

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 1235/2013

Date of CAV: 19.11.2018

Date of Pronouncement: 20.11.2018

Between:

Dr. K. Kailash Rao, S/o. K. Ganapathi Rao,
Aged about 58 years, Occ: Sr. DMO,
East Coast Railway, Visakhapatnam.

... Applicant

And

1. The Union of India, Rep. by the Secretary,
Railway Board, Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Manager, East Coast Railway,
Chandrasekharpur, Bhubaneswar 751017.
3. The Chief Medical Director, East Coast Railway,
Chandrasekharpur, Bhubaneswar 751017.
4. The Chief Personnel Officer, East Coast Railway,
Chandrasekharpur, Bhubaneswar 751017.

... Respondents

Counsel for the Applicant	...	Dr. P. B. Vijaya Kumar
Counsel for the Respondents	...	Mr. D. Madhava Reddy, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed against the impugned order dt 7.3.2012 dealing with the remarks in the APAR for the year 2009-10 of the applicant.

2. Brief facts of the case are that the applicant joined the respondents organisation on 7.05.1983 and his services were regularised on 17.03.1989. The applicant's batch mates and his juniors were promoted to Senior time scale on

17.3.1993 whereas the applicant was promoted on 17.10.1994. Applicant represented but of no avail. The applicant went on study leave from June 1996 to May 1999 and by 17.3.1999 he was due to be promoted to the JAG grade. Once again batch mates and juniors were promoted to JAG but not the applicant and therefore when he approached this Tribunal by OA No 1501/2000, he got the Sr. Time Scale from 17.3.1993 and JAG w.e.f 27.06.2001. Thereafter applicant became eligible for selection grade on 25.6.2002, along with his batch mates and juniors, but was given only in June 2004. Applicant represented for grant of JAG and selection grade with retrospective effect but there was no response. The applicant thereafter became eligible for SAG w.e.f 17.3.2009 after completion of 20 years of service vide RBE No.05/2009 & RBE No. 140/2009 under Dynamic Assured Career Progression Scheme, although he did not complete the mandatory 7 years service in the selection grade by 25.06.2009. However, when his batch mates and Juniors were promoted on 25.06.2009 to SAG and not the applicant, he approached this Tribunal in OA No.1019/2011 which ordered the respondents to dispose of the comprehensive representation of the applicant. Accordingly the respondents disposed of the representation vide lr dt 26.3.2012 stating that the applicant would be considered for SAG on 27.6.2011 as he completes 7 years residency in selection grade by the said date. The respondents on placing APAR in the Railway website, the applicant found that in the APAR for the year 2009-10 an entry namely "Average and not yet fit for promotion" was made. The applicant represented against the down grading but it was rejected vide proceedings dt 7.3.2012. The applicant approached this tribunal in OA No.264/2013 which ordered the respondents to reconsider the representation of the applicant to expunge the adverse remarks. The respondents disposed of the representation by ordering retention of the adverse remark vide

General Manager, East Coast Railway, lr. dt. nil and received by the applicant on 26.4.2013. Aggrieved by the same the present O.A has been filed.

3. The contentions of the applicant is that for 13 years beginning from 2000-01 till 2012-13 his APARs were either very good and fit or outstanding and fit excepting the APAR of 2009-10 where in it is remarked as Average and unfit for promotion. Being honest and for following norms the higher official bore a grudge against him and spoiled his APAR for 2009-10. They reduced the staff under him and demanded targets for works for which there were no targets. The prorata target for sterilisation was met. The impugned order was passed without application of mind.

4. The Respondents refute the contentions of the applicant by stating that the DPC considers various factors while assigning the overall grading for APAR. The bench mark for promotion to SAG is very good. The applicant APAR for 2009-10 was graded as 'Average and not fit for promotion'. On being represented the competent authority after carefully considering it has rejected the same vide lr. dt 7.03.2012. Aggrieved by the same, when the applicant moved this Tribunal in O.A 264/2013 it was reconsidered and decided by the competent authority to retain the entry made in the APAR for 2009-10. Reduction of staff was beyond the control of the Respondents and that it cannot be considered as harassment. Target achievement is based on the end of the year performance and not on a prorata basis.

5. Heard the learned counsel and perused the records. Learned counsel for the applicant argued that the representation for upgrading the APAR was not disposed with proper application of mind and with equal force it was repelled by the learned counsel for the Respondent by stating that after weighing all the factors the competent authority has decided to retain the entry.

6. The facts of the case indicate that to promote an officer, the APARs of the previous 5 years are considered. In the present case the APAR of the applicant was graded as Average in 2009-10 which is below the bench mark and hence could not be considered for promotion to SAG in the SAG/IRMS panel approved on 17.12.2012. The applicant reasons out that it is due to shortage of staff. Shortage is a common phenomenon in Govt. Organisation and it is in such circumstance one has to excel. That is where the quality of the officer comes out. Shortage cannot be a cause for under performance. Regarding achievement of the target under sterilisation, usually as the year comes to a close the performance month wise gallops. Initial months the pace will be slow but gains momentum in the closing months of the year. One cannot claim that he has achieved the prorata target. In fact, it is an opportunity to an officer to show his metal that despite the short time available, the target was achieved. This is what an officer material should be made of. The calibre of an officer is assessed based on what he can deliver to the organisation with the given resources. Officer like qualities come to the fore when one is faced with adverse circumstances. A half filled glass of water appears fifty percent empty for one and fifty percent full for someone else. Perception makes the difference. The performance parameter emerges on how you look at it. Those who look at it as fifty percent full will like to find ways and means to move forward to achieve goals in organisational interests, given the fifty percent resources at one's command. It is purely an individual's choice. As is said, where there is a will there is a way. In regard to the grievance of the applicant that the competent authority has not disposed of his representation without application of mind, is not true. The competent authority in his own hand has recorded a detailed note endorsing that even during his personal inspection he has noticed serious performance deficiencies. That the applicant

has secured average in 8 attributes and good in 5 and not 9 as indicated by the applicant for his reasons to rate him good. The reviewing authority has clearly recorded reasons that the applicant has not involved himself in improving the condition of the Vishakhapatnam Railway Station, which the competent has taken note of in deciding applicant's representation. The competent authority has also not agreed with the change of stance by the reviewing authority. Therefore as is seen the competent authority did go into the details and decided the issue even drawing upon his observations during personal inspection as well. Hence it cannot be said that the representation was disposed of without application of mind. Further, the applicant alleged that the higher officers have developed a grudge against him for not being pliant. In the absence of any evidence brought on record such allegations do not stand the scrutiny of law. Moreover, the applicant was granted study leave to pursue higher studies and sent for training in Hospital Management in order to enrich his career. This indicates that the Respondents were fair to the applicant. The Respondents followed the rules and decided the issue on their own and when directed to do so by this Tribunal when the applicant filed the relevant OA, based on performance norms.

7. Hence we do not find any reason to intervene on behalf of the applicant. Therefore the OA is dismissed. Parties to bear their own costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of November, 2018

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