inter-se seniority among the Doctors coming from different sources. Ultimately, the issue got finally resolved by the Hon'ble Supreme Court vide its judgment dated 10.4.2001 in Civil Appeal No. 2478-2479 of 2000. This resulted into re-fixation of seniority in respect of 255 doctors. According to the applicant, based on these orders of the Supreme Court, the entire seniority list was recast by issuing order dated 23.11.2001. In the said seniority list, name of the applicant appears at Sl.No.21 whereas name of so called juniors namely Dr. Kunwal Pal Singh and Dr. Jayashree Rana figure at Sl.No.22 and 23 respectively. This fact establishes that these two persons are junior to the applicant and as such the applicant could not have been over-looked while granting promotion in SAG grade.

The applicant has further pleaded that vide impugned order dated 10.2.2006 (Ann.A1), juniors have been granted SAG whereas case of the applicant has been over-looked. It is on the basis of these facts that the applicant has filed this OA thereby praying for the aforesaid reliefs.

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3. Notice of this application was given to the respondents. The respondents have filed reply. The facts, as stated above, have not been disputed. However, the respondents have categorically stated that after reinstatement of the applicant, his case for promotion to Senior Scale w.e.f. 24.12.87 with reference to his junior Dr. Jayashree Rana was considered, but he was not found fit, therefore, the applicant remained in Junior Scale while his junior got promoted to Senior Scale. It is further stated that the applicant was ultimately found fit for promotion to the Senior Scale w.e.f. 9.12.1992. In the meanwhile, those doctors who were promoted to the Senior Scale w.e.f. 24.12.1987 were further promoted to JAG w.e.f. 13.5.1991. Therefore, they all became senior to the applicant who continued to remain in lower grade. According to the respondents, the applicant was considered for promotion from Senior Scale to JAG by Railway Board and he was promoted to this grade vide Railway Board's order dated 6.5.1994. He was considered for placement in non-functional Selection Grade Rs. 14300-18300 by the Railway Board and was placed in this grade w.e.f. 6.6.2000. According to the respondents, the applicant has become junior to some of his erstwhile juniors because of his late promotion to Senior Scale, JAG and Selection Grade and accordingly, the applicant will be considered for promotion to SAG alongwith those

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doctors who have been promotion in JAG alongwith him from 1994.

4. The applicant has filed rejoinder. In the rejoinder, the applicant has categorically stated that his case for promotion to Senior Scale w.e.f. 24.12.87 with reference to his junior Dr. Jayashree Rana was considered and he was not found fit for promotion is a false statement made by the respondents, as such, they should be proceeded under Section 196 and 199 of IPC for making false statement. The applicant under the provisions of RTI Act had requested the CPIO, Northern Railway vide his letter dated 13.3.2008 to let him inspect the files relating to proceedings where his case was considered for promotion to senior scale after his reinstatement. He had also asked for copies of the notings of the relevant files. According to the applicant, in response thereto the applicant has received a reply from the General Manager (P), Northern Railway dated 29.4.2008, mentioning categorically that the relevant papers relating to the applicant's promotion to Senior Scale pertaining to the year 1992 and earlier could not be traced and in the absence of relevant documents, the same cannot be supplied. This part of the pleadings find mention in the Misc. Application No.249/2008 moved by the applicant for initiating criminal action against the respondents for filing false affidavit.

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5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. In order to see whether the case of the applicant for grant of Senior Scale w.e.f. 24.12.1987 when the so called junior was promoted was considered by the department, we summoned the original record. The respondents have produced the original record. From perusal of the original record, it is evident that review DPC for promotion of Doctors initially appointed on ad-hoc basis as AMOs/ADMOs to Senior Scale were considered in the light of the judgment rendered by the Apex Court in Civil Appeal No.2478-2479 of 2002. For that purpose, the respondents prepared a list of 57 doctors. Name of the applicant find mention at Sl.No.44. Below the eligibility list, the respondents have appended four notes. Note No.1 include names of doctors pertaining to other railways. According to note No.2, the persons covered vide item number mentioned therein were held entitled to benefit/proforma fixation with respect to their juniors. Note No.3 covers four persons who were entitled for benefit of proforma fixation with respect to their juniors subject to their fitness in ACR. It is against this category, name of the applicant find mention. Note No.4 covers several other items who were not entitled for benefit/proforma fixation with respect to their juniors, as their junior were also

promoted on the same date when these Doctors were promoted to Senior Scale as DMOs. Further from the minutes of meeting/record, it is evident that out of 4 persons mentioned against Note No.3 including applicant, the Review DPC found two persons to be fit for the purpose of grant of promotion to the Senior Scale whereas applicant as well as one Dr.S.K.Vyas was not found fit and such assessment was made on the basis of ACRs. Thus, the contention of the applicant that his case was never considered cannot be accepted, though such consideration was not made pursuant to direction given by this Tribunal in TA No.852/85 which has been affirmed by the Apex Court, but on account of the judgment of Apex Court in C.A. No.2478-2479. From the material placed on record, it is evident that the so called junior to the applicant namely Dr. Jayashree Rana was granted Senior Scale w.e.f. 24.12.1987 whereas the applicant was granted that said scale on 9.12.1992. Not only that, the junior persons who were granted Senior Scale w.e.f. 24.12.1987 were granted JAG w.e.f. 13.5.1991 whereas the applicant was granted Senior Scale w.e.f. 9.12.92 and JAG vide order dated 6.5.94. The applicant has neither challenged the validity of the order whereby he was not found fit for promotion to the Senior Scale pursuant to Review DPC held in the year 2002 nor he has challenged the promotion granted to his junior in the JAG w.e.f. 13.5.1991.

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Admittedly, the cause of action in favour of the applicant has arisen firstly in the year 1992 when he was granted such Senior Scale w.e.f. 9.12.92. At that time, it was open for the applicant to make grievance regarding grant of Senior Scale w.e.f. 24.12.87 when such scale was granted to his juniors and especially when he had a favourable order from the Tribunal which has been affirmed by the Hon'ble Apex Court specifically holding that the applicant shall be entitled to consequential benefits pursuant to quashing of the removal order. Admittedly, the applicant had not made such grievance at that stage. He accepted promotion of his so called junior over and above him in the year 1987. The submission made by the applicant that he was not aware about his consideration by the review DPC cannot be accepted. At this stage, no relief can be granted to the applicant to award him Senior Scale w.e.f. 24.12.87 when the same was granted to his junior, unless and until the applicant challenges validity of the order whereby he was found unfit for promotion w.e.f. 24.12.1987. Since validity of the said order is not under challenge, the applicant cannot be granted relief of granting Senior Scale w.e.f. 24.12.1987 when person junior to the applicant was promoted.

Similarly, the applicant cannot be granted any relief regarding grant of JAG w.e.f. 13.5.1991 when his so called juniors were promoted whereas the

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applicant was granted such grade w.e.f. 6.5.94. The cause of action in favour of the applicant has arisen firstly on 24.4.1993 when the so called junior were promoted in the JAG grade w.e.f. 13.5.1991. The submission made by the applicant that he had made representation to the authorities immediately thereafter will not advance cause of the applicant. It was permissible for the applicant to have challenged the order dated 24.4.93 at that time whereby the so called junior person was granted JAG w.e.f. 13.5.1991. Even in this OA the applicant has not made any grievance regarding quashing and setting aside the aforesaid order. Since validity of the order dated 24.4.93 whereby JAG has been granted to the so called junior persons to the applicant w.e.f. 13.5.91 is not under challenge, no relief can be granted to the applicant even on this ground. It is only when validity of the said order is challenged and affected persons are made parties that the applicant can be held entitled for relief. Further, the applicant is also not entitled to any relief, yet on another ground viz. in case the said order is quashed, some junior person will have to be demoted which is not party before us. Even on this account, the applicant is not entitled to any relief.

Law on this point is well settled. The Hon'ble Apex Court in number of decisions has held that no effective relief can be granted without impleading

necessary party and the order passed in the absence of necessary parties is nullity. Since validity of the order dated 24.4.93 is not under challenge before this Tribunal and admittedly promotion to the SAG has to be granted as per the seniority in the JAG, thus, we see no infirmity in the action of the respondents whereby the claim of the applicant for grant of SAG was declined on the ground that persons who have been granted SAG were promoted in the JAG prior to promotion of the applicant w.e.f. 6.4.94 and that case of the applicant for grant of SAG will be considered with the persons who have been granted JAG in the year 1994.

7. The reliance placed by the applicant to the seniority list dated 23.11.2001 is of no consequence, as according to the respondents, the seniority list was prepared on the basis of entry into grade and the seniority position reflected undergo changes at promotional level and in case the officer does not get higher grade alongwith his batch-mates or colleagues on the basis of his performance, he cannot be granted seniority especially when such promotion is made on the basis of merit and not on the basis of seniority. The fact that seniority list was prepared on the basis of initial appointment on ad-hoc basis is itself clear from letter dated 23.11.2001 (Ann.A-VII) whereby provisional seniority list was circulated. Since the

applicant has neither challenged validity of the order whereby his juniors were granted Selection Grade as well as JAG nor he has impleaded those persons as party respondents, who are likely to be affected in case relief is granted in favour of the applicant, as such, no relief can be granted to the applicant.

8. Besides this, such a stale claim cannot be entertained at this stage and the applicant cannot be permitted to unsettle the settled position after a lapse of such long time. This is also one of the reasons on which the applicant is also not entitled to any relief.

9. Viewing the matter from any angle, we are of the firm view that the OA is bereft of merit which is accordingly dismissed with no order as to costs.

10. In view of the order passed in the OA, no order is required to be passed in Misc. Application No.249/08, which is accordingly disposed of.


(B.L. KHATRI)
Administrative Member


(M.L. CHAUHAN)
Judicial Member

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