



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A 350/13/2014

Date of order: 20.4.2018

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Dr. Parna Banerjee, wife of Dr. Subir Kumar Kanjilal, aged about 48 years, working for gain as Senior Divisional Medical Officer, Eastern Railway, Liluah, residing at E-1001, Sun City, 105/1, Bidhannagar Road, Calcutta- 700067.

---Applicant

Versus

1. The Union of India, service through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
2. The Railway Board service through the Secretary, Rail Bhavan, New Delhi, 110001.
3. The Director General (Health) Railway Board, Rail Bhavan, New Delhi, 110001.
4. The General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
5. The Chief Personnel Officer Eastern Railway, 17, Netaji Subhas Road, Calcutta 700001.
6. The Chief Medical Director Eastern Railway, 14, Strand Road,(12th Floor), Calcutta 700001.

--Respondents

For the Applicant(s) : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondent (s): Mr. S.K Das, Counsel

ORDER

Per Ms. Jaya Das Gupta, Administrative Member

The applicant has approached CAT under Section 19 of the AT, Act, 1985 seeking the following reliefs:

“(a) Direction do issue directing the respondent authorities to grant promotion to the applicant to the Senior Administrative grade under ACP scheme with effect

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from 12.08.2011 as granted to her similarly circumstanced incumbents along with all consequential benefits;

(b) Direction do issue setting aside and quashing the ACR 2009-2010 being Annexure A-3 hereto;

(c) Declaration do issue declaring that non-upgradation of the ACR of the applicant for 2009-2010 was illegal and void and the applicant is entitled to promotion to the SAG under DACP scheme with effect from 12.08.2011 as granted to her similarly circumstanced incumbents along with all consequential benefits irrespective of the said ACR.

(d) A direction do issue upon the respondents to produce and/or cause to be produced the entire records of the case and upon such production being made to render consonable justice by passing necessary orders thereon;

(e) Cost and costs incidental hereto;

(f) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

2. Heard both the Counsels in details.

3. It is the case of the applicant that she joined the Indian Railway Medical Service through UPSC in 12.08.1991. She was promoted to senior scale on 12.08.1995; then to Junior Administrative Grade on 27.06.2001 and thereafter promoted to selection grade on 12.08.2004. After 20 years of service, she became entitled for consideration for promotion to Senior Administrative Grade under the Dynamic Assured Career Progression Scheme, in short DACP. The applicant Smt. Parna Banerjee received a communication on 28.02.2011 that her ACR for the year 2009-10 was found to be below benchmark and she was asked to file a representation against such entries and final grading within 15 days from the date of receipt of copy of the ACR. She gave her representation, which however was rejected. It was the further contention of the applicant that the DPC was required to consider the ACR of 5 years, namely, 2006-07, 2007-08, 2008-09, 2009-10 and 2010-2011 for her promotion to SAG Grade. But only because of below benchmark grading for one year i.e 2009-10, she was not considered for such promotion to the SAG Grade.

Per contra, it is the contention of the respondent authorities that as she was not awarded 'very good' for the ACRs for all the five years for consideration

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of promotion to SAG Grade, she was not given such promotion, and therefore, her application in this O.A should be dismissed.

4. The tenets of natural justice point to the fact that any person's eligibility for promotion must not be refused based only on the basis of an ACR for a single year. In fact, it is the duty of the respondent authorities that if the person has been awarded 'Very Good' in the preceding years, then the reason for suddenly downgrading her ACR from 'Very Good' to 'Good' has to be specified very clearly by the authorities.

On going through the ACR of 2009-10 as submitted by the applicant at Annexure A-3 to the O.A, it appears from page 43 that the Reviewing Authority has agreed with the assessment of the Reporting Authority and didn't wish to add or modify such report. The reviewing authority's comments are dated 15.07.2010. **However, it appears that the CMD had agreed to improve the Grade to 'Very Good' on 11.08.2010. However, such upgradation of the assessment to 'Very Good' was not accepted by the Ex-General Manager, Eastern Railway, Kolkata since allegedly the CMD has not given reasons for such upgradation.**

When the authorities appear to have given so much importance to reasonings, it is strange that such reasoning is absolutely absent in the communication dated 26th August, 2011 (annexed at Annexure A-5 to the O.A), when they communicated to the applicant that her representation dated 28.3.2011 was considered but the Assistant Secretary (P) (for the Deputy Secretary (Confidential)) was of the opinion that the grading given as 'Good' should stand. No reasons have been given why "Good" should stand. Order dated 26th August, 2011 is set out below:

"
**GENERAL MANAGER'S OFFICE
 EASTERN RAILWAY
 KOLKATA**

CONFIDENTIAL

No: AC.221/APAR/MEDICAL/II/PB(10)

Dated the 26th August, 2011

[Handwritten signature]

Dr. (Mrs.) Parna Banerjee
 Sr. DMO,
 Eastern Railway,
 Howrah

(Through: DRM/E.Rly./HWH)

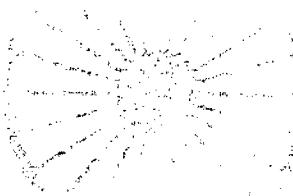
Sub: Decision of the competent Authority on the ACR/APAR for the year 2009-10.

Ref: Your representation dt. 28.03.2011 against communication of ACR/APAR for the year 2009-10

Your representation vide reference above was put up to G.M./E.Rly./Kolkata i.e the Accepting Authority of the APAR/ACR whose decision thereon is as follows:

'I have gone through the representation of Dr. (Mrs.) Banerjee and the remarks thereon, of the reporting, reviewing and countersigning authorities. On careful consideration I am of the opinion that the grading of "Good" as given should stand.'

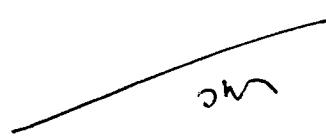
Kindly acknowledge receipt.


 (Md. Tarique)
 Asst. Secretary (P)
 For Dy. Secretary (Confld.) "

5. The order rejecting the representation is without reasons and hence, arbitrary, violative of Article 14 of the Constitution of India. Hence, the order dated 26.08.2011 is quashed and set aside. This view is supported by the direction of Hon'ble Apex Court in **Kranti Associate Private Limited and Ors. -Versus- Masood Ahmed Khan and Ors, (2010) 9 Supreme Court Cases, 496 and The Manager Government Press and Another - Appellant -Versus- D.B Belliappa -Respondents in AIR 1979 Supreme Court 429.**

6. Practically, seven years have elapsed from the date she had represented on 28.03.2011 and no fresh representation should be called for against the below benchmark grading of 2009-10, as the applicant may not remember all the salient points in her defense.

7. The applicant has submitted that both before and after 2009-10, she has received "Very Good" grading, so why suddenly for one year she has been



downgraded to "Good" has not been explained at all by the respondents authorities.

8. The ld. counsel for the applicant has referred to the orders of the CAT; Chandigarh Bench dated 13.10.2010 which has been upheld by the High Court of Punjab and Haryana in CWP No. 8439/2012 delivered on 17.08.2012

9. For the above reasons, the respondent authorities are directed to consider all ACRs from inception with special emphasis on the last five years of 2009-10 as per DOPT OM 22011/5/86-Est (D) order dated 13.04.1989 and set up a Review DPC for reconsideration of ACR for the year 2009-10. Such exercise shall be completed within three months of getting a certified copy of this order and further action taken accordingly on the basis of recommendation of Review DPC expeditiously. *Final Order*

10. The O.A is accordingly disposed of with the above direction. No costs.

(Jaya Das Gupta)
Member (A)

(Bidisha Banerjee)
Member (J)

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