

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 15th day of April, 2010

Original Application No.455/2006

CORAM:

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

Dr. N.K.Mathur
s/o Late Shri Gurudas Mathur,
aged completing 60 years in Dec.2006,
at present working as Senior Divisional Medical Officer,
Office of Chief Medical Superintendent,
Railway Hospital, Ajmer
r/o C-41, M.D.Colony,
Naka Madar, Ajmer.

.. Applicant

(By Advocate: Mr. P.V.Calla)

Versus

1. Union of India,
through its General Manager,
North Western Railway,
Headquarter Office, Opposite Railway,
Jaipur.
2. The Secretary (E),
Railway Board,
Rail Bhawan, Raisina Road,
New Delhi.
3. The Chief Medical Director,
North Western Railway, Railway Hospital,
Jaipur.
4. Dr. B.C.Behera,
Chief Medical Superintendent
(Senior Administrativ Grade officer),
Divisional Hospital, Adra,
South Eastern Railway,
West Bengal.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

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

- i) Call for and examine the relevant ACRs of the applicant for last 5 years preceding i.e. ACRs for the year 2000-2001 to 2004-2005. The remarks drawn by the Reporting as well as Reviewing Authority may also be called for;
- ii) The entire service record of the applicant may also be called for so that this Hon'ble Tribunal can reach to the conclusion that as to whether the applicant has ability to discharge his duties and responsibilities for his post of not;
- iii) Further by an appropriate order or direction direct the official respondents to hold review DPC and reconsider the case of the applicant as per the procedure laid down under circular dated 3.6.2002 Ann.A/4 and after granting promotion to Senior Administrative Grade post w.e.f. his juniors were so promoted, grant all consequential benefits;
- iv) Since the applicant is going to retire w.e.f. 31.12.2006, therefore, respondents may also be directed to revise the pension of the applicant accordingly;
- v) Any other relief to which the applicants are found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicants.

2. Briefly stated, facts of the case are that the applicant was initially appointed as Assistant Medical Officer (AMO) on ad-hoc basis by the General Manager, Western Railway on 20.12.1976. He was subsequently promoted to the post of Divisional Medical Officer on 24.12.1987 and was further granted promotion in Junior Administrative (JA) Grade in 18th October, 1993. The applicant was

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Further promoted in Selection Grade in the year 2000. The grievance of the applicant is regarding non-selection/promotion to the post of Senior Administrative Grade. It is averred that promotion in the said grade has been given to junior persons whereas the applicant who has put in 29 years service in railways and has never been communicated any adverse remarks in the ACRs and his career is spot less has been overlooked in promotion of Senior Administrative Grade. The applicant has also made a representation dated 2nd March, 2006 thereby requesting for reviewing the case. The said representation of the applicant was rejected vide order dated 26.4.2006 (Ann.A/2) whereby the applicant was intimated regarding Railway Board's decision dated 10.4.2006 to the effect that his case was considered for promotion to Senior Administrative Grade in the SAG/IRMS panels of February, 2006. However, he was not found suitable by the DPC on the basis of his performance. It is this order which is under challenge before this Tribunal and the applicant has prayed for the aforesaid reliefs.

The challenge has been made by the applicant based upon the guidelines/procedure as laid down in the circular dated 3.6.2002 (Ann.A/4) which stipulates procedure for promotion to Administrative Grade in railway service and it has been contended that since the applicant has got all the promotions to the post of Senior Scale, JA Grade and Selection Grade within time without any supersession and no adverse entry has been communicated to him till the date, as such, the applicant could not have been found unsuitable by the DPC. The second ground pleaded by the

applicant is that his juniors who have been selected were not having consistently very good record and some of them have less meritorious record than the applicant. Thus, the comparative merit of the applicant vis-a-vis other selected candidates has not been considered and inclusion of junior persons in the panel of Senior Administrative Grade is in violation of Article 14 and 16 of the Constitution. It is further pleaded that selection is not to be made on the basis of column of the ACR but overall performance has to be seen by the Selection Committee/DPC and in the instant case overall performance is better than various doctors who have been selected and promoted to the post of Senior Administrative Grade. It is on these grounds the applicant wants this Tribunal to call for the ACRs of the applicant for five years and to reach to the conclusion independently and also that direction may be given to the official respondents to hold review DPC and reconsider the case of the applicant as per the procedure laid down in the circular dated 3.6.2002 (Ann.A/4).

3. Notice of this application was given to the respondents. The respondents have filed reply. The respondents have also placed reliance upon the guidelines Ann.A/4 which prescribe procedure for promotion to the administrative grade in railway services and it has been specifically stated that the benchmark for promotion from Selection Grade to Senior Administrative Grade is 'very good' and therefore, the performances assessed below the benchmark are not eligible for empanelment. The respondents have also placed reliance on Para-6 of this circular which stipulates that DPC will

assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the five preceding years. According to the respondents, not only this, but advancement in officers career should not be regarded as a matter of course but should be earned by dint of hardwork, good conduct and result oriented performance and potential for shouldering higher responsibilities and it should be based on a strict and rigorous selection process. According to the respondents, the grading by the DPC and in the ACR are two distinct assessments for two different purposes and the performance below benchmark shall not be termed as adverse. The respondents have also categorically stated that as per Ann.A/4 the DPC is not to be guided merely by the grading recorded in the ACR but make its own assessment on the basis of entries in the ACRs. According to the respondents, the DPC consists of high ranking officers. In the absence of any malice of them towards the applicant any averment to the effect that the DPC committed a serious error in judging the suitability cannot be admitted. The respondents have also placed reliance upon the decision of the Apex Court in D.A.Solanki vs. B.S.Mahajan (AIR 1990, SC 434) whereby the Apex Court has held that it is not the function of the court to hear appeals over the decision of the Selection Committees to scrutinize the relative merit of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on

limited grounds such as illegality or patent material irregularity in the constitution of the committee or its procedure violating the selection. The respondents have also relied upon another decision of the Apex Court in the case of UPSC vs. Hiranyalal Dev. & Ors. (AIR 1988 SC 1069) to contend that how to categorise in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The Tribunal could not make a conjecture as to what the Selection Committee would have done or to resort two conjectures as to the norms be applied for this purpose. The respondents have also relied upon the case of Utkal University vs. Dr. N. Charan, Sarangi, whereby the Hon'ble Apex Court has held that when experts are appointed in a committee for selection, the selection should not be lightly set aside.

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

5. Admittedly, the selection for promotion to the administrative grade in railway service including the post of Senior Administrative Grade was to be made as per the guidelines dated 3.6.2002 (Ann.A/4). Para-2 of the guidelines stipulates that 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. The benchmark for promotion to various grades has been mentioned in para-12. The benchmark for promotion from Senior Scale to JAG/SG is 'good'

whereas the benchmark for SAG/HAG is 'very good'. Para-9 of the guidelines is in the following terms:-

"9. The DPC would not be guided merely by 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 penalties 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."

Para-13 of the guidelines specifically stipulates that any performance below the benchmark shall not be termed as adverse in respect of an officer. Para-14 stipulates that the DPC shall, for promotion to administrative grades, grades officers as 'fit or 'unfit only with reference to the bench marks. Based on these guidelines the applicant has not been found fit for promotion to the post of Senior Administrative Grade for which benchmark is 'very good'. As already stated above, the challenge has been made by the applicant solely on the ground that he has earned promotion in the Senior Scale, JA Grade and Selection Grade and, as such, he could not have been ignored while granting promotion to Senior Administrative Grade as no adverse entry or any remark reflecting work and conduct of the applicant was communicated to him. The second plea taken by the applicant is that he was having better record than the junior persons so promoted, as such, the DPC has not properly scrutinize the performance of the applicant vis-à-vis his junior persons.

6. We have given due consideration to the submissions so made by the learned counsel for the applicant. So far as first contention of

the applicant is concerned, that he has earned promotion in Senior Scale, JA Grade and Selection Grade, as such, he ought to have been promoted in SA Grade, suffice it to say that promotion to the applicant in the aforesaid grades was granted based upon the benchmark which was 'good' whereas for promotion to the SA Grade, benchmark was 'very good' which is clear from para-12 of the circular. Thus, the applicant cannot stake any claim solely on the basis that since he has been granted promotion where the benchmark was 'good', as such, he should be granted promotion where the benchmark is 'very good'. Has the benchmark for the post of Senior Scale, JAG/SG and SAG/HAG was the same, in that eventuality, we could have called upon the respondents to make the selection record available to come prima-facie to the conclusion as to whether the assessment has been made by the Selection Committee keeping in view the norms so prescribed and the matter could have been remitted back to the Selection Committee to reconsider the matter of the applicant vis-à-vis the officers who were junior to him. So far as the second contention of the applicant is concerned that he was having better record than the junior persons so selected, suffice it to say that such vague contention/averment made by the applicant cannot be accepted in view of the fact that the applicant has not made any allegation regarding arbitrary exercise of power by the Selection Committee or that the guidelines have not been followed. In fact what the applicant wants this Tribunal to hold that this Tribunal should scrutinize the relative merit of the applicant vis-à-vis junior persons

so selected and he should be declared fit as the Selection Committee has wrongly assessed him unfit as he has ~~not~~ obtained the requisite benchmark. According to us, this is not the function of this Tribunal, more particularly, when the applicant has not alleged any malafide or arbitrariness on the part of the Selection Committee and also that the Selection Committee has not followed prescribed procedure. The Apex Court in number of cases has held that the courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely function as a court of appeal to examine the selection of the candidates nor is it the business of the court to examine each candidate and record its opinion. The Apex Court has also stated that the recommendations of the Selection Committee can be challenged on the ground of malafide or violation of statutory rules. This being not a case of such nature, we are of the view that the applicant has not made out any case for our interference.

7. At this stage, we wish to refer to the decision of the Apex Court in the case of M.V.Thimmaiah and Ors. vs. Union Public Service Commission and Ors., (2008) 1 SCC (L&S) 409 whereby the Apex Court in para-21 has noticed number of its earlier decisions where the aforesaid legal proposition has been culled out.

8. Before parting with the matter, it may specifically be stated that it is not case of the applicant in this OA that since he has failed to achieve the 'very good' benchmark, as such, entry below the

benchmark which has not been communicated cannot form basis for the purpose of selection. Rather the case of the applicant is based upon guidelines Ann.A/4 which prescribe procedure for promotion to administrative grade in railway services and in para-13 of these guidelines, it has been specifically stipulated that performance below benchmark shall not be treated as adverse in respect of an officer. Thus, the oral contention raised by the applicant that the entry below benchmark has to be communicated, cannot be accepted in the absence of any such pleading in the OA and also that the applicant has not challenged validity of the guidelines (Ann.A/4). Rather the applicant has based his case on the basis of the guidelines Ann.A/4 which stipulates that entry below benchmark shall not be treated as adverse.

9. With these observations, the OA is dismissed with no order as to costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

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