

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 245 of 2017**

**OA No. 587 of 2015**

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

Susant Kumar Sahoo, S/o Indramani Sahoo, aged about 38 years, presently working as Junior Manager (Roll Shop), Rourkela Steel Plant, Rourkela, Qr.No. A/16 Sector-16, Rourkela-3, Dist.-Sundergarh.

.....Applicant

VERSUS

1. Union of India through its Secretary, Ministry of Steel & Mines, Shastri Bhawan, New Delhi.
2. Steel Authority of India Ltd. represented through its Managing Director, 16<sup>th</sup> Floor, North Block, Scope Miner, Laxmi Nagar, New Delhi-110092.
3. Executive Director (Projects), Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, Dist.-Sundergarh.
4. Deputy General Manager (PL-OD), Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, Dist.-Sundergarh.
5. Assistant General Manager (PLOD), Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, Dist.-Sundergarh.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.D.Das, counsel

Heard & reserved on : 4.2.2020

Order on : 17.3.2020

**O R D E R**

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

In both the OAs, the common issue is whether pendency of a criminal appeal against acquittal by the trial court can be considered to be a pending judicial proceeding so as to debar the benefit of promotion as per the rules. Both the OAs are filed by the same applicant seeking reliefs with regard to promotion to the grade of E-2 (in OA No. 587/2015) and to E-3 (in OA No. 245/2017). Hence both the OAs are considered together and disposed of by this order.

2. The applicant has filed these OAs praying for the relief as under :-

**OA 587/2015**

“In view of the aforesaid facts and circumstances staged in the Original Application, the applicant prays that this Hon'ble Tribunal may be graciously pleased to admit the OA and after hearing the parties may pass order/orders directing the Respondents to promote the Applicant to

the Grade E-2 Scale alongwith consequential financial service benefits as per the provisions of the standing orders rules and regulation of the SAIL w.e.f. Jan' 2012 and further may be pleased to direct to pay all accrued dues w.e.f. Jan' 2012 along with due interest.

And further may pass any other Order/ Orders/ direction/ directions as it may deem fit and proper in the facts and circumstances of the case.

And for which act of kindness and grade the applicant as in duty bound shall ever pray."

### **OA 245/2017**

- “(a) To quash the order/note sheet dtd. 21.2.2017 passed by Respondent No.5 under Ann. A/6 series;
- (b) And to direct the Respondents to promote the applicant to E-3 Grade w.e.f., June, 2015 at par with his juniors;
- (c) And to direct the Respondents to grant all consequential and financial benefits.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall every pray."

3. The applicant, while working under the respondent Steel Authority of India (in short SAIL), faced a criminal charge framed by the CBI on the allegation of accepting illegal gratification/bribe and he was also suspended as a consequence. The criminal case against the applicant was disposed of vide the judgment dated 18.2.2014 (Annexure A/8 of the OA) of the trial court acquitting the applicant of the charges since the prosecution failed to prove its case beyond reasonable doubt.

4. After the judgment dated 18.2.2014 acquitting the applicant, he submitted a representation for consideration for promotion which was held up because of the pending criminal case. It is stated in para 4.5 of the OA No. 245/2017 that there are many juniors to the applicant who have been promoted to the higher scale. The applicant seeks parity with them in respect of promotion. It is further contended by the applicant that he was entitled for E-2 scale since January 2012. The criminal case which was pending has been disposed of in the meantime.

5. Counter had been filed by the respondents in OA No. 587/2015, stating that the CBI, being aggrieved by the judgment dated 18.2.2014 of the Trial Court acquitting the applicant, had preferred an appeal before Hon'ble High Court in CRLLP No. 95/2014 and the same is sub judice. It is stated that the applicant had been promoted to E-2 grade on ad hoc basis since June 2016 with the condition that it does not confer any right on the applicant to claim regular promotion and the competent authority reserved the right to cancel this ad hoc promotion and revert the applicant to the post of Junior Manager. The order of ad hoc promotion of the applicant dated 28.3.2018 has been enclosed

at Annexure R/2 of the Counter. It is further stated that the vigilance clearance is not available in applicant's case, for which he did not come within the zone of consideration for regular promotion and as a result, his case for promotion was not considered by the DPC. It is stated that since the appeal against the judgment dated 18.2.2014 acquitting the applicant from criminal offence is pending before the Hon'ble High Court, the vigilance clearance cannot be given.

6. The Rejoinder filed by the applicant in OA No. 587/2015 stated that as per the judgment of the Hon'ble Apex Court in Janki Raman's case the applicant should have been considered by the DPC and the outcome should have been kept in the sealed cover subject to final outcome of the criminal proceeding. It is averred that the respondents did not consider the applicant even after the judgment dated 18.2.2014 (Annexure A/8 of the OA) and mere filing of the criminal appeal before the Hon'ble High Court will not deprive the applicant from being considered for promotion.

7. Similar plea has been made in OA No. 245/2017 where the prayer for promotion to E-3 grade w.e.f. June 2015 at par with his juniors has been made on the similar ground. The respondents, in that OA, have also taken a stand that since the CBI's appeal against the order of acquittal is pending before Hon'ble High Court, the applicant was not considered for promotion.

8. We have heard learned counsel for the applicant and the respondents and considered the pleadings on record furnished by both the parties. The issue to be decided in this case is whether the judicial proceeding can be considered to be pending against the applicant in view of the appeal filed by the CBI before the Hon'ble High Court against the judgment dated 18.2.2014 (Annexure A/8) acquitting the applicant from the criminal charges and whether this can be a valid ground for withholding the vigilance clearance of the applicant and for not considering him for promotion.

9. Learned counsels for both sides have filed written notes. The applicant's counsel has enclosed the promotion policy for executives of SAIL and has also relied on the following judgments :

- (i) Surendra Kumar -vs- State of Himachal Pradesh & Another. [SLR 1985 (3) 254]
- (ii) Balak Singh Thakur -vs- The State of Madhya Pradesh & Another [WP No. 7592/2013]

Learned counsel for the respondents has also enclosed the judgments in the following cases in his written note :

- (i) Rajesh Behera –vs- Union of India & Ors. [OA 152/2015 of CAT, Cuttack Bench]
- (ii) Union of India & Ors. –vs- Jaipal Singh [(2004) 1 SCC 121]

10. The applicant's counsel has cited the judgment of Hon'ble Himachal Pradesh High Court in the case of Surendra Kumar (supra) in which the dispute related to sustainability of the suspension order and disciplinary proceedings after acquittal of the petitioner from criminal charges. The case is factually distinguishable since in the present OA, the issue relates to promotion of the applicant after he is acquitted. Other case cited by learned counsel for the applicant is the judgment of Hon'ble High Court of Madhya Pradesh in the case of Balak Singh Thakur (supra). In this case the petitioner was placed under suspension which was revoked later on. He was acquitted by the trial court and the criminal appeal was preferred against the judgment of the acquittal. In this case, the issue that was considered and decided was "whether an appeal against an acquittal can be said to be a continuation of criminal case." In this case it was held by the Hon'ble High Court of Madhya Pradesh as under :

"Section 2(i) of the Criminal Procedure Code, 1973 defines expression "judicial Proceeding" "includes any proceeding in the course of which evidence is or may be legally taken on oath". The definition as apparent is not exhaustive. Therefore, before proceeding can be held to be a judicial proceeding, it must be found that in the course of that proceeding evidence is or may be legally taken on oath. If evidence could not be taken legally on oath it would not judicial proceeding (Please see Sheo Ram v. State (AIR 1964 Allahabad 290). Furthermore, a criminal proceeding is initiated when a criminal law is set at motion against a person on the basis of an information to the police that a person has committed a cognizable offence leading to an investigation into the accusation against the person and filing of report under Section 173 of the Cr.P.C. whereupon an accused is tried of an offence registered leading to the conviction or the acquittal, as the case may be. With the acquittal the charges of commission of offence gets washed of. A person so acquitted of the charges stand at par with a person who is not being charged and was not subjected to a criminal proceeding.

The preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceedings as the initial presumption of innocence gets reinforced by the orders of acquittal.

The contention, therefore, put forth by the respondents that the filing of revision against the judgment dated 22.10.2013 would tantamount to the pendency of judicial proceeding does not reason with the provisions as they stand under law. In the considered opinion of this Court, after acquittal, which lead to an affirmation of the innocence of the accused, an appeal or revision, as the case may be, being not a continuation of trial, will not amount to a pendency of judicial proceedings.

In this context regard can be had of judgment of division Bench of High Court of Himachal Pradesh in Shri Surinder Kumar v. State of Himachal Pradesh and another (1985 (3) SLR 254).

In view whereof, since with the acquittal of petitioner for an offence under Section 13(1)(e) and 13(2) of 1988 Act, his suspension which was based on criminal proceedings stands unjustified. The respondents are directed to

settle the same within a period of 3 months from the date of communication of this order.”

11. Learned counsel for the respondents has cited the judgment in the case of Rajesh Behera (supra), in which the dispute was whether the period of suspension will be treated as on duty or not. The petitioner was dismissed from service after conviction in a criminal case and reinstated on subsequent acquittal in the criminal appeal. Clearly, the judgment is factually distinguishable since in the present OA the applicant has been acquitted by the trial court and the prosecution has moved against the acquittal order before the appellate forum. In the case of Jaipal Singh (supra) cited by the respondents, the dispute related to back wages from the date of acquittal. The employee concerned was convicted in the criminal case by the trial court after which he was dismissed from service. This case is also factually distinguishable.

12. It is seen that in another case decided by Ernakulam Bench of this Tribunal in OA No. 43/2017 in the case of K.Krishnan –vs- Union of India & Ors., similar issue has been decided after referring to the judgment in the case of Balak Singh Thakur (supra) and it was held as under :

“14. I have considered the contentions of both sides to this dispute and the central issue involved which has been narrated above. A few citations have been brought before me from both sides. But I see that the citation which is directly relevant is Balak Singh Thakur (supra). This order clearly set out that pendency of an appeal or a criminal revision against acquittal cannot be regarded as a continuance of trial and cannot be treated as pendency of judicial proceedings. Countering this, is the argument that the applicant has not been the beneficiary of honourable acquittal and has merely been given the benefit of doubt. There is no departmental proceeding which has been initiated or pending against the applicant and while a criminal appeal is pending before the Hon'ble High Court, the covered decisions cited above clearly lay down that this cannot be construed as an extension of the judicial proceedings. A very similar view has been taken by this Tribunal in O.A.No.180/246/2017 at Annexure A-11.

15. So on an appreciation of facts before me I conclude that the O.A has merit on its side and it succeeds. The benefit as prayed for are to be disbursed to the applicant within a period of two months from the date of receipt of a copy of this order. The O.A is allowed accordingly. No costs.”

13. Learned counsel has enclosed a copy of the “Procedure for Dealing with Promotion/Confirmation of Executive Pending Inquiry/Disciplinary Proceedings and after” and also “Rules for Promotion framed under the Promotion Policy for Executive” with his written note. The applicant has also enclosed “Promotion Policy for Executives” with his written note. Although additional pleadings and additional documents are generally not permissible with the written note of arguments, but it is noticed that the documents submitted by learned counsel for the respondents did not have any provision not to consider the case of the applicant by the Selection Committee/DPC

when a criminal case is pending against him. In this case, the applicant was not considered for promotion by the DPC/Selection Committee on the ground of pendency of criminal case. There is no rule or policy documents furnished by the respondents in their pleadings to show that the applicant was not entitled for being considered for promotion to E-2 and E-3 grade during pendency of the criminal appeal against the judgment dated 18.2.2014 (Annexure A/8) acquitting him from criminal charges.

14. On the other hand taking into consideration the judgment of Hon'ble High Court of Madhya Pradesh in the case of Balak Singh Thakur (supra) cited by the applicant's counsel and the judgment of Ernakulum Bench in the case of K.Krishnan (supra) as discussed above are squarely applicable to this OA and pendency of the criminal appeal against acquittal order cannot be considered to be a pending judicial proceeding against the applicant for which the decision of the respondent authorities to withhold the vigilance clearance for consideration of promotion is not sustainable under law and the applicant is entitled for benefit of promotion to E-2 and E-3 grade in both the OAs at par with the juniors.

15. The respondents are, accordingly directed to convene the review DPC to consider the case of the applicant for promotion to E-2 and E-3 grade from the date of the promotion of his juniors subject to the outcome of the pending criminal appeal and if the applicant is found suitable for such promotion, he will be given all consequential service benefits at par with his juniors with the condition that the applicant will be allowed notional promotion for the past period till he held the post on ad hoc or actual basis and while no arrear salary for the period of notional promotion will be allowed to him, he will be allowed the benefit of seniority as per the rules. The respondents are to comply this order within three months from the date of receipt of a copy of this order.

16. Both the OAs are allowed accordingly. There will be no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)