

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01298/2018

DATED THIS THE 25th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Dr.M.N.Saradamma
D/o M.Narayana Reddy
Aged about 53 years
Additional Chief Medical Supdt (Dental)
Railway Hospital, Mysuru
R/o.147/C
Vantikoppal Railway Colony
Yadavagiri, Mysuru-570 020.

....Applicant

(By Advocate Sri K.Sreedhar)

Vs.

1. Ministry of Railways, represented by its Secretary
Railway Mantralaya
Rail Bhawan
New Delhi-110 001.
2. Railway Board, Indian Railways
Rail Bhawan, New Delhi-110 001
represented by its Chairman.
3. Indian Railways
South Western Railway, Rail Soudha
Gadag Road, Hubballi-580 020
Dharwad District
by its General Manager.
4. Shri A.K.Mittal, Retired Chairman
Railway Board, C/o.Chairman
Rail Mantralaya
New Delhi-110 001.Respondents

(By Advocate Sri N.Amaresh)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that she was selected by UPSC in the year 1995 in the cadre of Assistant Divisional Dental Surgeon on 3.8.1995. She studied BDS. In August 1999, she was promoted as Divisional Dental Surgeon. In August 2004, she became Sr.Divisional Dental Surgeon and in the year 2008, she earned Selection Grade. The next cadre is Non Functional Senior Administrative Grade (NFSAG). The applicant having experience and seniority and was assigned number of works in the department(Annexure-A1) should be given NFSAG scale in 2015, whereas it is given only in the year 2018 for the reason that during the year 2011-12 her APAR has been shown as 'Good' even though she has done excellent works such as Laparoscopic, Tubectomy Camp and Vasectomy Month and others(Annexure-A2) in addition to routine dental work. She has done excellent work and for her contribution, Mysuru division has awarded Shield also. Throughout her service, she has earned 'Very Good' except for the year 2011-12 on account of which, she was denied SAG scale in the year 2015. She made representation dtd.30.9.2016 which was recommended by the Chief Medical Supdt., Mysuru on 5.10.2016(Annexure-A10) and the General Manager has upgraded 'Good' as 'Very Good' as per order dtd.20.12.2016(Annexure-A11). Thus her grading is improved for all the years and she was fully eligible for SAG scale in the year 2015 itself. However, the General Manager communicated a letter dtd.8.8.2017(Annexure-A13) again reducing the grading to 'Good' on the ground that the original Accepting Authority, who was in service, has not approved changing from 'Good' to 'Very Good'. She sought for the actual orders passed by the original Accepting Authority i.e., 4th respondent for which the respondents have communicated letter dtd.25.7.2017(Annexure-A12)

wherein it has not communicated the decision taken by the 4th respondent. It is the opinion of the officer which is nothing to do with Accepting Authority. The applicant has again made a representation dtd.6.11.2017(Annexure-A14) referring the decision of the Tribunal in OA.727/2016 whereby a clear finding has been given stating that new Bench Mark guidelines cannot act retrospectively and it is only prospective and even for that year the Bench Mark is good, the subsequent year Bench Mark also should be taken into account. If it is taken, she will be eligible to become SAG scale in the year 2016 itself. However, the respondents has issued another order dtd.2.4.2018(Annexure-A15) rejecting her claim for according SAG scale. The reasoning adopted in that letter is unsustainable. When the Accepting Authority, the General Manager has reviewed and given 'Very Good', the question of original Accepting Authority to decide the matter does not arise. As the original Accepting Authority i.e. 4th respondent is promoted as Chairman and was on extension period after retirement, he could not have given any opinion in the present case. Throughout her service, she has got 'Very Good' except for the year 2011-12. If Annexure-A11 is accepted, she is eligible for SAG scale in the year 2015 itself as she was having the grade of 'Very Good' for all the five years. Even for that one year excluded, then in the year 2016 itself, she is eligible to be promoted to SAG scale which has been unjustly denied to the applicant. Therefore, she filed the present OA seeking the following relief:

i. Call for the records pertaining to the order bearing No.2016/SCC/13/35 New Delhi dtd.25.7.2017 vide Ann A-12 passed by the 2nd respondent, order bearing No.SWR/APAR/MED/2016/MNS dtd.8.8.2017 vide Ann A-13 passed by the 3rd respondent and order bearing No.E(O)111-2014/AE/266 New Delhi dtd.2.4.2018 vide Ann A-15 passed by Railway Board 2nd respondent and set aside the same by directing the respondents to consider the case of the applicant for promotion to the SAG Scale with effect from 2015 as she was having bench mark of Very Good for all the five years; and,

ii. Pass such other orders as may be deemed just and expedient in the circumstances of the case, including the award of costs of this application, in the interest of justice and equity.

2. On the other hand, the respondents have submitted in their reply statement that in terms of Railway Board's DACP Scheme dtd.7.1.2009(Annexure-R1), a Senior Grade Indian Railway Medical Service officer is eligible to be considered for promotion to Senior Administrative Grade (SAG) on completion of 7 years service. In terms of para 12 of Board's letter dtd.3.6.2002(Annexure-R2), benchmark for promotion to SAG is 'Very Good'. The applicant was considered for promotion to SAG w.e.f. 3.8.2015 in the SAG/IRMS (Dental) panel approved on 24.11.2015. Since the panel was for the year 2015-16, APARs for the period from March 2010 to March 2014 were taken into account by the DPC. In this panel, benchmark for promotion to SAG was applied as per Board's letter dtd.3.6.2002 which was 'Very Good'. Applicant was assessed as 'Unfit' by the DPC on the basis of her performance. Officers were given opportunity to make any representation against the entries and the final grading given in the report within a period of 15 days from the date of receipt of the entries in the APAR. As per Board's letter dtd.23.12.2009, the representation against entries in an APAR should be put up, for consideration and decision, to the officer, who has accepted the APAR, even if he has been transferred to some other Railway/Unit. Applicant vide her representation dtd.12.4.2016 addressed to General Manager, SWR had requested for upgradation of her APAR for the year 2011-12 mentioning that she was not promoted to SAG with her batchmates due to adverse entries in her APAR 2011-12. However, her request was not considered by the then GM/SWR Sri P.K.Saxena as she has represented after a lapse of 2 years(Annexure-R4). Then she again made representation on 30.9.2016 to GM/SWR Sri A.K.Gupta, the then GM/SWR who

condoned the delay and upgraded the APAR of the applicant for the year 2011-12 from 'Good' to 'Very Good'(Annexure-R5). Accordingly, the office forwarded the relevant paper for further action at Board's office vide letter dtd.20.12.2016. However, it was observed that the upgradation done by GM/SWR was not in line with the instructions of Board's letter dtd.23.12.2009 as Sri A.K.Mittal (Accepting Authority of the APAR), was still in service and acting as Chairman to the Railway Board(CRB). Sri A.K.Mittal who condoned the delay in submission of representation of the applicant and taking into account the remarks of reporting and reviewing authorities had decided not to change the grading in the APAR of the applicant for the year 2011-12. The applicant's name was again considered for promotion to SAG in the next panel for the year 2018-19 approved on 16.4.2018 when APARs for the period from March 2013 to March 2017 was taken into account by the DPC. On being assessed as 'Fit' by the DPC, the applicant has been promoted to SAG w.e.f. 1.4.2018. The allegation of the applicant that the APAR ought to have been given to her at the reporting stage is contrary to the rules. Since the Competent Authority Sri A.K.Mittal was still in service, he had considered the representation of the applicant and decided not to change the grading in the APAR for the year 2011-12 as original Accepting Authority. Therefore, the applicant is not entitled to any relief as claimed by her and the OA is liable to be dismissed.

3. The applicant has filed rejoinder submitting that the respondents cannot rely on the alleged opinion of Sri A.K.Mittal who was earlier General Manager of South Western Railway and has already retired from service. However, he was given re-employment for some period and he left by resigning that also. Therefore, he cannot be treated as an officer of the department during extension period. As such representation of the applicant should not have been placed before such officer. In

the CR of the applicant for 2011-12(Annexure-A17), against column No.4, it has been clearly stated with regard to any Adverse Remarks including penalties imposed/warning/displeasure communicated as 'Nil'. Therefore, no displeasure is communicated to the applicant. The applicant had worked as a Dental Doctor with additional duties of sanitation, Health & Family Welfare, DAR section and had been given Very Good for all the years except 2011-12. Therefore, the authority could not have opined that there is no initiation which is clearly incorrect in view of giving her additional responsibility. In that CR, it has been clearly mentioned that she is fit for promotion. The new benchmark which has been changed w.e.f. 15.12.2015 could not be applied for the benchmark which were not in force during 2011-12 as it was covered under earlier circular dtd.3.6.2002 wherein Clause 6,9,10,13 & 14 are relevant. Therefore, mere giving 'Good' in the CR for one year could not have been treated as ineligible for promotion in 2015 when new guidelines have been applied.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant would have got promoted to the SAG with effect from 2015 but for a grading of 'good' in one of the APARs of previous 5 years i.e. in 2011-12, and she did not get the same. As per the then existing guidelines, officers were to have 'very good' grading in all the previous 5 years. The applicant's grading was upgraded to 'very good' vide Annexure-A11 on 20.12.2016. However, a further examination by the Railway Board resulted in a change since the original accepting authority, the then General Manager of South Western Railway continued to be in service and the upgradation or otherwise of the grading should have been done by him and not by a successive General Manager. The applicant's claim that the accepting authority was on re-employment is of no relevance as the officer

performed this particular task in continuation of his earlier stint as the direct accepting authority. The accepting authority who had continued in service did not accept for upgrading the grading from 'good' to 'very good' and therefore the first opportunity for the applicant to get promoted came only w.e.f. 01.04.2018. The applicant would like to claim that the respondents have applied the rule retrospectively and as was ordered in OA.No.727/2016 dtd.20.01.2017, she should have been given the promotion based on the earlier rules and not based on the amended rules of 2015. The prospective nature of the rules is appropriate but in this case, the earlier rules also stipulated 'very good' for all the 5 years and therefore her contention cannot be accepted. She has also claimed that in column relating to 'any adverse remarks including penalties imposed or warnings/displeasures communicated', the said APAR for the year 2011-12 stated 'nil' and therefore there was nothing adverse against the applicant to have been given a grading of only 'good' instead of 'very good'. We are unable to accept her contention since it is for the reporting, reviewing and accepting authorities to take a considered decision based on the performance of the individual and we cannot sit in judgment over the decision of the concerned authorities in the absence of any alleged mala fide or bias. No such claim has been made by the applicant. Further, as can be seen from Annexure-A12, the accepting authority has accorded detailed reasons as to why no changes are warranted in the APAR for the year 2011-12. As already seen at Annexure-R3, certain benchmarks have been prescribed for promotion to the Administrative Grade in Railway service and the applicant will not be able to gain anything since the said guidelines have not been applied in a retrospective manner but only based on the then existing benchmark guidelines. As noted in such guidelines, we need to point out that Departmental Promotion Committees(DPC)

should not act merely on overall gradings recorded in the APARs but should make their own assessment on the basis of the entries in APAR and some times an overall grading in APAR may be inconsistent with the entry of various parameters and attributes. It is not clear whether this point was considered by the DPC which originally examined the applicant's case for promotion in the year 2015. If they have merely gone by the grading without considering all the aspects of the performance of the applicant, the same will be not in consonance with the guidelines issued by the respondents themselves. We, therefore, direct the respondents to examine the proceedings of the DPC for considering the applicant's case for promotion in the year 2015 to this limited extent and take an appropriate decision. The same may also be communicated to the applicant in writing. This they may do so within a period of three(3) months and pass appropriate orders.

5. The OA is disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01298/2018

Annexure-A1: Copy of work sheet assigned to the applicant dtd.24.10.2008

Annexure-A2 to A8: Copy of contribution of work done by the applicant in the Mysuru Division

Annexure-A9: Copy of the revised guidelines/Bench Mark notification dtd.15.12.2015

Annexure-A10: Copy of the recommendation dtd.5.10.2016

Annexure-A11: Copy of upgradation of Bench Mark passed by 3rd respondent dtd.20.12.2016 from Good to Very Good

Annexure-A12: Copy of the order dtd.25.7.2017 not furnishing the reqd information and merely stating the representation has been considered

Annexure-A13: Copy of the order dtd.8.8.2017 rejecting the claim of the applicant

Annexure-A14: Copy of the representation dtd.6.11.2017 of the applicant

Annexure-A15: Copy of the order dtd.2.4.2018 rejecting the claim of the applicant

Annexure-A16: Copy of promotion order dtd.18.4.2018

Annexures with reply statement:

Annexure-R1: Copy of the Railway Board letter No.PC-V/2008/ACP/2 dtd.7.1.2009 regarding extension of Dynamic Assured Carrier Progression(DACP) Scheme for officers of the Indian Railway Medical Service

Annexure-R2: Copy of the Railway Board letter No.2002/SCC/3/1 dtd.3.6.2002 regarding procedure for promotion to Administrative Grades in Railways Services

Annexure-R3: Copy of Railway Board letter No.201/3/1 dtd.15.12.2015 regarding Benchmarks for promotion to Administrative Grade in Railway Service

Annexure-R4: Copy of the representation of the applicant dtd.12.4.2016

Annexure-R5: The representation dtd.30.9.2016 to GM/SWR, Shri A.K.Gupta, the then GM/SWR condoned the delay and upgraded the APAR of the applicant for the year 2011-12 from 'Good' to 'Very Good'.

Annexures with rejoinder:

Annexure-A17: CR of the applicant for 2011-12
