

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

21.8.2012

OA No.91/2008

**Mr. S.L.Songara, counsel for the applicant
Mr. Anupam Agarwal, counsel for respondents**

Heard the learned counsel for the parties.

**For the reasons dictated separately, the OA stands disposed
of.**

Anil Kumar
**(ANIL KUMAR)
Admv. Member**

K.S. Rathore
**(JUSTICE K.S.RATHORE)
Judl. Member**

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 21st day of August, 2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION No. 91/2008**

Dr. B.L. Songara, Sr. DMO (SG), Railway Hospital, North West Railway, Ajmer, Rajasthan at present retired Chief Medical Superintendent/Chief Specialist, resident of 2-J-17, Jawahar Nagar, Jaipur.

... Applicant

(By Advocate : Mr. S.L. Songara)

Versus

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Western Railway, Jaipur.
3. Dr. Elangovan A., Medical Director, Railway Hospital, Parambur, Chennai.

... Respondents

(By Advocate : Mr. Anupam Agarwal)

2. **ORIGINAL APPLICATION No. 92/2008**

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... Respondents

(By Advocate : Mr. Anupam Agarwal)

ORDER (ORAL)

The facts of both these OA are similar and, therefore, they are disposed of by a common order. The facts of OA No. 91/2008 are being taken as a lead case.

2. The applicant has filed this OA claiming for the following reliefs:-

"8. In view of the facts mentioned in Para 6 above, the applicant prays for the following reliefs

Entire service record and ACR for last 5 years be called for and examined, if any uncommunicated ACR/Remark is used in assessing performance or ignoring the applicant for promotion, the same may kindly be declared illegal and set aside.

Impugned order dated 27.09.2007 so far as it relates to not giving promotion to the applicant be declared illegal, quashed, set aside and modified. Respondents may be directed to hold fresh review DPC and case of the applicant be considered for the promotion to SA Grade in the SAG/IRMS with effect from the date when his juniors have been promoted, withal consequential benefits. Further applicant be assigned seniority at proper place in the seniority list.

8-A Respondents be directed to communicate all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report pertaining to the year 2000 to 2008 to the applicant. Further applicant has a right to make representation against the entry for upgradation, if entry is upgraded the applicant shall be considered for promotion of SA Grade retrospectively by the Departmental Promotion Committee, if applicant gets selected for promotion, he should be given arrears of pay with 12% interest per annum.

8-B That entry of Down grading "Good" for the year 2003-04 be quashed and set aside. Respondents be further directed to convene revise DPC, down graded ACR for the year 2003-04 be ignored and candidature of the applicant may be considered afresh by the respondents for selection SA retrospectively, he should be given arrears of pay with 12% interest per annum."

Anil Kumar

3. Brief facts, as stated by the learned counsel for the applicant, are that the applicant has not been promoted on the post of SA Grade while persons junior to him have been promoted. The promotion was on the basis of seniority. The applicant was senior and meritorious and his case for promotion ought to have been considered and he should have been given promotion to the post of Administrative Grade and should have been assigned rank in between 6 & 8 of the promotion order dated 27.09.2007 (Annexure A/1). He drew our attention to the grading given in the ACRs of the applicant by the Reporting Officer, Reviewing Officer and Accepting Officer, which read as under:-

Sr. No.	Year	Reporting Authority, Chief Medical Supdt (CMS)	Reviewing Authority, Chief Medical Director (CMD) DRM	Accepting Authority, General Manager (GM)
1.	2001-02	Very Good	Very Good	Very Good
2.	2002-03	Good	Very Good	Very Good
3.	2003-04	Good	Good	Good
4.	2004-05	Very Good	Very Good	Very Good
5.	2005-06	Very Good	Very Good	Very Good
6.	2006-07	Outstanding	Outstanding	Outstanding GM retd. on 25.02.2007
7.	2007-08	Outstanding	Outstanding	Outstanding
8.	2008-09	Very Good	Very Good	Very Good
9.	2009-10	Very Good	Very Good	Very Good

4. The perusal of the above grading shows that in the year 2003-04, grading was recorded as 'Good'. In the year 2002-03, grading was 'Good' by the Reporting Officer but 'Very Good' by the Reviewing Officer as well as by the Accepting Officer. Thus for the year 2002-03, grading should have been treated as 'Very Good' instead of 'Good'. The DPC ignored the grading given to the

Anil Kumar

applicant for the year 2002-03 as 'Very Good'. Thus the applicant was fit for promotion to Senior Administrative Grade on the basis of his performance. The promotion to the Senior Administrative Grade is made out by selection and the element of selectivity is determined with reference to relevant bench-mark prescribed for promotion. Selectivity is also determined on the basis of the ACRs of an officer of the preceding five years but in the case of the applicant, DPC has ignored the merit of the applicant. The applicant's performance has not been judged and recognized on the basis of ACRs. Therefore, the applicant should be given promotion from the date, his juniors have been given promotion to the Senior Administrative Grade.

5. Similarly in OA No. 92/2008, the applicant has challenged promotion order dated 10.02.2006 so far as it relates to not giving promotion to him. The applicant has requested that respondents be directed to hold fresh DPC and he be given promotion to Senior Administrative Grade with effect from the date with his juniors have been given promotion with all consequential benefits.

6. On the contrary, the learned counsel for the respondents argued that applicant cannot assail the finding of the DPC as the Hon'ble Apex Court has time & again held that the findings of the DPC cannot be challenged without there being any malafide on the part of members of that committee towards the applicant. The applicant was considered but was not found fit on the basis of his performance and, therefore, he has no legitimate cause of his

Anil Kumar

grievance. He further argued that the bench mark for Senior Administrative Grade is 'Very Good'. Thus, those who fall short of it are not promoted. Thus even the meritorious junior most falling within the zone of consideration may march over his less meritorious senior. The applicant was duly considered. However, he was not considered meritorious enough to be promoted vide orders dated 10.02.2006 and 27.09.2007. He further argued that only those persons have been selected who had 'Very Good' ACRs in all the preceding five years and no person who have less than 'Very Good' in the preceding five years was promoted. Since the applicant does not have all five 'Very Good' ACRs preceding to the selection year, therefore, he was not considered fit for promotion. Thus the OAs has no merit and it should be dismissed.

7. This Tribunal had directed the respondents on 20.07.2012 to place the proceedings of the DPC for the relevant years in question for the perusal of the court. The respondents in compliance of the order dated 20.07.2012 have produced the extracts of File No. 2007/SCC/13/19 SAG/IRMS panel approved on 18.07.2007 for the perusal of the Tribunal. They have further informed that the DPC proceedings for SAG/IRMS panel was approved on 04.02.2006 wherein the applicant was considered first time for SAG was handed over before Hon'ble CAT, Cuttack Bench on 03.12.2009 in connection to an OA No. 446/2006. The proceedings have not been returned by the Registry of the learned Tribunal. The proceedings are not traceable in the Tribunal.

Anil Kumar

Therefore, the respondents could not produce the DPC proceedings for SAG/IRMS panel approved on 04.02.2006.

8. Heard the rival submissions of the parties and perused relevant documents on record. From the perusal of the chart of the ACRs, as produced by the applicant in the OA, it is clear that the applicant has overall 'Very Good' or 'Outstanding' record except for the year 2003-2004 where the applicant has been awarded 'Good' ACR. For the year 2002-2003, the Reporting Officer has graded him 'Good' but the Reviewing and Accepting Officers have graded the applicant as 'Very Good'. The applicant has also annexed copies of the ACRs alongwith the OA. These facts have not been controverted by the learned counsel for the respondents either during the arguments or in the reply to the OA. From the perusal of the extracts of the proceedings of the DPC held on 13.06.2007, which have been placed before the Tribunal by the respondents, it appears that the person at sr. no. 2, Shri Meena Jai Singh (ST) has been given 'Good' ACR for the period ending March 2003. Thus for the proceeding five years, he has four 'Very Good' and one 'Good' ACR and he has been assessed by the DPC as 'Fit'. Similarly, Shri Behera Seetharam (SC), whose name appears at sr. no. 7 has one 'Good' ACR for the period ending March, 2002 and has partly 'Good' and partly 'Very Good' ACR for the period ending March, 2003. He has also been assessed 'fit' by the DPC. Thus the contention of the learned counsel for the respondents that only those who have all five ACRs preceeding to the selection as 'Very Good' have been

Anil Kumar

selected does not hold good. The applicant has only one 'Good' ACR for the year 2003-2004 and for the year 2002-2003, his grading has been recorded as 'Good' by the Reporting Officer but 'Very Good' by both the Reviewing Officer and the Accepting Officer. Therefore, in view of these facts and circumstances, we deemed it proper to direct the respondents to convene a Review DPC and place the case of the applicant for re-consideration for promotion to Senior Administrative Grade for the year 2006 and 2007 before the DPC. The respondents are directed to complete this exercise expeditiously but not later than three months from the date of receipt of a copy of this order.

9. With these observations, both the OAs (91/2008 & 92/2008) are disposed of with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S.Rathore)
Member (J)

AHQ