

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

TA No.40 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T. Jacob , Member (A)

1. Sri Sakti Ranjan Saha, aged about 42 years, S/o Sri Haripada Saha, At – Plot No. B – 6, Sector – 9, Rourkela, Dist - Sundergarh.

.....Applicant.

VERSUS

1. Rourkela Steel Plant represented through its Managing Director, At – Rourkela. Dist- Sundargarh.
2. Executive Director (P&A) Rourkela Steel Plant, At/Po – Rourkela, Dist – Sundergarh.
3. Deputy General Manager, Personnel Organization and Development, Rourkela Steel Plant, At/Po – Rourkela, Dist – Sundergarh.
4. Executive Director (Finance & Accounts), Rourkela Steel Plant, Unit – VIII, Delta Colony, At/Po – Rourkela, Dist – Sundergarh.

.....Respondents.

For the applicant : Mr. M. K. Khuntia, advocate.
For the respondents: Mr. H. M. Dhal, advocate.

Heard & reserved on : 19.03.2021

Order on :19.04.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

1. The W.P.C No. 7704/1995 was transferred from Hon'ble High Court of Odisha vide order dated 05.11.2015 and numbered as TA 24/2016. The brief of the case as inter alia averred by the applicant is that he is challenging the action of the respondents in not giving promotion to the applicant despite the fact that the batch mate of the applicant and junior to the applicant had already been given promotion. The applicant submitted that he was appointed as Executive Trainee (Finance) on 04.03.1994 in pursuant to the open advertisement vide Annexure 1. The applicant submitted that it was further stipulated that on completion of one year training they will be replaced in the next higher scale as Junior manager (E.1 Grade) and subsequent promotion will be subject to their passing the final examination of ICAI/ICWAI. The applicant submitted that he had passed the final examination of AICWA in June 2004 and was eligible for promotion to E-2 Grade in 2003 and E 3 grade in 2006, but he is stagnating for the last eleven years without any promotion despite availability of clear vacancies. The applicant submitted that two criminal cases bearing No. TR – 17/2002 and 18/2002 are pending before Learned Special Judge, Bhubaneswar

and his name are not sent up for trial as far as TR – 18/2002 is concerned since in the charge sheet it is mentioned that allegation against Sri P. K. Das and Sri S. R. Saha were not substantiated”. The applicant submitted that in the charge sheet in TR No. 17/2002 there is no allegation of misappropriation against the applicant and a disciplinary proceeding has also been proceeded by the department in the said case. In the disciplinary proceeding the allegation against the applicant was that he failed to maintain absolute integrity and devotion to duty resulting in violation of Clause 4 (1) of Steel Authority of India Limited CDA Rules, 1977 and the disciplinary authority imposed a penalty of reduction of his basic pay by one stage in his existing time scale of pay for a period of one year with cumulative effect. The applicant further submitted that as per promotion Policy (Annexure 3) Clause 19 (Annexure IV) the cases of employees, whose conduct is under departmental enquiry or investigation by vigilance department or CBI or any agency, may be considered for promotion on merit as if there is no case against him and the selection board or the competent authority should not be prejudiced in determining the suitability of the employees for the involvement of the employee in the departmental or vigilance case. The applicant submitted that the

promotion policy meant for executives as framed by RSP does not contain seal cover procedure and non consideration of the case of the petitioner by the DPC is violation of Article 14 of the Constitution of India.

Hence he has filed this TA with the following prayers:

It is, therefore, humbly prayed that this Hon'ble Court may graciously be pleased to issue Rule Nisi calling upon the Opp. Parties to show cause as to why an appropriate writ in the nature of mandamus shall not be issued directing the Opp. Parties to remove stagnation in service of the petitioner and further direct the Opp. Parties to consider the case of the petitioner for promotion from E-1 grade w.e.f dated of entitlement and further promotion to E-3 grade and further directs the Opp. Parties to impart consequential service as well as financial benefits w.e.f. the date of entitlement and on perusal of causes shown or insufficient causes shown if any make the said Rule absolute and may pass any appropriate order as deemed just and proper.

2. The respondents in their counter inter alia averred that the applicant was imposed with major punishment as a disciplinary measure following a departmental proceeding for committing misconduct and criminal cases instituted by CBI under the provisions of Prevention of Corruption

Act are subjudice, hence the applicant was not promoted. The respondents further submitted that as per guidelines of the promotion policy it is a matter of discretion of the competent authority to consider the case of an employee for promotion on adhoc basis when series allegations are subjudice and since in the case of applicant it was felt that there was no likelihood of CBI cases coming to conclusion in near future, a sympathetic view was taken by the competent authority and he was given adhoc promotion to his next higher grade w.e.f. 30.06.2009 vide office order dated 17.08.2009.

3. Heard learned counsel for both the sides and have carefully gone through the materials on records. It is ascertained that the applicant has been imposed with a penalty of reduction of his basic pay by one stage in his existing time scale of pay for a period of one year with cumulative effect as per punishment order vide annexure A/7 dated 22.05.2004. It is further ascertained that the applicant has been given adhoc promotion to the post of Assistant Manager (F&A) as per order vide Annexure R/5 dated 17.08.2009. He has not been given regular promotion although he was found suitable since CBI cases instituted against the applicant under the Prevention of Corruption Act are subjudice.

4. Learned counsel for the respondents Mr. H. M. Dhal has produced certain information in sealed cover which were

perused by us and it was ascertained that out of 6 criminal cases instituted against him by the CBI, the applicant has been acquitted in one case and the rest 5 criminal cases are pending against the applicant. It was submitted by Mr. Dhal that the said cases are at stage of hearing and recording of evidence.

5. Learned counsel for the applicant had drawn the attention of the Tribunal to policy of promotion of the respondent organization at Annexure 3 The relevant portion from Annexure 3 is extracted below:

"PROMOTION/CONFIRMATION PENDING INQUIRIES/ INVESTIGATION

The case of an employee whose conduct is under departmental enquiry or investigation by Vigilance Department or CBI or any other agency may be considered for promotion on merit as if there is no case against him. The selection board or the competent authority should not be prejudiced in determining the suitability of an employee because of his involvement in the departmental or vigilance case.

In case the employee is found suitable for promotion on merit, his case will be dealt as follows:

- (a) His promotion will not be withheld unless the charge memorandum/charge sheet is issued to him.*
- (b) His promotion will be withheld if he is under suspension.*

The same principles would be followed in respect of confirmation also.

PENDING DISCIPLINARY PROCEEDINGS

If disciplinary proceedings against an employee have been initiated by issuing a charge sheet either for minor penalty or for major penalty, his case may be considered by the selection board/competent authority as if there is no case against him. In case the employee is considered suitable for promotion his promotion or confirmation, as the case may be, will be withheld till the conclusion of the disciplinary proceedings.

PENDING PROSECUTION

If any employee is being prosecuted in court of Law, his case will be dealt with as at para above.

6. In the above circumstances we find that no irregularity or illegality has been committed by the respondents in not giving regular promotion to the applicant while 5 criminal cases instituted against him by the CBI are still pending at the stage of hearing.
7. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order as to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)