

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.620 of 2018

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (A)**
Hon'ble Mr.Swarup Kumar Mishra, Member(J)

Rama Chandra Padhy, aged about 61 years, S/o. late Bhaskar Padhy, Retired General Manager (Projects), NALCO, resident of NALCO Nagar, PO/PS/Dist-Angul.

...Applicant

VERSUS

1. Union of India represented through the Secretary, Mines, Govt. of India, Shastri Bhawan, New Delhi-110 001.
2. Chairman-cum-Managing Director, NALCO, At-Nalco Bhawan, Bhubaneswar, PO-bhubaneswar-751 071, Dist-Khurda.
3. General Manager, H.R.D., NBALCO, At-Nalco Bhawan, Bhubaneswar, PO-Bhubaneswar-751 061, Dist-Khurda.
4. Assistant General Manager (HRD), NALCO, At-NALCO Bhawan, Bhubaneswar, PO-bhubaneswar-751 061, Dist-Khurda.

...Respondents

For the Applicant: Applicant In Person
For the Respondents: Mr.D.K.Pattnaik, Counsel

Heard & reserved on: 20.02.2020 Date of Order : 26.05.2020

ORDER

Per Mr.Gokul Chandra Pati, Member(A):

The applicant has filed this Original Application (in short OA), filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- i) to quash the order dated 20.05.2017 at Annexure-
- ii) To direct the respondents to promote the applicant to E-8 and E-9 grades from the date of promotion of the Junior Sri R.K.Mishra i.e., on 09.01.2012 and 31.12.2013 respectively.
- iii) To direct the respondents to grant consequential financial benefits and release the arrear differential forthwith.
- iv) Allow the application with cost".

2. The applicant, an officer of NALCO, was aggrieved earlier by the decision of the authorities not to promote him to the rank of E-7 and E-8 grade and he had filed a writ petition challenging the said decision. His case was considered for promotion as per the order dated 26.2.2016 of Hon'ble High Court in W.P. (C) No. 24215/2013 and he was promoted to the rank of E-7 and E-8 grade w.e.f. 1.7.2008 and 13.3.2014 respectively. The applicant claimed promotion to the grade of E-8 (General Manager) w.e.f. 9.1.2012 and promotion to the

next higher grade of E-9 w.e.f. 31.12.2013 at par with his junior Sri R.K. Mishra. Such claim of the applicant has been turned down by the respondents vide the order dated 20.5.2017 (Annexure-A/4) of the respondent no. 4, which is impugned in this OA. The applicant has retired from service w.e.f. 30.4.2017.

3. The ground for claiming the benefit of promotion to the grade of E-8 and E-9 is that his junior Sri R.K. Mishra was promoted to E-8 and E-9 grade w.e.f. 9.12.2012 and 31.12.2013 respectively and being senior to Sri R.K. Mishra, the applicant should have been allowed the same benefit also.

4. The applicant has also filed the MA No. 447/2018 for condoning delay in filing the OA. Vide order dated 19.2.2019, the respondents were directed to file objection to the MA and Counter to the OA. The Counter was filed by the respondents on 11.11.2019, to which the applicant did not want to file any as noted in Tribunal's order dated 18.12.2019. The respondents' counsel filed objection to the MA at the time of final hearing on 20.2.2020 giving a copy to the applicant. Both the MA and OA were heard together.

5. In the Counter, it is averred that the applicant was promoted to E-7 and E-8 grade in compliance of the order dated 26.2.2016 (Annexure-R/1 of the Counter) of Hon'ble High Court and all the arrear salary and other dues were released after creating a supernumerary post with the approval of the administrative Ministry. The applicant filed a contempt petition before Hon'ble High Court and vide order dated 23.3.2017 (Annexure-R/5), the said contempt petition was dropped after considering the compliance of the order by the respondents. The applicant submitted a representation dated 26.3.2017 disputing his inter se seniority in the grade of E-7. It is further stated in the Counter that the applicant had filed the OA No. 178/2017 on 27.3.2017 for such grievance and the said OA was disposed of by this Tribunal on 30.3.2017 directing NALCO to dispose of his representation. The direction was complied by the respondents by issuing the impugned order dated 20.5.2017 (Annexure-A/4). The applicant was promoted to the grade of E-8 w.e.f. 13.3.2014 which was the date on which his junior was promoted to E-8 grade according to the respondents.

6. It is further averred in the Counter that the applicant's claim of seniority vis-a-vis Sri R.K. Mishra is not correct since in the panel for promotion to the grade of E-7, the name of Sri R.K. Mishra was at Serial No.2 of the merit list whereas position where as the merit position of the applicant was at 24 of the panel/merit list. Hence, it is averred that the Sri R. K. Mishra is senior to the applicant in E-7 grade. It is stated that there were 5 executives who were junior to the applicant in E-7. Two of them had retired in E-7 grade and one of them

was still in E-7 grade. Other two juniors were promoted to E-8 grade on 13.3.2014 and 27.3.2015, for which the applicant was promoted to E-8 grade w.e.f. 13.3.2014. The same ground was raised by the applicant earlier which was not accepted by Hon'ble High Court. It is averred that the present OA is barred by resjudicata. The ground of delay and limitation has also been raised by the respondents in the Counter.

7. It is also averred in the counter that the OA is barred by res-judicata since alleging non-compliance of the order dated 26.2.2016 of Hon'ble High Court, the applicant had filed a Contempt Petition which was dropped vide order dated 23.3.2017 (Annexure-R/5) of Hon'ble High Court and hence, the applicant cannot claim in this OA that he was not given the benefit as per orders of Hon'ble High Court. The ground of delay in filing the OA has also been mentioned in the counter.

8. The applicant was heard in person in the matter and he also filed a written note of arguments on 13.1.2020 and on 27.2.2020 at the time of hearing. It is submitted in the said written note that the respondents have implemented the order of Hon'ble High Court partially after delay and misled Hon'ble High Court to get the contempt petition filed by the applicant dropped. It was claimed that he being a whistleblower, was penalized by the respondents. It is further submitted that in this OA, applicant's claim was for consequential benefits arising out of the retrospective promotion to E-7 grade w.e.f. 1.7.2008. It is further stated in the written note that Sri R.K. Mishra was junior to the applicant at E-6 grade and hence, he cannot be made his senior on the basis of the merit as per the 2008 DPC for promotion to E-7 grade and his seniority should be decided on the basis of E-6 grade seniority. Violation of the NALCO (Recruitment and Promotion) Rules for Executives, 1997 (in short R&P Rules) was also alleged in the written note. It was further noted that constitution of the special DPC to consider his case for promotion to E-8 grade retrospectively was without any basis and it was done to purposefully assign lower marks to him.

9. Learned counsel for the respondents was heard. He submitted that since the applicant claims parity with his junior Sri R.K. Mishra for promotion to E-8 grade, he should have made him a party. Since no junior has been made a party in this OA, the claim of same allowed to such junior, will not be maintainable. He also filed an objection to the MA stating that no cogent reason was furnished in the MA to seek condonation of delay. It is submitted that the OA was filed to challenge the order dated 20.5.2017 (Annexure-A/4) after about one and half year. It is stated that he was promoted to E-7 grade vide order dated 19.5.2016 and all arrear salary and perks was also released. A

special DPC was constituted for promotion to E-8 grade to which he was promoted w.e.f. 13.8.2014 i.e. from the date of promotion of his junior. It was further submitted by learned counsel that as explained in the Counter, Sri R.K. Mishra is not junior to the applicant since in the selection panel for the grade of E-7, the applicant's merit position was lower than Sri R.K. Mishra. A written note of submission was filed by the respondents' counsel belatedly on 13.5.2020, which could not be considered for this order because of delay and non-service of a copy of the note to the applicant.

10. We have considered the submissions as well as the pleadings by both the parties and perused the materials on record. Before considering the OA on merit, the MA No. 447/2018 filed by the applicant for condoning the delay in filing the OA needs to be considered. It is mentioned by the applicant in view of the death of his mother, the MA that he had misplaced the copy of the order dated 20.5.2017 (A/4) by which his representation was rejected. The said order dated 20.5.2017 could be traced out on 28.11.2018 after a thorough search and thereafter he contacted his advocate to file the OA. A medical certificate of the applicant's mother was enclosed with the MA.

11. The applicant has further stated that injustice has been meted out to him by the respondents for which the OA is needed to be considered on merit. Since in the OA, the applicant has alleged that he was not given the consequential benefits of promotion arising out of the order of Hon'ble High Court, we consider the ground advanced in the MA No. 447/2018 explaining the delay in filing the OA by about six months to be satisfactory. Accordingly, the MA No. 447/2018 is allowed and delay in filing the OA is condoned.

12. The respondents have averred in the Counter that the OA is barred by res-judicata since the Contempt petition filed by the applicant for non-compliance of the order dated 26.2.2016 (Annexure-R/1) was dropped by Hon'ble High Court vide order dated 23.3.2017 (Annexure-R/5). In the order dated 26.2.2016 it was observed by Hon'ble High Court that in June, 2008 the DPC considered the applicant's case for promotion to E-7 grade, but the recommendation of the DPC was kept in the sealed cover although no charge-sheet was filed against the applicant in a criminal case or departmental proceeding was pending by that date. Hence, the order of the Tribunal dismissing the OA filed by the applicant was set aside and the respondents were directed by Hon'ble High Court in order dated 26.2.2016 as under:-

“We, therefore, set aside the orders dated 1.10.2011 passed by opp. Party no. 1 and dated 9.10.2013 passed by the CAT and at the same time it must be held that the petitioner should be given retrospective promotion to the grade E-07 from 1.7.2008 for which we hereby direct the opposite

parties to give promotion to the petitioner w.e.f. 1.7.2008 with all arrear salary and other service benefits as admissible from time to time.”

13. The respondents complied the order dated 26.2.2016 (R/1) of Hon’ble High Court, by first promoting the applicant to E-7 grade w.e.f. 1.7.2008 vide order dated 19.5.2016 and then promoting him to E-8 grade w.e.f. 13.3.2014 vide order dated 16.9.2016 (Annexure-R/4 of the Counter). But the applicant claims seniority vis-a-vis another executive Sri R.K. Mishra and claims that he was entitled for promotion to E-8 grade w.e.f. 9.1.2012 which was the date of promotion of Sri R.K. Mishra to E-8 grade. He also claims promotion to E-9 grade w.e.f. 31.12.2013 comparing him to another junior. If such claim was genuine, then the order dated 26.2.2016 of Hon’ble High Court, which included the other service benefits in addition to promotion to E-7 grade w.e.f. 1.7.2008, was not fully complied and he should have raised the matter in the Contempt Petition filed by him before Hon’ble High Court. But vide order dated 23.3.2017 (R/5), Hon’ble High Court held that the order dated 26.2.2016 was complied by the respondents and the aforesaid order was accepted by the applicant without challenging the same before higher forum. Instead of challenging the order dated 23.3.2017 (R/5) as per provisions of law, the applicant filed this OA with one of the plea (vide para 4.7 and 4.8 of the OA) that he had not been allowed the consequential promotion benefit to E-8 grade in pursuance to the order of Hon’ble High Court. But such plea of the applicant is not convincing in view of the order dated 23.3.2017 of Hon’ble High Court dropping the Contempt Petition after noting down the applicant’s promotion to E-7 and E-8 grade with disbursement of financial benefits.

14. The basis of the applicant’s claim for promotion to E-8 grade w.e.f. 9.1.2012 is that he was senior to Sri R.K. Mishra. Such contention has been denied vehemently by the respondents by stating that in the panel approved by the DPC for promotion to E-7, the applicant was placed at serial no. 24 where as Sri R.K. Mishra was placed higher at serial no. 2 and as per the rules, promotion to E-7 grade is on the ground of merit. The applicant’s case is that in E-6 grade, Sri R.K. Mishra was junior to him and the DPC’s recommendation of the panel treating the applicant as junior to Sri R.K. Mishra was wrong. But no rule has been cited by the applicant to show that the inter-se-seniority in E-7 will be as per the seniority in E-6 grade. There is nothing on record to show that the DPC’s recommendation of inter-se-merit in the panel for E-7 grade was arbitrary or biased. Hence, based on the materials available on record, there is no scope for this Tribunal interfere in the panel in question recommended by the DPC for promotion to E-7 grade. Further, we take note of the fact that there is no specific prayer made in this OA claiming that Sri R.K. Mishra was junior

to the applicant in E-7 or E-8 grade and Sri R.K. Mishra was not made a party in this OA.

15. In the circumstances as discussed in the preceding paragraphs, we are unable to accept the grounds advanced by the applicant in the OA in support of his claim that he was senior to Sri R.K. Mishra and hence, he was entitled for promotion to E-8 grade w.e.f. the date of promotion of Sri R.K. Mishra i.e. 9.1.2012, with consequential benefit for promotion to E-9 grade w.e.f. 31.12.2013 and hold that no case has been made out to justify any interference of this Tribunal in the matter. The OA is accordingly liable to be dismissed and hence, it is dismissed. However, there will not be any order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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