

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/409/2016

O.A.No.260/411/2016

O.A.No.260/412/2016

&

O.A.No.260/413/2016

Date of Reserve: 02.01.2020

Date of Order: 04.02.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. In O.A.No.260/409/2016

Raj Kishore Patel, aged about 45 years, S/o. Late Pitambar Patel, working as JWM/MM, Per No.922243, Qr.No.31357/4, OFBL Estate, Ordnance Factory, Badmal, Bolangir, Odisha.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, Deptt. Of Defence Prodn. & Supplies, South Block, New Delhi-110 011.
2. The DGOF & Chairman, Ordnance Factory Board, 10-A, Sahid Kudhiram Bose Road, Kolkata-700 001.
3. The General Manager, Ordnance Factory, Badmal, Bolangir, Odisha.

...Respondents

By the Advocate(s)-Mr.S.Behera

2. In O.A.No.260/411/2016

Sh.Chittaranjan Rout, aged about 37 years, S/o. Sh.Umech Ch.Rout At.Qr.No.31157, Type-III, 2nd Phase, Ordnance Factory, Badmal Estate, PO-Badmal, Dist-Bolangir, PIN-767 070, presently working as Junior Works Manager, Ordnance Factory, Badmal, Bolangir, Odisha.

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2. Director General Ordnance Factory, Ministry of Defence, Ordnance Factory Board, 10-A, Sahid Kudhiram Bose Road, Kolkata-700 001.

3. The General Manager, Ordnance Factory, Badmal, Bolangir, Odisha.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

3. In O.A.No.260/412/2016
Sh.abhudatta Mishra, aged about 40 years, S/o.Sh.Dibakar Mishra, At.Qr.No.43057, Type-IV, 5th Phase, Ordnance Factory, Badmal Estate, PO-Badmal, Dist-Bolangir, PIN-767 070, presently working as Junior Works Manager, Ordnance Factory, Badmal, Bolangir, Odisha.

...Applicant

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N.M.Rout

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2. Director General Ordnance Factory, Ministry of Defence, Ordnance Factory Board, 10-A, Sahid Kudhiram Bose Road, Kolkata-700 001.
3. The General Manager, Ordnance Factory, Badmal, Bolangir, Odisha.

...Respondents

By the Advocate(s)-Mr.A.K.Mohapatra

4. In O.A.No.260/413/2016

1. Mr.Manoj Kumar Hota, aged about 42 years,S/o.Shri Biswakeshari, Qr.No.32140/2, OFBL Estate, Ordnance Factory Badmal, Bolangir, Odisha.
2. Mr.Niroj Ranjan Das, aged about 42 years, S/o.Shri late Suresh Chand Dash, Qr.No.33277, Type-III, OFBL, Estate, Ordnance Factory Badmal, Bolangir, Odisha.
3. Sh.Satya Narayan Tripathy, aged about 41 years, S/o. Sh.Dibakar Tripathy, Qr.No.31010, Type-III, OFBL Estate, Ordnance Factory, Badmal, Bolangir, Odisha.
4. Shri Udit Kumar Patel, aged about 44 years,S/o. Late Sachidananda Patel, Qr.No.31267, Phase-II, OFBL Estate, Ordnance Factory Badmal, Badmal, Bolangir, Odisha.
5. Mr.Debasish Nayak, aged about 43 years, S/o. Sh.Bhagbat Nayak, OFBL Estate, Ordnance Factory Badmal, Badmal, Bolangir, Odisha.
6. Sh.Sanat Kumar Sahoo, aged about 42 years, S/o. Late Shri Trinath Sahu, OFBL Estate, Ordnance Factory Badmal, Badmal, Bolangir, Odisha.

7. Mr.Pragyan Kumar Rath, aged about 41 years, S/o. Late Umakanta Rath, Qr.No.31394, Type-III, OFBL Estate, Ordnance Factory Badmal, Bolangir, Odisha.
8. Sh.Sasanka Sekhar Kar, aged about 41 years, S/o. Late Hare Krushna Kar, Qr.No.32006/OLDQr.No.OFBL Estate, Ordnance Factory, Badmal, Bolangir, Odisha.
9. Mr.Dipak Chandra Patel, aged about 41 years, S/o. Sh.Bedvyas Patel, Qr.No.32086, Type-III, OFBL Estate, Ordnance Factory Badmal, Bolangir, Odisha.
10. Mr.Ashok Kumar Behera, aged about 40 years, S/o.Sh.Sudam Prasad Behera, Qr.No.31055/2, OFBL Estate, Ordnance Factory, Badmal, Bolangir, Odisha.
11. Mr.Sunit Kumar Pandey, aged about 39 years, S/o. Sh.Late Srikanta Pandey, Qr.No.31219, Type-III, OFBL Estate, Ordnance Factory, Badmal, Bolangir, odisha.
12. Mr.Pramod Kishore Dash, aged about 45 years, S/o. Late Tripurari Dash, Qr.No.32173/2, OFBL Estate, Badmal, Bolangir.

...Applicants

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Secretary, Govt. Of India, Ministry of Defence, Deptt. Of Defence Production & Supplies, South Block, New Delhi-110 011.
2. The DGOF & Chairman,, Ordnance Factory Board, 10-A, Sahid Kudhiram Bose Road, Kolkata-700 001.
3. The General Manager, Ordnance Factory, Badmal, Bolangir, Odisha.

...Respondents

By the Advocate(s)-Mr.S.B.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In all the Original Applications, legality and validity of order No.3601 31.12.2015 (A/10), whereby the promotion of the applicants in the erstwhile Asst. Foreman (Tech/Chem) and JWM(Tech/Chem) has been deferred from 28.07.2010 to 22.12.2015 consequent upon publication of the revised seniority list of Chargeman (Tech/Chem) from 01.01.2009 onwards upto 01.01.2013 vide OFB Letter No.3265/CH/Tech(Chem)SNTY/2015/Per/NG dated 07.08.2015.

2. Since the point to be decided emerges out of an identical cause of action, all the above mentioned four OAs are being disposed of through this common order. For the sake of reference, the facts narrated in O.A.No.260/409/2016 are being referred to.

3. In the said O.A., the applicant presently working as JWM/MM has sought for the following reliefs:

- i) Please direct the respondent to consider and call for the records of the respondents pertaining to the impugned order of the Respondent No.2 vide order No.DJWM-15/Tech(Chemical)/PEF/GB/2015 dated 22.12.2015 deferring the effective date of the promotion date of applicant w.e.f. 28.07.2010 and the consequent factory orders of the Respondent No.3 FO Part-II No.261 dtd. 31/12/2015 to defer the regular promotion date of the applicants from 28.07.2010 to 22.12.2015 and set aside the same and pass such other or further order or orders in the circumstances of the case and in the interest of justice.
- ii) Pass any other further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

4. Shorn of unnecessary details, it would suffice to note that challenging the legality of order dated 22.12.2015 whereby promotion of the applicant herein is claimed to have been deferred from 28.07.2010 to 22.12.2015, a number of Applications had been filed before various Benches of the Tribunal, one of those being O.A.No. 274 of 2016 before the Central Administrative Tribunal, Principal Bench, New Delhi. It reveals from the record that the CAT, Principal Bench had passed an order dated 27.05.2016 in P.T./136/2016 to the following effect:

"In this view of the matter, no direction can be issued in these PTs. However, the applicants are at liberty to file their respective OAs before the appropriate jurisdictional benches, and such OAs after completion of pleadings shall remain lie over till the disposal of OA No.274/2016 pending before PB".

5. Backed by this, the applicants in the above four OAs have approached this Tribunal seeking reliefs, as referred to above.

6. O.A.No.260/409/2016 came up for admission on 22.06.2016, when this Tribunal passed the following orders:

“Heard Mr.D.P.Dhalasamant, learned counsel for the applicant and Mr.S.Behera, learned SCGPC. Admit. Issue notice to respondents returnable in four weeks. However, it is directed that this matter, on completion of pleadings shall lie over till the disposal of O.A.No.274 of 2016 pending before the CAT, Principal Bench.

As an interim measure, status quo in respect of the applicant shall be maintained until further orders”.

7. This interim order is in force as on date.

8. Respondents have filed their counter opposing the prayer of the applicant. However, by filing an additional counter, the respondents have brought to the notice of this Tribunal order dated 04.04.2019 passed by the CAT, Principal Bench, disposing of O.A.No.274/2016.

9. We have heard the learned counsels for the respective parties and perused the records. In the fitness of things, the relevant part of the order as passed in the said O.A. is extracted hereunder:

“3. The applicants were originally appointed as Chargeman Grade-II (Electrical) during the years 1998-2002, as per rules. The respondents, vide the Annexure A-2 order dated 28.07.2010, on the recommendation of the Supplementary DPC, promoted the applicants and others to the post of Assistant Foreman (Electrical) with effect from 16.08.2010. However, vide Annexure A-3 Corrigendum dated 02.08.2010, the respondents have changed the date of promotion from 16.08.2010 to 30.07.2010. While the applicants and others were working as Assistant Forman (Electrical), in view of the implementation of the 6th CPC recommendations, the respondents again vide the Annexure A-4 dated 14.02.2011, merged the post of Assistant Foreman (Electrical) wherein the applicants were working, with the post of Junior Works Manager (Electrical). However, while the applicants were working as Junior Works Manager (Electrical), the respondents revised the

seniority list of Chargeman (Technical/Electrical) from 01.01.2009 onwards upto 01.01.2013, vide letter dated 07.08.2015 (Annexure R-1 to the compliance affidavit filed on behalf of the respondents on 22.01.2019), after following due procedure, i.e., after calling for objections from the applicants and others, and in view of the consequent Review DPC recommendations, have issued the impugned Annexure A-1 letter dated 22.12.2015 postponing or deferring the date of promotion of the applicants from the original date of 30.07.2010 to the dates mentioned in the said proceedings.

4. Aggrieved with the said proceedings dated 22.12.2015, the applicants filed the instant OA.
5. Heard Shri U. Srivastava, the learned counsel for the applicants and Shri Gyanendra Singh, the learned counsel for the respondents and perused the pleadings on record.
6. Shri U. Srivastava, the learned counsel appearing for the applicants while reiterating the aforesaid facts submits that once the respondents have promoted the applicants against the post of Assistant Foreman (Electrical), diverted from the Mechanical discipline to Electrical discipline by invoking Note 15 of the Indian Ordinance Factories Group 'C' supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 (SRO 13-E) (Annexure R-1 to the counter filed by the respondents), and after the applicants worked in the said promotional posts of Assistant Foreman (Electrical), which were later re-designated as Junior Works Manager (Electrical) for all these years, cannot defer or postpone the promotions of the applicants to any subsequent date. The learned counsel further submits that if any other category of employees deserves promotion from a particular date, in view of any change in the rules or circumstances, they can be promoted as such by creating supernumerary posts or by adjusting them against any future vacancies, but deferring/postponing the promotions given to the applicants way back in the year 2010, is illegal and arbitrary.
7. The learned counsel further submits that once the applicants have physically worked in the promotional posts from 30.07.2010 till the date of issuance of the impugned order, proposing to refix their pay in accordance with the deferred date is illegal, arbitrary and violative of the

principles of the natural justice, as the said promotions to the applicants were conferred by the respondents themselves and that the same were not due to any misrepresentation or fraud played by the applicants.

8. The learned counsel for the applicants placed heavy reliance on the judgment of the Hon'ble Apex Court in **Kusheswar Nath Pandey Vs. State of Bihar and Others (2013) 9 SCR 593** and of the Hon'ble High Court of Orissa, Cuttack in W.P. (C) No. 4652/2017 in **Union of India and Others Vs. R. Srinivas and Others** decided on 20.07.2017.
9. On the other hand, Shri Gayenenra Singh, the learned counsel for the respondents would submit that once the applicants admit that the respondents have empowered to invoke Note 15 of the Annexure R-1 Rules 1989, in their favour, they cannot raise any objection when the respondents invoked the same Note while setting right the injustice done to the Mechanical Wing employees. The learned counsel further submits that the applicants having not challenged the revised seniority lists of Chargeman (Technical/Chemical/Electrical) as on 01.01.2009 onwards upto 01.01.2013, which were issued after calling for objections from the applicants and others and after considering the same, and basing on which the impugned order was passed, cannot question the consequential action of issuance of the impugned order. Once the applicants accepted their seniority position, as per the revised seniority list of Chargeman dated 07.08.2015 as on 01.10.2009, i.e. the date prior to their promotion to the post of Assistant Foreman (Electrical), the OA itself is not maintainable as the impugned order was passed strictly basing on the said revised seniority list.
10. The learned counsel further submits that the entire process, i.e., revising the seniority list and deferring the dates of promotion etc. was carefully undertaken by the Task Force, which was specifically created and that no employee is discriminated in any manner in the whole process and accordingly prays for dismissal of the OA.
11. As rightly submitted by the learned counsel for the respondents, the applicants have not challenged the revised seniority list of Chargeman as on 01.01.2009 issued on 07.08.2015 basing on which the promotions of the applicants and others were reviewed and accordingly appropriate dates of fresh promotions were assigned to the

applicants and to others. Further, once the power of the respondents to invoke Note 15 of the 1989 Rules, is not disputed, the respondents action cannot be found fault with, as the applicants fail to show violation of any other rule or existence of any arbitrariness in respect of the applicants or any other individual employee.

12. However, we are in full agreement with the submission of the learned counsel for the applicants that the promotions to the post of Assistant Foreman(Electrical) now re-designated as Junior Works Managers (Electrical) were given to the applicants with effect from 30.07.2010 by the respondents themselves, and that there was no misrepresentation or fraud played by the applicants and that the applicants having actually worked in the said promotional posts from the date of said promotion till the date of deferment or postponement of the same, the respondents cannot resort to any recovery consequent to the deferment/postponement of the promotions of the applicants. On our enquiry about the stand of the respondents on the said issue, the learned counsel for the respondents today produced a letter dated 25.01.2019 written by Director/NG for Director General, Ordnance Factories addressed to the General Manager, Ordnance Factory Muradnagar wherein it was categorically stated that "although, relevant rules regarding pay fixation would inevitable have to be applied to the case of the applicants, whose date of promotion to JWM have been postponed, the respondents do not intend to make any recovery of payments already made to them and hence, the earnings received by them for the period which they had served as JWMs, will not be affected in any manner".
13. The facts in Kusheshwar Nath Pandey's case (supra), on which the applicants counsel has placed reliance, are not applicable to the facts of the present case.
14. Similarly, the decision of the Hon'ble High Court of Orissa in R. Srinivas and others (supra) would not support the contentions of the applicants.
15. Hence, we don't find any merit in the challenge made to the impugned order. However, in the circumstances and for the aforesaid reasons, the respondents are directed not to affect any recoveries in pursuance of the impugned orders of the OA, in terms of their own letter dated 25.01.2019. Accordingly, the OA is disposed of".

10. Since the point to be decided herein has already been set at rest, we do not find any justifiable reason to make a departure from the view already taken by the CAT, Principal Bench. Following the ratio decided by the CAT, Principal Bench, we hold that the impugned order which is the subject matter of challenged herein, needs no interference by this Tribunal. However, the respondents are directed not to effect any recoveries in pursuance of the impugned orders in all the four OAs, in terms of their own letter dated 25.01.2019. Accordingly, all the OAs are disposed of. No costs.

11. Consequently, the MAs if any, pending in all the OAs, stand disposed of.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

