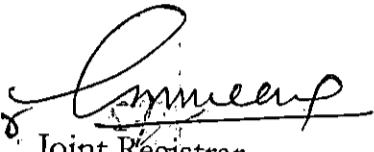


B

23/10/2012
OA 188/2011

Present : Mr. P.N. Jatti, counsel for the applicant.
None for the respondents.

This case has been listed before Joint Registrar
due to non availability of Bench. Let the matter be listed
before the Hon'ble Bench on 16.11.2012.

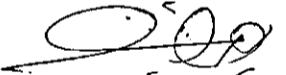

Joint Registrar

OA 188/2011 Dr. R.C. Soni Vs UOI

16.11.2012

None for the parties.

This case has been listed before the Joint Registrar
due to non availability of the Division Bench. Be
listed before the Hon'ble Bench on 12.12.2012.


(Gurmit Singh)
Joint Registrar

Shashi/-

12/12/2012

Mr. P.N. Jatti, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

Case adjourned on the request of
learned counsel for applicant(s)/
respondent(s). Put up for hearing
on 14/12/2012

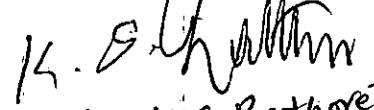
14/12/2012
10/12/2012
Court Officer

14/12/12

OA No. 188/2011

Mr. P.N. Jatti, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.
Heard. O.A. is disposed of by a separate order
on the separate-sheets for the reasons regarder therein.

Anil Kumar
[Anil Kumar]
Member (A)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 188/2011

Jaipur, the 14th day of December, 2012

CORAM :

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

Dr. R.C. Soni son of Ram Dayal Soni by caste Soni, aged about 59 years, resident of 10/551, Kaveri Path, Mansarovar, Jaipur. Presently working as Senior DMO (Senior Divisional Medical Officer), Selection Grade- Alwar.

... Applicant
(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through through the Secretary to the Railway Board, Ministry of Railway, New Delhi.
2. General Manager, North Western Railway, Jaipur.
3. Chief Medical Director, North Western Railway, Jaipur.
4. Divisional Railway Manager, North West Railway, Jaipur.

... Respondents
(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

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

"(i) That by a suitable writ/order or the directions the impugned order vide Annexure A/1 dated 09.02.2011 be quashed and set aside and promotion orders from selection grade/RMS officers to SA grade 'in situ' under the Dynamic Assured Career Progression Scheme with effect from 25.06.2009 be allowed to the applicant with all the consequential benefits.

(ii) That as the applicant is entitled for the promotion in SA Grade 'in-situ' as the applicant has been performing his duties in selection grade with effect from 25.06.2002. Therefore, the name of the applicant be added in the orders dated 14.10.2009 from Selection grade/IRMS Officers to S.A. Grade 'in'situ' under Dynamic Assured Career Progression Scheme."

Anil Kumar

2. Learned counsel for the applicant submitted that the applicant is working as Senior Divisional Medical Officer in North Western Railway, Alwar. He was promoted to the selection grade by the competent authority with effect from 25.06.2002. The applicant has been working with full devotion and utmost satisfaction towards his duties.

3. He further submitted that those medical officers who have completed their seven years service on 25.06.2009 in selection grade got promotion of Senior Administrative Grade 'in situ' but the same promotion has not been granted to the applicant while the applicant is fully eligible for this Senior Administrative Grade 'in situ' with effect from 25.06.2009.

4. That the name of the applicant did not appear in the order dated 14.10.2009. The applicant submitted a representation in this regard to the respondents and the respondents informed the applicant vide impugned order dated 09.02.2011 (Annexure A/1) that the applicant was considered for promotion to Senior Administrative Grade in the panel approved in 2009. However, he was found unfit by the DPC on the basis of his performance.

5. He further argued that the applicant has been working as Senior DMO, Alwar and the inspection report of 04.06.2005 (Annexure A/4) shows that his performance has been excellent

Anil Kumar

and Rs.500/- was awarded to Para Medical Staff for better maintenance of records and dispensary.

6. Further there was inspection of the Railway Health Unit Alwar on 20.07.2007 and as per the inspection report of 20.07.2007, the work of the Sr. DMO Alwar was found excellent (Annexure A/5). Again in the inspection report dated 04.09.2010, the work of Alwar unit has been found as excellent (Annexure A/6).

7. He further submitted that no adverse entries have been communicated to the applicant in these years while the candidates junior to the applicant have been allowed Senior Administrative Grade. There is no disciplinary proceedings pending against the applicant, no vigilance case is pending against him and no warning has been issued to the applicant. Therefore, the applicant is entitled for promotion to the Senior Administrative Grade.

8. On the contrary, learned counsel for the respondents argued that this OA is barred by limitation because the applicant has challenged the order dated 14.10.2009 (Annexure A/7) in the year 2011.

9. He further submitted that the claim of the applicant for promotion to Senior Administrative Grade was duly considered on 15.09.2009 under Dynamic Assured Career Progression Scheme dated 17.01.2009. However, the applicant was found unfit by DPC

Amit Kumar

on the basis of his performance. Those, who found suitable, which include some of his erstwhile juniors, were promoted to Senior Administrative Grade. The applicant was again considered in the subsequent panel approved on 29.08.2011 and was again assessed as unfit by the DPC. He further submitted that it is an accepted proposition of law that an employee only has the right to be considered for promotion and not for promotion as such. Therefore, the applicant having been duly considered for promotion and having not been found fit by the DPC, the applicant cannot claim for promotion to Senior Administrative Grade merely on the grounds of eligibility.

10. Learned counsel for the respondents argued that the procedure of holding such selection is contained in the Ministry of Railway's letter bearing No. 2002/SCC/3/1 dated 03.06.2002 (Annexure R/1). Thus, it is seen from the procedure prescribed that the bench mark for promotion to Senior Administrative Grade is 'Very Good' and, therefore, those whose performance fall below the benchmark are not eligible for empanelment to Senior Administrative Grade. In Para No. 6 of the said letter, it has been laid down that Annual Confidential Reports (ACRs) are the basic inputs on the basis of which assessment is to be made by the DPC while considering the claims for promotions of the eligible officers. Moreover, the DPC is not be guided merely by the entries in the ACRs, but will make its own assessment on the basis of the entries in the ACRs.

Anil Kumar

11. Learned counsel for the respondents further argued that the applicant is not in a position comment either on his merit or skill. It is for his superiors to assess the same. The very fact that the DPC did not find the applicant fit for promotion to Senior Administrative Grade in view of assessment of his service records negates the claim of the applicant that his performance has been up to the mark so as to accord promotion to him. Therefore, the claim of the application to Senior Administrative Grade under Dynamic Assured Career Progression Scheme is absolutely baseless and thus the OA merits rejection.

12. He further submitted that in terms of the new procedure of disclosing ACRs before holding a DPC, the applicant had been given the ACRs and he availed of the opportunity by representing against the ACRs for the period ending in 2005, 2006 and 2007. His ACRs for the year 2005 and 2007 were upgraded but the ACR for the year 2006 remains the same. However, the applicant still could not meet the benchmark fixed for promotion to Senior Administrative Grade. Therefore, the action of the respondents in not giving promotion to the applicant is perfectly legal, valid and in consonance with the service law jurisprudence. Therefore, he prayed that the OA be dismissed with costs.

13. Heard the rival submissions of the parties and perused the documents on record. It is not disputed between the parties that bench mark for promotion to Senior Administrative Grade is 'Very Good'. According to the respondents, the applicant was 'duly

Anil Kumar

considered by the DPC for promotion but he failed to obtain bench mark for promotion that is 'Very Good' and, therefore, he was assessed unfit for promotion to Senior Administrative Grade. The applicant was provided with the copies of ACRs and he availed of the opportunity by representing against the ACRs for the period ending 2005, 2006 and 2007. His ACRs for the year 2005 and 2007 were upgraded but the ACR for the year 2006 remains the same but the applicant still could meet the bench mark fixed for promotion to Senior Administrative Grade. The applicant was again considered for promotion on 29.08.2011 and was again assessed as unfit by the DPC. Thus it is clear from the averments of the respondents that the applicant was considered for promotion not only on 15.05.2009 but also on 29.08.2011 and on both occasions, he failed to achieve the bench mark "Very Good" and, therefore, he was assessed unfit for promotion. Learned counsel for the applicant could not show us if any of his junior was wrongly given promotion or any less meritorious candidates than the applicant was given promotion. The applicant had a right for consideration for promotion and the respondents considered him for promotion. It is for the DPC to assess the performance of the candidates and then decide about their bench mark. The DPC is an expert body and this Tribunal cannot sit in appeal against the decision of the DPC. The respondents have considered the applicant on two occasions and both occasions, he was found unfit on the basis of his performance. He has failed to achieve bench mark that is 'Very Good'. Therefore, he was not promoted to

Anil Kumar

Senior Administrative Grade. We find no illegality/infirmity in the action of the respondents.

14. Learned counsel for the applicant during the course of arguments referred that Alwar dispensary was inspected on 04.06.2005 (Annexure A/4), on 20.07.2007 (Annexure A/5) and on 04.09.2010 (Annexure A/6) and the performance of the applicant has been adjudged as excellent. Rs. 500/- was awarded to para medical staff for better maintenance of record and dispensary. Similarly, a group award was sanctioned to the employees of the dispensary for their outstanding team work and for providing new facilities at the dispensary. The dispensary was again given a group cash award of Rs. 500/- for the good maintenance of dispensary during the inspection on 04.09.2010. Learned counsel for the applicant argued that these inspection reports also show that the work of the applicant has been excellent through out. But these were not considered by the D.P.C. We have gone through the inspection reports. It is on record that after each inspection, the dispensary was given a group cash award of Rs. 500/- to the staff. Without going into the merits of the inspection reports (whether they were excellent or not), we are of the opinion that since these inspection reports are not part of A.C.R., therefore, if they were not considered by the D.P.C. then no irregularity has been committed by the D.P.C. while assessing the performance of the eligible candidates for promotion to Senior Administrative Grade. Thus, we find no merit in this Original Application.

Anil Kumar

15. Consequently, the Original Application is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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

AHQ