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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.702 OF 1996

Cuttack, this the 19th day of Aug, 2003

Basanta Kr. Mohanty .....

Applicant

Vrs.

Union of India & Others .....

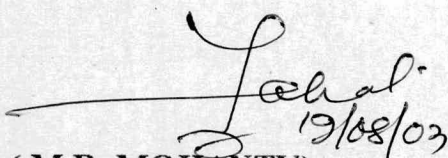
Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Yes

Yes

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N.SOM)  
VICE-CHAIRMAN

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**CORAM:**

**HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN**

**&**

**HON'BLE SHRI M.R. MOHANTY, MEMBER(JUDICIAL)**

**Shri Basanta Kumar Mohanty, S/o Late Laxmidhar Mohanty, Geological Survey of India, Eastern Region, O.O. Orissa, Nayapalli, Bhubaneswar-12, Dist: Khurda**

**By the Advocate(s) .....**

.....Applicant

M/s J. Patnaik

H.M. Dhal

A.A. Das

**Vrs.**

1. Union of India, represented by Secretary to Govt. of India, Dept. of Mines, Shastri Bhawan, New Delhi & Others.

**Respondent(s )**

**By the Advocate(s) -**

**M/S**

**B. Dash**

**O R D E R**

**SHRI B.N. SOM, VICE-CHAIRMAN:**

Shri Basanta Kumar Mohanty has filed this O.A. challenging the alleged illegal and arbitrary action of the Respondent in not promoting him to the post of Director (Geology) when his juniors were promoted in the year 1996.

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2. Shorn of details, the case of the applicant is that the Respondents had once earlier also held up his promotion to the post of Geologist (Senior). He was promoted only after he had approached this Tribunal in 1987. The Tribunal was pleased to issue direction to the Respondents to promote him with retrospective effect as a result of which he was promoted to the post of Geologist (Sr.) w.e.f. 28.07.1981. The applicant claims that he has always enjoyed high reputation for his professional excellence. However, when the DPC was convened in the month of April, 1996 for considering promotion of eligible officers i.e. Geologist (Sr.) to the post of Director (Geology) in Junior Administrative Grade, he was not cleared for promotion although six officers junior to him were given promotion. Having enjoyed the reputation of an officer of high calibre he feels that his name was not included in the list of successful officers due to arbitrary and biased attitude of the some of his superior officers.

3. The applicant has further contended that there being no adverse remarks in his confidential report, there could be no reason for not clearing him for promotion. He has submitted that the Govt. having introduced bench marks system, there by laying down that only those officers who will be graded as 'very good' and above will be given promotion subject to availability of vacancy, he apprehends that he might have been given only 'good' grading in the Annual Confidential Report ( in short A.C.R.) making him ineligible for promotion. "Consequently then the said entry becomes adverse so far as the service career of an employee is concerned" he submits.

✓ Relying on the judgement of Jabalpur Bench of this Tribunal, he submits that Respondents should have communicated the said adverse remarks to him much before the holding of the DPC meeting. He should have been given an opportunity for making representation against the said entry. But that opportunity was denied to him. He has also raised an objection that the DPC did not consist of an expert and in that DPC which considered his case, the Director General, Geological Survey of India was the expert member whose basic discipline was Physics and not Geology and that vitiated the entire selection made by the DPC. He has submitted that where the reviewing officer is not sufficiently aware of the work and performance of an employee, it is incumbent on his part to verify the grading given by the reporting officer "after making necessary enquiry and if necessary he should also give a hearing of the concerned employee reported upon before recording his remarks." Stating these, he has alleged that in his case the reviewing officer has not followed this instruction for the year when he was on foreign assignment to Bhutan. The reviewing officer was stationed at Calcutta in 1991-92. He had never visited Bhutan during the tenure of the applicant and that the reviewing officer had submitted the confidential report after two years of the retirement of the Director General for acceptance. He submits in conclusion that supersession of the applicant for the post of Director (Geology) was on account of these illegal, arbitrary and discriminatory actions on the part of the Respondents. In the circumstances, he has approached the Tribunal seeking relief to the extent that the selection

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made by the DPC to the post of Director (Geology) be quashed as illegal and discriminatory and that the Respondent be directed to promote him from the date from which his juniors were promoted to the said post.

4. We have heard Mr. J. Patnaik, Ld. Sr. Counsel for the applicant and Mr. B. Dash, Ld. Addl. Standing Counsel for the Respondents. We have also perused the records placed before us.

5. The Respondents have refuted all the allegations in their counter. They have submitted that promotion to the post of Director is done in consultation with the Union Public Service Commission (in short UPSC) and is a selection post. The promotion is made strictly on the basis of merit-cum seniority. The case of the applicant was duly considered by the DPC held under the aegis of UPSC and that only the most meritorious of the officers were recommended for promotion. They have further disclosed in the counter that the applicant contrary to his claim, during his tenure in Bhutan for the period from January, 1991 to March 1994 had earned the grading "good" and "average", that the DPC considered all the officers in the zone of consideration on the basis of 5 years ACRs. But the applicant could not secure the minimum bench mark for promotion to the grade of Director. They have further disclosed that the applicant had never obtained any outstanding performance report but that his performance rating fluctuated from 'very good' to 'good' to 'average'. They have disputed that an officer is over looked only if he has adverse entry in his ACR. They have stated that an officer may be overlooked if he has secured the overall grading of only

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✓ "good". But the grading of 'good' does not constitute an adverse comment in the ACR to be communicated. The applicant was at Sl. No. 32 out of 67 officers in the eligibility list for preparation of a panel of 31 officers for filling of as many vacancies for the year 1994-95. But on assessment of the ACR 26 officers senior to him and 5 officers juniors to him were assessed 'very good' and above and were recommended for promotion. Thus the applicant's name was not included in the panel of successful officers for promotion not on any other reason but on account of his inability to secure the minimum bench mark for promotion to the grade of Director. They have also refuted the other objections raised by the applicant in this O.A.

6. We have very carefully considered the submissions made by both the parties. We have also perused the ACRs of the applicant considered by the DPC. We have also perused the Minutes of the DPC held by the UPSC.

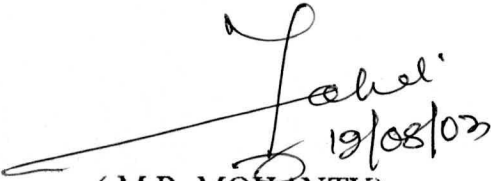
7. The Recruitment Rules pertaining to the post of Director (Geology) prescribes that the DPC for promotion to the grade of Director is to be held in consultation with the UPSC. The Ld. Adl. Standing Counsel Mr. Dash, brought to our notice that in terms of Govt. of India, Office Memorandum No. 22011/5/86 dt.10.04.1989, DPCs have full discretion to device their own methods and procedures for objective assessment of the suitability of the candidates who are to be considered by them. It has also been laid down in that Office Memorandum that advancement "in an officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result-oriented performance as

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reflected in the ACRs and based on strict and rigorous selection process". It has also been stated there that it is the function of the DPC to evaluate the confidential roles of the officers under consideration and to make overall grading considering their ACRs for relevant years. Detailed guidelines have also been laid down at para 6.3.1 of this memorandum for the DPCs to follow. The applicant in his O.A. has repeatedly complained that it was due to the bias and arbitrariness on the part of the Respondents that he missed his promotion. His complaint appears to be out of tune because it is the DPC held by UPSC which did not find him suitable for promotion after independently evaluating his ACR, which contained his self-assessment of work done by him. The UPSC being a constitutional authority known for its objectivity and impartiality, one is well advised to abide by its recommendation unless there is some apparent error on record. It is only applicant's own claim that his performance has been outstanding. We do not see any evidence or substance in that claim when we went through his ACRs. Equally unsustainable is his assertion that in the composition of the DPC there should be an expert member. No such instruction exists in the Govt. order referred to above, nor there is any such provision in the recruitment rules. In effect we find no merit in this statement.

8. Regarding his statement that it is incumbent on the part of the reviewing officer to give a hearing to the reportee officer before recording his remarks is of no avail because no such system has been prescribed by the

Respondents in the matter of writing of ACR. However, this statement made by the applicant may be examined by the Respondents for reforming the system of Confidential Report writing. In conclusion, we find the allegations made by the applicant are not well founded. The DPC having duly considered his performance for the 5 years along with 66 other officers in the zone of consideration and his performance having been evaluated objectively in terms of the guidelines laid down in this regard, we see no merit in this O.A. which is accordingly dismissed. No costs

  
(M.R. MOHANTY)  
MEMBER (J)

  
(B.N. SOME)  
VICE-CHAIRMAN

CAT/CTC  
Kalpeswar