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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.148 OF 2001
Cuttack this the 4th day of May 2005

Dr. (Mrs.) M. Reutray ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

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


(M.R. MOHANTY) 04-05-05
MEMBER (JUDICIAL)


(B.N. SASMAL)
VICE-CHAIRMAN

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CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN,
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)
...

Dr. (Mrs.) Manjurani Reutray, aged about 46 years,
W/o. Dr.Jayant Kumar Reutray, VIM - 719,
Sailashree Vihar, Bhubaneswar-21, Dist. Khurda

... Applicant

By the Advocates

M/s. M.Mishra
D.Patnaik
B.B.Mohanty
S.Senapati

- VERSUS -

1. Union of India represented through its Secretary, Ministry of Information & Technology, Electronics Niketan, Scope Complex, Ledi Read, New Delhi
2. Director General, National Informatics Centre, A-Block, C.G.C. Complex, Ledi Read, New Delhi
3. State Informatics Officer, National Informatics Centre, Orissa State Unit, Unit-IV, Sachivalaya Marg, Bhubaneswar, Dist. Khurda
4. Susanta Kumar Panda, State Informatics Officer, National Informatics Centre, Orissa State Unit, Unit-IV, Sachivalaya Marg, Bhubaneswar, Dist. Khurda

... Respondents

By the Advocates

Mr. U.B.Mohapatra, SSC

- - - -
O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original Application has been filed by Dr. (Mrs.) Manjurani Reutray, being aggrieved that she has not been promoted to Scientist-E although her juniors have been promotion to that grade inspite of her merit. Accordingly, she has assailed the order No.20 (3)/2000-PERS dated 16.4.2001 issued by the Respondents (Annexure-14). ✓

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2. Shorn of details, the grievance of the applicant is that she is working as Principal System Analyst, i.e., now named as Scientist 'D'. As per the promotion policy of the Respondents-Department, called Flexible Complementing Scheme, she was eligible for promotion to Scientist E in the rank of Technical Officer/Director, after she completed four years of service in the grade of Scientist 'D'/Principal System Analyst. But, her promotion to the grade of Scientist 'E' has not been effected although the case of her junior was considered by the Selection Committee in the years 1999, 2000 and 2001. She has alleged that although she had obtained highest requisite qualification among all the officials from Orissa State Unit of National Informatics Centre (in short NIC) she apprehends that her achievements for the last seven years had not been given due consideration by the Screening Committee or the Review Committee/Promotion Committee or it has been mis-reported to the higher authorities by her Reporting Officer (Respondent No.4), who is not in good terms with the applicant since 1995. She has alleged so on the ground that Respondent No.4, who is now acting as her immediate superior/reporting officer was junior to her earlier. She has submitted that her area of working is a specialized one, which can never be evaluated by the officers not having appropriate expertise in that area. But the body of Experts, who interviewed her did not include any expert

from the field of her specialization. Her other grievance is that although she has been screened by the Screening Committee on the basis of performance of her rating above the cut off marks, on both the occasions, she was left behind as the Selection Committee which interviewed her did not recommend her case. She has further submitted that although on the basis of ACRs her performance was rated above, the cut off marks, may be 60%, 90% or 80%, but she was not selected only on the basis of the marks given by the Interview Board. She has further submitted that the selection for promotion from Scientist 'D' to Scientist 'E' is being done through video conferencing although such a procedure has not been incorporated in the rules. She has also submitted that the Selection Committee did not ask her any question which was related to her subject. Inspite of that she had faced the video conferencing answering all the questions in the interview, but her case was not recommended by the Committee either for the year 2000 or for the year 2001. It is, therefore, her apprehension that her merit and performance were not objectively assessed by the Selection Committee and video conferencing is not a good method for assessing the merit of the Scientist adequately. She has also alleged that the interview process lacks objectivity and gives enough scope to promote/harass officers as per the sweet-wills and caprices of the authorities.

3. The Respondents have resisted the O.A. by filing a detailed counter. They have, at the outset, submitted that the Apex Court has held that if promotion

is made on merit, it cannot be said that the senior has been superseded. It is their further submission that the applicant could not be promoted with effect from 1.1.2001, because, her name was not recommended by the duly constituted Review Committee for promotion in terms of the Personnel Policy of the Respondents-Department and the guidelines of the Department of Personnel & Trg. vide O.M.NO.2/41/97-PIC dated 9.11.1998. Admitting the facts of the case, they have clarified that the ~~personnel~~ system for promotion has been revised by the Respondents-Department for rewarding exceptionally meritorious work. The minimum length of service for consideration for promotion on the basis of exceptional merit is two years, which may be relaxed further to meet the requirements of an exceptional case. The Respondents have also established a Special Assessment Procedure consisting of preliminary assessment by a panel of experts to determine whether a prima facie case of ~~extraordinary~~ merits exists and if that be so, to be followed by a detailed assessment by a Selection Committee. This procedure has been set up for ensuring total personnel development through goal setting, appraisal and counselling and personnel enhancement. The policy also has inbuilt disincentives for continued unsatisfactory performance culminating even in termination of service. The Respondents have averred that the applicant's case for promotion from Scientist C to Scientist D and ~~From~~ Scientist D to Scientist E was processed in terms of the policy guidelines laid down in this regard. With

regard to her allegation that her juniors were given promotion to the grade of Scientist E with effect from 1.1.2001, the Respondents have repudiated this plea on the ground that the concept of seniority does not exist in the ~~personal~~ policy relating to Scientists, because, it is 'person-oriented'. That apart, they have stated that any grievance with regard to promotion of certain official as mentioned in the O.A. as on 1.1.1994 is hopelessly time-barred. They have denied her allegation that Res. No.4 had played any mala fide role in the matter of promotion of the applicant, and that her promotion as Scientist-D with effect from 1.1.1996 was given after two years of it becoming due. They have explained that a minimum length of service in a grade is always provided for determining the eligibility of a post holder for being considered for promotion and it does not confer any right for promotion. With regard to her allegation of supersession in the Grade of Scientist D to Scientist E, they have stated that her views could not be more objective about herself and the other officers in the zone of consideration than those assessed by the Members of the Review Committee, who are experts in their field and have vast experience in the Department and other areas. The Respondents have, therefore, contested the credential of the applicant to question or doubting the quality of the judgment of the members of the Review Committee, on whose recommendations, the list of candidates eligible for promotion was finalized. They have further submitted that in such matters, the Committees' recommendations

are treated as final. They have also pointed out that the applicant is not the only officer, who was not recommended for promotion. The Review Committee did not recommend the names of as many as 24 officers out of 41 officers for promotion for the year 2000 and 32 officers out of 67 for the year 2001 and that the seniority is not the criterion in the promotion policy of the Department to decide the issue in this case. The Respondents have also rebutted her plea that promotion of Res. 4 before the due date was bad on the ground that no such representation was ever made by the applicant when the Res. No.4 was promoted in the year 1990. They have also stated that the applicant has not made out any legal ground in support of her prayer made in the O.A.

4. We have heard the learned counsel for the parties and have also perused the materials available on record. We are also conscious of the fact that selection made by a duly constituted interview board consisting of experts is not normally to be interfered with. We also see lot of force in the submission made by the Respondents that even under the Flexible Complementing Scheme, no due date has been fixed for promotion of the Scientists from one grade to another. It has only laid down the minimum residency period for being eligible for consideration for promotion. However, we find that the applicant has made a valid point that as per the criteria for considering promotion under the Flexible Complementing Scheme, the Respondents have made two tier system, the first tier consisting of

assessment of A.C.Rs on a 10 point scale for determining whether a Scientist is eligible for consideration. Referring to the criteria so notified under Annexure - 15, the applicant has submitted that whereas the cut off percentage of performance on the job has been fixed as high as 90% down to 60% depending on the number of years of residency (4 to 8 years) the final selection of a Scientist for promotion is, however, dependent on the result of the interview. Although it has been stated in the guidelines that the performance in the interview will also be graded similarly on a 10 point scale and the eligibility for promotion will be based on the same norms as in the case of assessment of ACRs, it has not been made clear either in the scheme or by the Respondents in their counter, whether the percentage of marks obtained on ACRs, i.e., performance at work place as well as interview together will determine the final placement of a Scientist under consideration in the promotion list or whether irrespective of performance of a Scientist as reflected in the ACR, his/her promotion to the next grade will be decided on his/her performance before the interview Board. In other words, even if, say a Scientist D with six years service had secured 75% in the interview, he will not be recommended for promotion in that year. On the other hand, a Scientist with 7/8 years service having secured 70% or 60% in the interview could be recommended for promotion. Thus, the principle of working out final select list for promotion having not been clearly spelt out, it

has caused natural fear and apprehension in the mind of the applicant that although her performance at the work place is highly commended, she has been left out of the select list on subjective consideration. It has been repeatedly canvassed before us that the recommendation of the interview board has been made the sole determining factor for inclusion of the name of a Scientist in the merit list and expressed the apprehension of bias in the process, although the applicant has not levelled any specific allegation of bias against any expert in the Board. Such a view gains ground from the decision in the case of J.P.Kulashreshtha v. Vice-Chancellor, Allahabad University (AIR 1980 SC 2142). It was held in that case that the vice of manipulation cannot be ruled out, though interview is a second factor in the matter of appointment. As it plays a strategic role it was further held that although an interview is an important factor, it should not be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings". In Ashok Kr.Yadav vs. State of Haryana (1985) 3 Serv LR 400, the Apex Court, has however, observed in no uncertain terms that "the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact tests the man himself and is, therefore, regarded as an important tool along with the written examination."

In the case of Praveen Singh vs. State of Punjab (AIR 2001 SC 153), the Apex Court on the question

whether *viva voce* test should be the sole basis for selection/appointment, held as under :

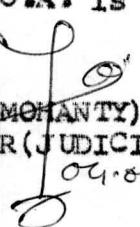
" Interview should not be the only method of assessment of the merits of the candidates. The vice of manipulation cannot be ruled out in *viva voce* test ... and then concluded that "while it is true that the administrative or quasi judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fairplay, good conscience and equity".

Having regard to the above observations of the Apex Court regarding the role and function of Interview Board/*viva voce* test and the need to ensure equity and fairplay in the conduct of the selection procedure, we are persuaded to take note of the concerns expressed at the Bar. In the circumstances, the Respondents will be well advised to clarify the guidelines of selection of Scientists for promotion from one grade to another by explaining the objective of CR assessment and objective of assessment through interview for promotion and whether the combined performance of a candidate at the work place as well as ^{at} interview determined the final outcome of the selection process. Once the promotion policy is thus clearly spelt out, no dispute would arise. Therefore, in the interest of fairness and justice, we would call upon the Respondents to inform the applicant about her rating by the Interview Board and as to why inspite of her above average performance at the work place,

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She was not considered ripe enough for promotion. We are not, however, impressed with the prayer of the applicant that the Respondents should give her promotion to Scientist E (Grade of Technical Director) from the date when her juniors were promoted to the said post, as the promotion policy of Scientist is not based on the principle of seniority, but wholly and solely on the basis of merit as propounded by them both in the counter as well as before us, during oral argument. We, however, for the reasons stated earlier, direct the Respondents-Department, in the interest of fairness and justice, to inform the applicant the reasons how she was not found suitable for promotion inspite of the high rating given to her by the Assessment Board in the scale of 10 points. This exercise shall be completed within a period of 120 (one hundred and twenty) days from the date of receipt of this order.

With the above observation and direction, this O.A. is disposed of. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)

04-05-05


(B.N. SOM)
VICE-CHAIRMAN

BJY