

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

**Original Application No. 97/2013**

**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, Bhubaneswar.
3. Chief Medical Director, East Coast Railway, Bhubaneswar.
4. Chief Personnel Officer, East Coast Railway, Bhubaneswar.
5. Divisional Railway Manager, East Coast Railway, Visakhapatnam.

... 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 assailing the impugned order dt 26.03.2012 communicated vide lr dated 4.4.2012 by the Dy. Chief Personal Officer of the East Coast Railway, Zonal Head Quarters, wherein the request of the applicant to be promoted to SAG grade has been rejected.

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 05/2009 & RBE 140/2009 under Dynamic Assured career Progression Scheme, although he did not complete the mandatory 7 years service in the selection grade by 25.6.2009. However, when his batch mates and Juniors were promoted on 25.6.2009 to SAG and not the applicant, he approached this Tribunal in 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. However in the promotion list for SAG grade released vide Railway Board order 36/12 dt 26.12.2012 his name did not figure and hence this OA.

3. The contentions of the applicant are that since he has completed 20 years of service he is eligible for SAG promotion and that the denial of the same is violative of orders contained in RBE 05/2009 & RBE 148/2009.

4. The respondents clarify that granting of SAG for having 20 years of service without rendering 7 years of service in the selection grade is only a one time relaxation. The applicant was considered for SAG on completing 7 years in the panel approved on 17.12.2012 for SAG/IRMS and was found unfit by the DPC on grounds of performance . In regard to promotion to JAG , the DPC found him unfit for the panels approved on 20.10.1999 & 18.5.2001 but found fit in the panel approved on 5.11.2011 by the DPC w.e.f 27.6.2001. Applicant was considered for placement in selection grade under DACP scheme w.e.f 27.6.2004.

5. Heard the learned counsels and perused the documents on record. The learned counsel for the applicant asserts that the applicant is eligible for SAG on completion of 20 years of service, whereas the learned counsel for the respondents claims that only after putting 7 years in selection grade the applicant is eligible for SAG.

6. The issue is about promotion to SAG grade. The condition for promotion is that an officer has to put in 20 years of service, of which 7 years of service has to be in the selection grade. The applicant was granted selection grade on 27.6.2004 and hence eligible to be considered for SAG as on 27.6.2011. The assertion of the learned counsel that the seven year condition need not be considered and that 20 years of service will suffice is incorrect. The Railway Board order dt. 24.8.2009 enclosed as Annexure A-III, makes it clear that it is a one time relaxation. As per the said letter the applicant is not eligible for the said relaxation. The Member Staff of the Railway Board has accordingly disposed of

the representation of the applicant dated 7.11.2011 informing the applicant that his candidature for SAG will be considered on 27.6.2011, the date on which he becomes eligible. Accordingly the applicant was considered under DACP for SAG /IRMS panel approved on 17.12.2012 but found unfit on grounds of performance by the DPC. The Senior Administrative Grade is a senior position which requires high level of performance standards. One has to lead and take higher responsibilities. Performance is thus an essential key consideration when being promoted to SAG grade. Lagging on the same may not find favour with the employers whoever they may be, public or private. Besides, the disposal of the representation of the applicant by the Respondents is as per existing instructions and we therefore do not find any infirmity in the impugned order. Moreover, the applicant's candidature for SAG was duly considered by a duly constituted DPC as on the date of his eligibility and found him unfit on grounds of performance. This Tribunal cannot sit on judgment of the DPC unless it is malafide and against rules. The applicant has not brought out any facts to show that the DPC findings were violative of rules or malafide. Respondents have been specific and clear in their disposal. It was a considered decision backed by a rule/instruction. Rules are meant to be followed and cannot be overruled.

7. Therefore, based on facts and merits we do not find any reason to intervene on behalf of the applicant. Hence the OA is dismissed, with no order to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

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

Dated, the 20<sup>th</sup> day of November, 2018