

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.521 of 2018

In
Civil Writ Jurisdiction Case No.14590 of 2017

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Dr. Mritunjay Kumar Son of Shri Baijnath Prasad Sah presently posted as Divisional Medical Officer, under Eastern Railways, at Jamalpur, permanent resident of at and P.O.- Makwa, P.S.- Asarganj, District-Munger.

... .. Petitioner

Versus

1. The Union Of India through the Registrar, Central Administrative Tribunal, Patna Bench, situated at Income Tax Golembur, Bailey Road, P.S.- Kotwali, Patna- 800001.
2. The Railway Board through its Secretary (Establishment), Rail Bhawan, New Delhi.
3. The General Manager (Personnel), North Eastern Railway, Gorakhpur, office of G.M, Gorakhpur- 273012, U.P.
4. The General Manager (Personnel), East Central Railway, Hajipur, Bihar.
5. The Director (Medical), North Eastern Railway, Gorakhpur, Office of G.M, Gorakhpur- 273012, U.P.
6. The Director (Medical), East Eastern Railway, Hajipur, Bihar.
7. Assistant Personnel Officer/ Gazetted, N.E. Railways, Office of G.M, Gorakhpur- 273012, U.P.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Rajeev Prakash
For the Opposite Party/s : Mr.S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-04-2019

This Review Petition has been preferred seeking review of the judgment and order dated 20.11.2017 passed by Hon'ble Division Bench in Civil Writ Jurisdiction Case



No. 14590/2017 by which this court refused to interfere with the decision of the Patna Bench of Central Administrative Tribunal ('CAT') in O.A. No. 765/2012 and dismissed the writ petition.

Brief Facts

2. The review petitioner in this case joined the Indian Railway Medical Service (hereinafter referred to as 'IRMS') as Assistant Divisional Medical Officer (in short the 'ADMO') w.e.f. 17.10.2002 and completed his Kalavdhi of four years prescribed for promotion by the Railway Board for grant of Senior Scale post of Divisional Medical Officer. He cleared All India PG Entrance Examination and got admission in Kolkata Medical College for two years PG Diploma Course in Ophthalmology. For this purpose he was granted extraordinary leave from 18.08.2004 till 17.08.2006 for a period of two years. However the examination of the course was not conducted in time which caused overstay of the petitioner for a period of 18.08.2006 to 30.04.2007 beyond the sanctioned leave. The petitioner reported on his duty on 01.05.2007.

3. As per the railway report circular dated



29.07.2003 (Annexure R2/1) the empanelled Junior Scale Officers of IRMS may be promoted to Senior Scale on completion of four years of regular service in Junior Scale as ADMO even if the date of completion of four years of service is prior to the date of DPC.

4. In terms of another circular dated 21.08.2009 issued by the Railway Board (Annexure R2/2) wherever the Railway Medical Officers become due for promotion to Senior Scale under DACP Scheme on completion of four years service in Junior Scale when they are still on sanctioned Extra Ordinary Leave (EOL) for pursuing higher studies, the benefit of promotion should be allowed to them only on their return to duty after EOL and on their assuming charge of the higher grade post and no proforma promotions be allowed to them with effect from the date on which they complete the stipulated four years service in Junior Scale. Paragraph '3' of the Railway Board Circular reads as under:-

"3. The matter has been examined in detail in consultation with Associate Finance and it's clarified that wherever an IRMS probationer is sanctioned EOL for



prosecuting higher studies and his confirmation as ADMO is delayed on account of delayed completion of his probation due to his proceeding on sanctioned EOL, while he will be considered for promotion as DMO only on his confirmation after successful completion of probation, on being found fit for promotion, the same will be granted retrospectively from the date he completed 4 years of regular service in Junior Scale or the date on which he returned to duty after the sanctioned EOL, whichever is later.”

5. By yet another Circular dated 03.06.2002 (Annexure R2/3) of the Railway Board, it is provided that *“Confidential Reports are the basic inputs on the basis of which assessment is to be made by the DPC. The DPC will assess the suitability of the officers for promotion on the basis of their service records and with particular reference to the five preceding years.”*

6. Further it is provided in paragraph ‘7’ of the Circular (Annexure R/2-3) that *“Where one or more CRs have not been written for a sufficient reason for a particular period, the CRs of the years preceding the period in question, would be considered. If this is not possible, all the available CRs should be taken into account.”*



7. It is not in dispute that the DPC in its meeting held on 01.12.2006 considered the case of the petitioner along with two other 'ADMOs' for assessing their fitness for promotion to the senior scale. With respect to this petitioner the proceeding of the DPC held on 01.12.2006 reads as under:

"Since Dr. Mritunjai Kumar, ADMO/IZN, Dr. Fahim Ahmand, ADMO/Sitapur are on sanctioned EOL from 17.08.2004 to 16.08.2006 and 18.08.2005 to 16.08.2007 respectively therefore, their case for promotion to Sr. Scale will be considered after returning from EOL....." Reference may be made to Annexure '12' to the review application.

8. Again in the meeting held on 07.09.2007 name of Dr. V.K. Pathak, Dr. A.K. Singh and Dr. Manohar were considered and they were granted promotion to the senior scale. In the DPC held on 14.08.2008 the case of the petitioner was discussed and it was recorded that *"Dr. Mrityunjay Kumar is on unauthorized absence w.e.f. 01.04.2008 therefore case for promotion to be considered when he reports for duty on next occasion by the DPC."*



9. In the DPC held on 25.05.2010, the petitioner was found suitable for promotion to senior scale. The Committee recommended the name of the petitioner along with three others for promotion to the senior scale. A copy of the proceedings of the DPC held on 25.05.2010 is available on the record as Annexure '1' which is quoted hereunder for a ready reference:

“Proceedings of the Departmental Promotion Committee held on 25.05.2010 for promotion of ADMO's (15600-39100 + 5400 GP) to Sr. Scale as DMO (15600-39100 + 6600 GP) in Medical department.

Railway Board vide their letter No. 88/E(RG)II/7/52 dated 18.11.91 (C/1) have introduced procedure for promotion from Jr. Scale to Sr. Scale of directly recruited Group 'A' IRMS doctors through DPC. As per guidelines of Railway Board, the General Manager has nominated following officers as member of DPC (N/34) on the case No. Ka/260/Misc/Sr. Scale/JAG(I) (Copy placed at 126/C)

The DPC met on 05.2010 and considered eligible ADMOs who have completed four years regular service in Group "A" for promotion to Sr. Scale. Jr. Scale officers of Indian Railway Medical Service (ADMOs) are to be promoted to Sr. Scale as DMO/SMO on completion of four years of regular service as ADMO in the order of seniority subject to rejection of the unfit as per Railway Board's letter No. E(O)III-98/PM/42 dated 29.07.2003 (copy placed at 28/C). The case of Dr. Mritunjay Kumar, Dr. A.K. Jaiswal, Dr. A.K. Choubey & Dr. Alpana are to be considered by DPC for assessing their fitness for promotion to Sr. Scale. They were confirmed in Jr. Scale Rs. 8000-13500 on 23.01.04, 17.08.06, 30.09.09 & 16.09.08 respectively (copy placed at 57/C, 94/C, 100/C & 125/C) after completion of probation period.

The committee has taken into account the preceding



years annual confidential reports including ACRs of (09-10) of Dr. Mritunjay Kumar, Dr. A.K. Jaiswal, Dr. A.K. Choubey & Dr. Alpana and their SPE/Vig. DAR clearance for deciding their suitability for promotion to Sr. Scale.

Considering all facts and Board's instructions on the subject, the Committee has assessed overall performance of the candidates based on overall assessment, the Committee's recommendations are indicated below-

S. No	Name of Doctor	Designation & place of posting	DOITS	Date of completion of 4 years regular service	Recommendations
1.	Dr. Mritunjay Kumar	ADMO/LNMR H/GKP	17.10.2002	30.06.2007	Suitable
2.	Dr. A.K. Jailwal	ADMO/LNMR H/GKP	24.05.2005	23.05.2009	Suitable
3.	Dr. A.K. Chaubey	ADMO/CRI/BS B	25.05.2005	24.05.2009	Suitable
4.	Dr. Alpana	ADMO/LNMR H/GKP	02.11.2005	01.11.2009	Suitable

The above candidates are free from SPE/Vig. DAR cases (C/128-129).

General Manager may kindly approve the proceedings.”

10. Pursuant to the aforesaid recommendations the General Manager, Eastern Railway issued office order no. 130 dated 07.06.2010 (Annexure ‘2’ to the review application). Through this office order the petitioner along with three others recommendees were granted promotion in the senior scale. Controversy arose when the persons placed at serial no. 2, 3 & 4 were granted promotion in senior scale with effect from the date of completion of four years regular service, the petitioner was granted promotion in senior scale



only w.e.f. 26.5.2010.

11. The petitioner thereafter represented to shift his date of promotion from 26.05.2010 to 01.07.2007 by modifying the order dated 07.06.2010 but the same was rejected vide letter dated 13/14.10.2011. The aforesaid decision of the Railway authorities were challenged before the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal').

12. The Tribunal took a view that because the petitioner was on an Extra Ordinary Leave from 18.08.2004 to 17.08.2006 and on leave without pay from 18.08.2006 to 30.04.2007 and as the petitioner was not performing any duty and had not performed the minimum period of 90 days duty during 2008-09 his appraisal report was not prepared for that period. In such background giving him promotion from 26.10.2010 was held to be logically right decision by the Department. In other words, it was held that because the petitioner had not performed duty for four years as per requirement for promotion, DPC sat on 25.05.2010 in connection with the application and was granting benefit of promotion after reckoning four years of regular service.



13. The judgment of the Tribunal passed in OA No. 765/2012 was challenged before Hon'ble Division Bench of this court and the Hon'ble Division Bench vide its judgment dated 20.11.2017 refused to interfere with the judgment of the Tribunal by holding that the grant of benefit of promotion cannot be read as a matter of right when the petitioner was absent. The Hon'ble Division Bench dismissed the writ application.

Submission of the Petitioner

14. Learned counsel for the petitioner has pressed the review application on the ground that both the learned Tribunal as well as the Hon'ble Division Bench of this court missed-out on the factual details showing that the petitioner had completed four years in junior scale on 30.06.2007, therefore as per directives of the Railway Board, the petitioner was suitable for grant of senior scale w.e.f. 30.06.2007. It is stated that as far as the ACR of 2007-08 is concerned, ACR was also accepted as good as has been communicated to the petitioner vide letter dated 13.01.2011.

15. It is further pointed out that in the Tribunal the petitioner had filed a supplementary affidavit on 17.01.2017



wherein it is specifically stated that the ACRs were very much available and considered by the DPC in its proceeding. It is pointed out that the DPC had found the petitioner suitable with effect from the date of completion of four years period on 30.06.2007, but the General Manager has chosen to grant promotion to the petitioner in senior scale w.e.f. 26.05.2010 which aspect has been completely ignored both by the learned Tribunal as well as the Hon'ble Division Bench.

16. Learned counsel for the petitioner submits that the petitioner has been discriminated in the matter of promotion. It is stated that the respondent authorities had granted promotions to admitted juniors to the petitioner who had also availed "Extra Ordinary Leave" in similar manner like the writ petitioner for pursuing higher studies. The petitioner came to know this fact after he made application under the provisions of Right of Information Act (in short the 'RTI') on 25.08.2018 before Public Information Officer and Additional Chief Medical Director, Gorakhpur who refused to grant information to the petitioner regarding the promotion to juniors of the petitioner who had availed the



Extra Ordinary Leave, but in first appeal, the first appellate authority granted information to the petitioner with related documents with regard to (i) Dr. V.K. Pathak (ii) Dr. Niraj Kumar and (iii) Dr. Fahim Ahmad. Annexure '9' & '10' to the review application are the copies of the letters supplied to the petitioner.

17. From Annexure '11' it would appear that Dr. Niraj Kumar who had been appointed on 25.10.2002 was on EOL between 08.04.2003 and 12.04.2005, he was granted senior scale w.e.f. 25.10.2006 i.e. the date on which he completed four years. Similar treatment was given to Dr. V.K. Pathak and Dr. Fahim Ahmad as well.

18. In the aforesaid background learned counsel submits that the order passed by the Division Bench saying that it is not the case of the petitioner that juniors who were on Extra Ordinary Leave for a permissible period and were granted promotion, was taken in want of correct information on the record.

Submission of Railways

19. Learned counsel representing the Railway Board submits that the DPC had earlier decided to consider



the case of the petitioner for promotion to senior scale when he would report to duty. It is stated that the ACR of the petitioner for the year 2006-07 was not written as he was on EOL from 18.08.2004 to 17.08.2006 and thereafter on unauthorized absence from 18.08.2006 to 30.04.2007 which, according to the respondent Railway Board was later on sanctioned as Leave Without Pay (LWP).

20. It is stated that at the time of his DPC, his last available ACR was 2004-05 in which he was graded as 'average/not fit', as such petitioner was not fit for promotion to senior scale.

21. In course of hearing, however learned counsel for the Railways could not place on record any material to demonstrate that the name of the petitioner was considered for grant of promotion to senior scale in the DPC held on 07.09.2007 and that it was rejected.

Consideration

22. Having heard learned counsel for the parties and on perusal of the records, we are of the considered opinion that the facts reveal from the information supplied to the petitioner under the provisions of RTI are relevant



facts which go to show that the views taken by the Tribunal and affirmed by the Hon'ble Division Bench of this court were taken in absence of the proper materials on the record. The petitioner has by enclosing the documents which he has been supplied under the RTI shown that at least three persons junior to him were granted promotion to senior scale w.e.f. the date they had completed four years of service. They had also gone on 'EOL' to pursue their studies. We also find from the record before us that as per the Railway Board Circular itself where one or more CRs have not been written for sufficient reason for a particular period, the CRs of the years preceding the period in question would be considered. In the present case, the minutes of the meeting of the DPC as contained in Annexure-12, 13 & 14 of the review petition would show that in none of these meetings the petitioner was declared unfit for promotion. The minutes of the DPC would show that the case of the petitioner was taken for consideration and it was decided that his case shall be considered when he reports for duty on the next occasion by the DPC. Thus, the contention of the Railways that the petitioner was found



unfit in the DPC held in the year 2007 is not supported by any material on record. Contrary to that from the minutes of the DPC held on 25.05.2010 (Annexure-1), it is evident that the petitioner's name was recommended for promotion to senior scale taking the date of completion of four years in regular service as 30.06.2007. Three other names were also recommended in like manner. The General Manager thereafter accepted the recommendation with regard to the three other names in the manner it was recommended by the Committee, but in case of the petitioner, the date of promotion was shifted to 26.05.2010. We have quoted in the very beginning the minutes of the DPC held on 25.05.2010 and are satisfied from the materials placed on the record that the petitioner has been able to make out a case for review.

23. We are of the view that the Tribunal as well the Hon'ble Division Bench have committed error on facts in absence of proper records by assuming that the person junior to the petitioner had not availed 'EOL' for higher studies and their case stood at a different footing. Further it appears that the materials which have been obtained by the



petitioner under RTI are required to be considered in order to reach to a just and proper conclusion.

24. In the result, we recall our judgment and order dated 20.11.2017 passed in CWJC No. 14590/2017 and restore the writ application being CWJC No. 14590/2017 for fresh consideration by the appropriate Bench.

25. The application is allowed.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	03.04.2019
Uploading Date	17.04.2019
Transmission Date	

