

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17002 of 2018

Dr. Ranjit Das, Son of Late R.M. Das Ex - Senior Divisional Medical Officer
Physician, E.C. Railway Hospital, Danapur, residing at B.M. Das Road, Patna
Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of
Railway, Rai Bhawan, New Delhi
2. The Member (Staff), Railway Board, Ministry of Railway, Rail Bhawan,
New Delhi.
3. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New
Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gautam Bose, Sr. Adv
For the Respondent/s : Mr. Shekhar Singh, Adv

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video
Conferencing and the Advocates joined the proceedings through Video
Conferencing from their residence.)

Date : 21-08-2020

Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for the following relief?-

“That the present writ application is being directed for
quashing the order dated 30.06.2017 passed in O.A. No.
562 of 2013 by the learned CAT, Patna Bench, Patna,
by a Bench consisting of Hon’ble Mr. S.K. Pattnaik,
Member (Judicial) and Hon’ble Mr. A.K. Upadhyay,
Member (A), by which the petitioner’s prayer to
command the respondents to give effect of promotion of
the petitioner in Senior Administrative Grade in first
(SAG) from the due date i.e. 01.04.2011, since he had
been declared fit for promotion by the Departmental
Promotion Committee (DPC) on 09.11.2012 approved



by the Ministry of Railway (M.R) on 17.12.2012 and turning down his prayer by an order dated 15.05.2013 under the RTI Act by the Deputy Secretary (Confidential), Railway Board, has been rejected.

The petitioner further prays that he had moved before the learned CAT, Patna bench, Patna in review application vide R.A. No.58/2017, but the said review application has also been rejected in circulation by an order dated 09.01.2018 i.e. without hearing the learned counsel for the petitioner. The said case was dismissed in the Chamber of the learned member without hearing the parties. The petitioner desired that his order of review should also be quashed.”

Briefly stated the facts of the case is that petitioner was initially appointed as Assistant Divisional Medical Officer, and was posted at Danapur and thereafter promoted as Divisional Medical Officer and Sr. Divisional Medical Officer (Selection Grade) on 6.6.2000 and after completion of 7 years of service in selection grade, he was entitled for promotion in Senior Administrative Grade (SAG).

Petitioner was not given promotion in the Sr. Administrative Grade although his name was considered in the meeting of DPC held on 15.9.2009 and 29.8.2011 on account of adverse entry in the ACR for the year 2007-08 which was communicated to petitioner vide letter dated 1.9.2008. He submitted his representation on 13.9.2008, however, same was rejected vide order dated 28.11.2008 against which he filed OA No.202/2009 which was disposed of by the tribunal by order dated 12.5.2010 by directing the respondent authority to treat the application of petitioner as appeal and decide it by a speaking order, accordingly, member (Staff) Railway Board by order dated 18.8.2010 dismissed the appeal of petitioner and no change in adverse remark was recorded, as such, petitioner was not granted SAG.



It is submitted on behalf of petitioner that he was posted as In-charge, Medical Store where he found certain illegalities and irregularities going on in supply of sub-standard drug and he reported the matter to higher authorities and thereafter instituted FIR against the drug supplier in May, 2008 and it was for this reason that higher authorities were annoyed and adverse entry was made in his ACR for the year 2007-08.

It is further submitted that petitioner had very good service record prior to 2007-08 and even reporting officer had graded petitioner as “Very Good” and fit for promotion for the year 2007-08, however, reviewing authority made entry in ACR as ‘Good’ and “Not fit for promotion” which was accepted by accepting authority and his subsequent ACR is also “Very Good”.

Petitioner superannuated from service and a Departmental Promotion Committee was constituted for consideration of promotion in the Rank of SAG in which case of petitioner was also placed in DPC meeting on 9.11.2012 and he was declared fit for promotion and altogether 77 officers including Juniors to petitioner were granted promotion by order dated 26.12.2012, however, petitioner was not promoted as he had already superannuated on 31.10.2012 although persons at serial nos. 18, 19 and 21 were promoted although they had also retired.

Respondents in their written statement have stated that case of petitioner for promotion in SAG under DACP Scheme in the list approved on 15.09.2009 and 29.08.2011 was considered but he was found unfit by competent authority and subsequently his case was again considered by DPC on 09.11.2012 which recommended his inclusion in the list for promotion in SAG and said list was approved by the



competent authority on 17.12.2012, however, petitioner had retired from service prior to the approval of the said list by the competent authority, as such, order for his promotion to SAG was not issued.

It has been further stated that Officers found unfit in previous DPC and found fit in the subsequent DPC are granted promotion to the respective grade from the date of approval by the competent authority, whereas, Officers whose case is considered by DPC for the first time, they are promoted from their due date of promotion. Officers at sr. nos. 18, 19 and 21 superannuated from service before the recommendation of DPC and approval by the competent authority but they have been granted promotion in SAG from due date as aforesaid Officers were considered for the first time for promotion in SAG in list approved on 17.12.2012 and fulfilled the eligibility criteria of 7 years of service in Selection Grade before their retirement and on being found fit by the competent authority they were promoted in SAG after retirement w.e.f the date when they fulfilled the eligibility criteria.

It has been submitted by learned counsel for the petitioner that as he was a whistle blower and had exposed the authorities indulging in corrupt practice and it was for this reason that adverse entry was made in his ACR for the period 2007-08.

Petitioner has been denied promotion in SAG although found fit for promotion by DPC in its meeting conveyed on 9.11.2012 and approved on 17.12.2012 by the competent authority from due date, i.e. 1.4.2011 on the ground that in cases where employees were declared unfit for promotion in previous DPC they will be granted promotion from the date of approval by competent authority, i.e., from 17.12.2012 and since



petitioner had already retired on 31.10.2012, he was not granted promotion in SAG from due date, i.e., 1.4.2011 whereas cases of employees at Sr. No.18, 19 and 21 for promotion in SAG was considered for the first time, they were promoted from due date although they had also retired much prior to 9.11.2012 and 17.12.2012.

This Court does not find any justification for such discrimination and finds it arbitrary, unreasonable and department is treating equals differently without any reasonable basis.

For the reasons, as stated above, the order dated 30.06.2017 passed in O.A. No.592/2013 as well as order dated 09.01.2018 passed by the Tribunal in R.A No. 58 of 2017 is set aside and matter is remanded to the Member (Staff), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi (respondent no. 2) to consider grant of promotion to the petitioner in SAG grade, from due date, as granted to retired personnels at serial nos.18, 19 and 21.

This writ petition is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.10.2020
Transmission Date	NA

