
(2019) 01 CAT CK 0095

In the Central Administrative Tribunal

Case No : Original Application No. 3030 Of 2017

Shishir Dutt

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0095

Hon'ble Judges : L. Narasimha Reddy, J; Pardeep Kumar, Member (A)

Bench : Division Bench

Advocate : Dr. K.S. Chauhan, Murali Lal, Ajit Kumar Ekka,

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the Indian Railway Service of Mechanical Engineer (IRSME) as Mechanical Engineer (IRME) in the year 1982 on being selected by the UPSC. He held various posts and in the year 2014, he was posted in the Integral Coach Factory, Perumbur, as Chief Works Engineer (Shell). Up to that period, his APARs were rated as "Outstanding".

2. For the period 01.04.2014 to 09.09.2014, he submitted the self-appraisal. The Reporting Officer for the applicant was the Chief Mechanical Engineer, North Eastern Railway, the Reviewing Officer was the General Manager, North Eastern Railway, and the Accepting Authority was Member (Mechanical), Railway Board. By that time, the reviewing officer, i.e., General Manager retired. Since the Accepting Authority was about to retire in the month of November, the applicant went on making the representations to the Reporting Officer to process the APAR, so that the appraisal would be complete. A reminder was also issued in this behalf on 29.10.2014. The applicant was informed by the office of General Manager, i.e., the Reviewing Officer that his APAR was misplaced, and he was required to furnish another APAR to enable them to do the needful. The applicant complied with the same, but in the meanwhile, the Accepting Officer retired. In

view of this development, the APAR for the said period was dealt with only by the Reporting Officer and he graded the applicant as "Good". There was no occasion either for the Reviewing Officer or for the Accepting Authority to deal with the same.

3. On coming to know about the poor grading given by the Reporting Officer, the applicant submitted a representation to the Competent Authority. Through order dated 08.02.2016, the applicant was informed by the office of the Competent Authority that the APAR for the period in question was upgraded as "Very Good" and fitness for DRM and promotion is revised to "Yes". It is stated that the APAR of the applicant, for the period subsequent to one, referred to above, was rated as "Outstanding".

4. The DPC, for empanelment of officers for being chosen as DRMs for the year 2016-2017 met in April, 2017. In the case of applicant, the DPC noted that his APARs for four years are "Outstanding", for a part of 5th year, it was initially graded as "Good", but upgraded as "Very Good" by the Competent Authority. On noticing that certain attributes assessed by the Reporting Officer for the period in question were not upgraded by the Competent Authority, the DPC found the applicant to be "Unfit" for being empanelled for the post of DRM. However, it was opined that the applicant is otherwise eligible to be promoted to other posts.

5. This OA is filed with a prayer to set aside the proceedings of the DPC which met in April, 2017, contained in memo dated 04.07.2017 and to quash the orders of promotion/posting issued to the juniors of the applicant as DRM. It is also prayed that the applicant be placed above respondent Nos.7 to 14 in the context of posting as DRM.

6. The applicant contends that his APAR for a short period, namely, 01.04.2014 to 09.09.2014 was dealt with in a manner detrimental to his interest and the deliberate attempts made in this behalf are evident on the face of record. He contends that for no fault of him, he was denied empanelment, though his career was rated as brilliant throughout. He submits that even for the year in question, his performance in the ICF resulted in certain awards being given, and having regard to the peculiar circumstances, at least that period ought to have been treated as "Non-APAR", and he was entitled to be restored what is due to him.

7. The respondents filed counter affidavit stating that though the APAR of the applicant for a substantial period was rated as "Outstanding", the one for the period 01.04.2014 to 09.09.2014 came in the way. It is stated that the view taken by the DPC does not warrant interference, and that the applicant cannot be said to have suffered any detriment, since his other promotional avenues/benefits are kept intact. Other grounds were also urged.

8. We heard Dr. K. S. Chauhan, learned counsel for the applicant in detail. Since there was no representation for the respondents, the OA was adjourned thrice awaiting the appearance of learned counsel for the respondents, but he did not turn up. Left with no alternative, we have perused the record and proceed to

decide the case.

9. The applicant held various posts, after he joined IRSME in the year 1982. The DPC met for empanelment of officers for being posted as DRMs for the year 2016-17. The applicant was within the zone of consideration. The relevant Circulars or Official Memorandums stipulate that the APAR of the officer should be up to the level of "Very Good+". The APAR for the 5 years preceding the year of consideration are taken into account. For the years 2010-11, 2011-12, 2012-13 and 2013-14, the applicant was rated as "Outstanding".

The APAR for the year 2014-2015 was divided into two parts. The second part was also rated as "Outstanding". It was only as regards the first part, there was some unnatural development.

10. On his part, the applicant submitted his self-appraisal, within time. As mentioned in the preceding paragraphs, the Reporting Officer was CME, the Reviewing Officer, the General Manager, of North Eastern Railway and the Accepting Authority was Member (Mechanical), Railway Board. It hardly needs any mention that the appraisal of APAR can be perfect or valid, if only, it passes through all the three stages. The very purpose of having such hierarchy of the authorities is to ensure that extreme likes and dislikes of the Reporting Authority as regards the appraisal of an officer, whose performance, he had an occasion to observe, does not go unchecked. That exactly is the purpose of having a Reviewing Authority and Accepting Authority. The Reporting Officer under whom the officer under consideration works, is likely to have his own view about the concerned officer and instances of manifestation of prejudices or favoritism are not lacking.

11. The Reviewing Authority of the applicant retired in August, 2014. The only objective assessment of the APAR of the applicant could have been in the hands of Accepting Authority. Even he, i.e., the Member (Mechanical), Railway Board, was scheduled to retire in November. Therefore, the applicant was frequently requesting the Reporting Officer to ensure that the APAR reaches the Accepting Authority before his retirement. Deliberately the APAR was withheld from that authority and it was only in December, 2015 that the applicant was informed by the office of Accepting Authority that the APAR of the applicant for the period in question was misplaced. Even if the APARs were to have been reconstructed, it would not have been of much help, since the Accepting Authority has already retired. The result was that the APAR of the applicant stood handled by the Reporting Officer alone.

12. The applicant states that the Reporting Officer was not well disposed towards him for one reason or the other and this, in turn, is reflected in the appraisal made by him. The Reporting Authority graded the applicant as "Good", notwithstanding, the fact that the performance of the applicant was rated as "Outstanding" throughout. It is not, as if, any untoward incident or act of indiscipline or incompetence has taken place during the period in question.

13. The representation made by the applicant to the Competent Authority did result in removing the damage to certain extent. Though the applicant was expecting the evaluation consistent with past record, the competent authority upgraded the APAR for the period in question, to "Very Good", with specific endorsement that he is fit to be promoted to the post of DRM.

14. The DPC which met in April, 2017 perused the entire record pertaining to the applicant. It did acknowledge the fact that the APAR of the applicant for four and a half years was "Outstanding" and only for a part of 2014, it was initially graded as "Good" but upgraded later on by the competent authority as "Very Good". It, however, proceeded to undertake a microscopic verification as to whether the various attributes assessed by the Reporting Officer were upgraded by the competent authority. It was a totally misdirected exercise. The DPC was not able to point out any official memoranda or circular which mandates that unless the attributes assessed by the Reporting Officer are modified by the Competent Authority, the upgradation cannot be treated as valid.

15. The officer who reaches almost a pinnacle of service expects the forward movement in a respectable way. He cannot be subjected to whims and fancies of an individual officer, and the DPC was required to examine as to whether the exceptional assessment of the applicant for a part of 2014-15 was in conformity with the earlier record of the applicant or it is an exception and whether such a deviation was justified. It cannot stop its discretion at a stage. Without addressing itself to such an aspect, it has preferred to pay attention to an otherwise impermissible and illegal act on the part of the Reporting Officer and made that basis to deny promotion, to the applicant.

16. Even where the APAR could not be handled by the two out of the three officers, namely, Reporting, Reviewing and Accepting Officers, the safest course is to treat the period as Non-APAR. The DPC did not address the issue from that angle also. Quite a large number of juniors of the applicant were empanelled and were thereafter appointed as DRM.

17. In terms of emoluments and rank, the applicant cannot be made to suffer a detriment. For the service rendered by him spread over three decades, which is uniformly rated as meritorious, he cannot be rewarded with denial of a post which he is otherwise entitled to, and as regards which, he has a legitimate expectation.

18. The relevant rules mandate that a person can be appointed as DRM only if he is not left with two years of service. The issue of this very nature was dealt with by this Tribunal in OA No.3365/2015, D. C. Sharma vs. UOI & Ors., and it was held that by the time an officer is considered by review DPC, he crosses the age of 52 years, he cannot be denied the post of DRM. The judgment is said to have been upheld by the Hon'ble Delhi High Court.

19. In view of the above, we allow the OA and set aside the minutes of DPC dated 04.07.2017, insofar as it concerns the applicant. We direct that the review

DPC shall be constituted to consider the case of the applicant and which, in turn, shall treat the APAR for first part of the year 2014- 15 as non est. If the applicant is declared as fit by the Review DPC, he shall be entitled to the consequential benefits, including seniority. This exercise shall be done within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.