

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.456/2014

Monday, this the 6th day of February 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Rajendra Prasad
Address C-205, Gandharv Society, Omega One
Greater Noida, UP 201308
Retired Chief Medical Superintendent
North Central Railway, Jhansi, UP

..Applicant

(Applicant in person)

Versus

Union of India through Chairman, Railway Board
Rail Bhawan, New Delhi – 110 001

..Respondent

(Mr. Shailendra Tiwary, Advocate)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“8.1 To allow this Application & to quash the Impugned orders of Rly. Board dt 20.11.07 (Annex A-1), dt 23.01.07 (Annex A-2), dt 26.05.10 (Annex A-3), dt 07.05.2013 (Annex A-1) & Impugned Para 13, of Railway Board Order No.2002/SCC/3/1 dt 03.06.2002 (Annex A-5).

8.2 To direct the Respondent to ignore all below the benchmark ACRs, of the applicant which were not communicated but were taken as adverse for promotion to SA grade, even if the appellant was ever informed of the grade.

8.3 To direct the respondents to promote the Applicant to SA grade with all consequential benefits & of increase in pay & allowances of SA grade wef the date his junior was promoted along with @ 12% interest on the dues of arrears of pay @ allowances.”

2. Brief facts of the case are under:-

2.1 The applicant joined Indian Railway Medical Services (IRMS), which is a Group 'A' service, on 08.03.1979. He was promoted to Junior Administrative Grade (JAG) in the year 1990 and to the Selection Administrative (SA) Grade on 06.06.2000. He was placed in the Senior Administrative Grade (SAG) on 07.01.2009.

2.2 In the years 2006 and 2007, the Ministry of Railways created about 130 new posts of SAG for IRMS officers. Against these posts, several eligible IRMS officers, vide Annexure A-2 order dated 23.01.2007, were promoted. The applicant, however, was promoted to SAG belatedly on 07.01.2009. The applicant superannuated from the service of the Railways on 31.12.2012 from the same Grade. The claim of the applicant is that several of his juniors were promoted to SAG vide Annexure A-2 order but he was ignored and much belatedly he was promoted to SAG on 07.01.2009

2.3 The applicant had approached this Tribunal five times in the past as indicated below:-

- (i) For the first time, the applicant filed O.A. No.588/1988 when he was not appointed to the upgraded post of Divisional Medical Officer (DMO) whereas his juniors had been given the upgraded post, purportedly on the ground that his ACRs were

below benchmark. The said O.A. was disposed of vide Annexure A-15 order dated 05.03.1991 with the following directions:-

“7. On a consideration of these factors, we give the following directions:-

a) the Annual Confidential Reports for the each of the years 1984-85, 1985-86 and 1986-97 be reviewed afresh taking due note of the remarks of the Commissioner for Departmental Inquiries, by the Chief Medical Officer;

b) The selection committee will thereafter assess the fitness of the applicant for giving him the upgraded post on the basis of the ACRs reviewed as indicated at (a) above.

c) In the event the Committee finding the applicant fit for promotion, he will be promoted from the date his junior was promoted with all consequential benefits.

d) This shall be done within a period of two months from the date of receipt of this order.

8. The O.A. is allowed with the above directions..”

(ii) The applicant approached this Tribunal for the second time in O.A. No.959/1992 when on the recommendations of the Selection Committee, 186 Assistant Divisional Medical Officers (ADMOs), including his juniors, were promoted but the applicant was left out and persons juniors to him were promoted. The said O.A. was disposed vide order dated 19.09.1997 (Annexure A-16) with the following directions:-

“9. In the light of the above discussion and facts and circumstances of the case, we consider that this is a fit case for remitting back to the DPC. We therefore direct the respondents to place the matter afresh before the DPC with the direction that they will not take into account the remarks “not yet fit” in the ACR for 1984-85 and 1985-86 and also ignore the remarks of the accepting authority in the ACR for 1987-88. They will also specifically ask the DPC to note the fact in respect of the column of integrity

in the ACR for 1984-85 that the officer had been exonerated, as also the remarks of the Commissioner DE reproduced at page 8 of the order of this Tribunal dated 5.3.1991. The said review by the DPC will be completed within three months from the date of receipt of a copy of this order.”

- (iii) Pursuant to the directions contained in the order dated 19.09.1997 in O.A. No.959/1992, the applicant was granted Senior Time Scale notionally with effect from the date when his juniors were promoted and thus he was denied the arrears of pay and allowances. Aggrieved by the said action of the respondents, he approached the Tribunal for the third time in O.A. No.2782/1999, which was decided vide Annexure A-17 order dated 13.11.2000 with a direction to the respondents to pay the arrears with interest.
- (iv) He approached the Tribunal for the fourth time in O.A. No.2670/2008 when 130 officers junior to him were promoted to SAG but he was denied the promotion again due to his ACRs being below benchmark. The said O.A. was disposed of vide order dated 19.08.2009 in the following terms:-

“3. Admitted position is that such reports were taken into consideration in the years 2006 and 2007, which were below the prescribed benchmark of ‘Very Good’ and that the same were not communicated to the applicant. That being so, in the light of the decision of Hon’ble Supreme Court in Dev Dutt Vs. Union of India and others, (2008) 8 SCC 725 and the decision of the Full Bench of this Tribunal in A.K. Aneja Vs. Union of India & Ors., OA No.24/2007, decided on 7.05.2008, directions need to be issued. The respondents would communicate to the applicant all the concerned ACRs of the applicant, which may be below benchmark, under consideration of the DPC held in 2006 and 2007 within 15 days from today and if

the applicant makes a representation, the same would be disposed of by the respondents within a period of four weeks from the date of receipt of such representation. If the representation of the applicant may find favour with the respondents and his below benchmark reports are upgraded, commensurate to meet the benchmark, a review DPC may be held. Such a review DPC shall meet within four weeks from the date the reports of the applicant are upgraded.

4. Before we part with this order, we may mention that it is conceded position that the representation aforesaid of the applicant under rules has to be considered by an authority above the reviewing authority.”

- (v) Pursuant to the directions contained in order dated 19.08.2009 in O.A. No.2670/2008, the applicant was supplied copies of the two ACRs for the years ended March 2001 and March 2003. Vide his representation dated 10.11.2009, the applicant requested the respondents to ignore these two below benchmark ACRs, as they had not been communicated to him in the past. In this regard, he relied on the decision of the Hon’ble Supreme Court in **Dev Dutt v. Union of India** [2008 (8) SCC 725]. His representation dated 10.11.2009 was declined by the respondents vide order dated 26.11.2010. Being aggrieved, the applicant, for the fifth time, approached this Tribunal by filing O.A. No.983/2012. This O.A. was disposed of by the Tribunal vide order dated 06.12.2012 (Annexure A-12), allowing the O.A. in the following terms:-

“14. Looking to all aspects of the matter and keeping in view the facts and circumstances of the case, we are of the considered view that the impugned orders cannot sustain for the reasons indicated above. In the result, the impugned letters dated 20.11.2007 (Annexure A-1), 23.01.2007 (Annexure A-2) and 26.05.2010 (Annexure A-

3) are quashed and set aside and the matter is remitted back to the respondents to reconsider the applicant's representation by the competent authority, i.e., the authority higher than the accepting authority.

15. The exercise, as ordained above, shall be completed as expeditiously as possible and preferably within a period of nine weeks from the date of receipt of a certified copy of this order. In case the applicant succeeds in upgrading his ACRs for the year ending March, 2001 and March, 2003, a review DPC needs to be convened to consider the case of the applicant for promotion to the SAG level with effect from the date when his juniors have been promoted. In case the adverse order is passed against the applicant either in upgrading the ACRs or in review DPC, the applicant would be entitled to get a reasoned and speaking order."

(vi) The respondent-Railway Board has issued Annexure A-4 letter dated 07.05.2013 in compliance with the direction of the Tribunal in order dated 06.12.2012 in O.A. No.983/2012.

3. The applicant in this O.A. has prayed for quashment of the following communications:

- i) Annexure A-1 letter dated 20.11.2007 from General Manager, Northern Railway to the Divisional Railway Manager, Northern Railway informing that Dr. Rajendra Prasad (applicant), then working as Senior DMO, Delhi Division, was considered for promotion to SAG in the SAG/IRMS panel of 2007 but was not selected on the basis of his performance.
- ii) Annexure A-2 communication dated 23.01.2007 from Railway Board to various Zonal Railway General Managers in which transfers of various officers of SAG/IRMS have been ordered.

- iii) Annexure A-3 letter dated 26.05.2010 from Railway Board to the General Manager, S C Railway, Secunderabad stating therein to inform the applicant that his request for holding review DPC is not warranted since his ACRs for the years ended March 2001 and March 2003 have not been upgraded by the General Manager, Northern Railway and General Manager, N.F. Railway respectively.
- iv) Annexure A-4 letter dated 07.05.2013 from Railway Board to General Manager, N.C. Railway, Allahabad, under whom the applicant was then working, issued pursuant to the directions contained in the order dated 06.12.2012 in O.A. No.983/2012. It reads as under:-

“Dr. Rajendra Prasad, IRMS/NCR, had filed the subject OA before CAT/PB/ New Delhi for promotion to SAG w.e.f. 23.01.2007 and ____Railway Board’s letter dated 26.05.2010 advising rejection of Sh. Prasad’s representation on ACRs year ending March 2001 and March 2003. The subject OA was disposed of by Ld. Tribunal vide order dated 06.12.2012 directing to reconsider applicant’s representation by the Competent Authority i.e. the Authority higher than the Accepting Authority.

2. In pursuance to Ld. Tribunal’s order dated 06.12.2012, the Competent Authority (MS) considered the representation and passed a detailed order on the same concluding that no revision of the entries/remarks in the ACRs for March’01 and March’03 is justified. A copy of detailed order passed by Competent Authority is enclosed herewith.

3. You are requested that the above order passed by Competent Authority (MS) may be served to Dr. Rajendra Prasad and his acknowledgment may be obtained. A copy of acknowledgment may be sent to this office for record.”

- 4. Pursuant to the notice issued, the respondent-Railway Board entered appearance and filed its reply. The respondent also filed an additional

affidavit. The applicant has filed rejoinders to the reply as well as additional affidavit filed on behalf of the respondent.

5. The gist of the averments made in the reply/additional affidavit filed by the respondent is as under:-

- (a) Pursuant to the directions of the Tribunal in O.A. No.2670/2008 dated 19.08.2009, the applicant was supplied copies of the two ACRs for the years ended March 2001 and March 2003 and in accordance with the ratio of law laid down by the Hon'ble Supreme Court in **Dev Dutt** (supra). The applicant had submitted his representation in regard to these two below benchmark ACRs. His representation was considered by the accepting authorities, i.e., General Manager, Northern Railway for the ACR for the year ended March 2001 and General Manager, N.F. Railway for the ACR for the year ended March 2003. They have declined to upgrade the ACRs with conclusion that "there is no room for improvement".
- (b) The respondent in pursuance of the Tribunal's directions in O.A. No.983/2012 dated 06.12.2012, with the approval of the competent authority (Member Staff, Railway Board) vide order dated 07.05.2013 (Annexure A-4) concluded that no revision of the entries/remarks in the ACRs for the years ended March 2001 and March 2003 was justified.
- (c) The applicant has filed the instant O.A. seeking promotion to SAG overlooking his ACRs for the years ended March 2001 and March 2003, which is not justified.

- (d) As per the interlocutory orders dated 10.09.2014 and 13.11.2014 passed by the Tribunal in the instant O.A., the new representation dated 28.11.2014 submitted by the applicant against the below benchmark ACRs for the aforementioned years have been considered and disposed of by the Member Staff, Railway Board by a speaking order dated 01.04.2015 (Annexure R-4), which, *inter alia*, contains the following concluding remarks:-

“On the whole the officer has failed to bring out any reasonable ground for changing the remarks/grading in his ACR for the year 2000-01 and 2002-03 or for treating these ACRs as null and void..... I have come to the conclusion that no revision of entries and remarks in the ACR for March 2001 and 2003 is justified.”

- (e) The Department of Personnel & Training (DoPT) instructions contained in O.M. dated 11.05.1990 are not applicable to the instant case for the reason that the said O.M. pertains to adverse remarks in the ACRs whereas in the present case the below benchmarks ACRs of the applicant are in question.

6. On completion of the pleadings, the case was taken up for hearing the arguments of the parties today. The arguments of the applicant, who appeared in person and that of Mr. Shailendra Tiwary, learned counsel for respondents were heard.

7. The applicant submitted that he was being denied his legitimate career progression in the service at every stage of his promotion and he had to approach the Tribunal time and again seeking justice, and that he could get his promotions only with the judicial intervention of this Hon'ble

Tribunal. He further argued that his promotion to SAG was denied when about 130 officers junior to him were promoted on 23.01.2007. Later he was informed that this denial was on account of his ACRs for the years ended March 2001 and March 2003 being below the benchmark. He vehemently argued that these ACRs were never communicated to him and as such in terms of the judgment of Hon'ble Supreme Court in **Dev Dutt** (supra) and **Abhijit Ghosh Dastidar v. Union of India & others** (Civil Appeal No.6227/2008) decided on 22.10.2008, they are required to be ignored. He also stated that in terms of DoPT O.M. dated No.2101/1/2010-Estt.A dated 13.04.2010, these below benchmark ACRs were required to be communicated to him within a reasonable period of time after they were written by the concerned authorities. He further submitted that all officers, who had written these ACRs in the capacity of reporting/ reviewing/ accepting authorities, had retired long back and, therefore, the Annexure R-4 order dated 01.04.2015 passed by the Member Staff, Railway Board, declining the upgradation of these ACRs, is meaningless.

7.1 Concluding his arguments, the applicant submitted that he has been promoted to SAG on 07.01.2009 but in view of the fact that his ACRs for the years ended March 2001 and March 2003 were not communicated to him in time, they are required to be ignored and he is entitled for promotion to SAG from the due date, i.e., 23.01.2007 when his juniors were promoted to that Grade.

8. *Per contra*, learned counsel for respondent submitted that the judgment of Hon'ble Supreme Court in **Dev Dutt** (supra) was pronounced on 12.05.2008. Thereafter the DoPT issued O.M. dated 13.04.2010 making

it mandatory for communication of all his ACRs to the officer concerned irrespective of their gradings. Prior to this, the DoPT O.M. 20.05.1972 was *in vogue* under which only the ACRs containing adverse remarks were to be communicated to the concerned officer. Since the ACRs of the applicant for the years ended March 2001 and March 2003 were graded as 'Good' and not as 'adverse', the grading given in his ACRs were not communicated to the applicant. However, thereafter, in terms of O.M. dated 13.04.2010 issued by the DoPT, following the dictum of Apex Court in **Dev Dutt's** case (*supra*), these ACRs were also communicated to him.

8.1. Mr. Shailendra Tiwary, learned counsel for respondent further submitted that communication of the ACRs for the years ended March 2001 and March 2003 was also in compliance with the directions of the Tribunal in O.A. No.2670/2008 dated 19.08.2009. His representation against these below benchmark ACRs has been considered by the competent authority, i.e., Member Staff, Railway Board, who, vide speaking order dated 01.04.2015 (Annexure R-4), has rejected his representation, and as such the applicant cannot be granted promotion to SAG w.e.f. 23.01.2007, as prayed by him in this O.A.

9. We have given our thoughtful consideration to the arguments of the applicant and that of Mr. Tiwary, learned counsel for respondent. The reasons given by the learned counsel for respondent for not communicating the ACRs for the years ended March 2001 and March 2003 to the applicant is understandable, as these ACRs were graded as 'Good' and not 'adverse', and thus communication of these two ACRs to the applicant was not mandatory at that point of time. However, the situation has changed

subsequently after the judgment of Hon'ble Apex Court in **Dev Dutt** (supra). Undoubtedly, the respondent-Railway Board communicated to these below benchmark ACRs to the applicant for his representation and after considering his representation, earlier the General Manager, Northern Railway and General Manager, N.F. Railway in their capacity of accepting authorities had declined to upgrade them. Later Member Staff, Railway Board also declined to upgrade these ACRs twice. Pertinent to note that these ACRs pertain to the years ended March 2001 and March 2003, whereas representation against these ACRs were considered much later by General Manager, Northern Railway and General Manager, N.F. Railway respectively and later by Member Staff, Railway Board. Obviously, the representations of the applicant have not been disposed by the concerned persons, who were then occupying these posts. The new incumbents, who have stepped into the shoes of the competent authorities, perhaps could not have had the full appraisal of performance of the applicant during the relevant periods. The Hon'ble Supreme Court in **Abhijit Ghosh Dastidar's** case (supra) held as under:-

“4) It is not in dispute that the CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22.09.1997 and the order of adverse remarks dated 09.06.1998. In view of the said order, one obstacle relating to his promotion goes. Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion admittedly the entry of “good” was not communicated to the appellant. The entry of ‘good’ should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries “good” if at

all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

5) Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group-A, but his retrospective promotion from 28.08.2000 shall be considered for the benefit of re-fixation of his pension and other retrial benefits as per rules.

6) The appeal is allowed to the above extent. No costs.”
(emphasis supplied)

10. Considering the fact that the applicant retired on 31.12.2012 and the ACRs pertain to the years ended March 2001 and March 2003 and their upgradation has been declined by the officers holding the posts of General Manager, Northern Railway, General Manager, N.F. Railway and Member Staff, Railway Board and these officers were not holding such positions at the time when these ACRs were written, and also following the dictum of Hon’ble Supreme Court in **Abhijit Ghosh Dastidar’s** case (supra), we are of the view that the applicant should be granted SAG w.e.f. 23.01.2007, the date when his juniors were promoted to that Grade, ignoring these two ACRs.

11. In the conspectus of the discussions in the pre-paragraphs, the respondent-Railway Board is directed to grant SAG to the applicant w.e.f. 23.01.2007, i.e., the date when his juniors were so promoted to that Grade, ignoring the two ACRs for the years ended March 2001 and March 2003. This shall be done within a period of three months from the date of receipt

of a copy of this order. The applicant shall be entitled for all the consequential benefits.

12. The O.A. is accordingly allowed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/sunil/