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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 260 OF 2004

Cuttack, this the 18th day of August, 2005

Prasanta Kumar Mishra	Applicant
Vrs.		
Union of India and others	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? no

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? no


(M.R. MOHANTY)
JUDICIAL MEMBER


(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

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

HON'BLE SHRI M.R.MOHANTY, JUDICIAL MEMBER

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Prasanta Kumar Mishra, aged about 28 years, son of Sri Panchanan Misra, At-Baibal, P.O.Pirahat Bazar, Dist.Bhadrak, presently working as AC Fitter Skilled at Badamal Ordnance Factories, Government of India, Ministry of Defence, Bolangir Applicant

Advocates for the applicant - M/s S.J.Das & S.K.Nayak

Vrs.

1. Union of India, represented through its Secretary, Ministry of Defence, Government of India, New Delhi.
2. Ordnance Factory Board, represented through its Secretary, Government of India, Ministry of Defence, Ayudh Bhavan, 10-A, Saheed Khudiram Bose Road, Kolkata 700 001.
3. General Manager, Indian Ordnance Factories, Ordnance Factory, Bolangir (P), At/PO: O.F.Badmanl, Dist.Bolangir 767 770

..... Respondents

Advocate for the Respondents - Mr.U.B.Mohapatra,Sr.CGSC

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Prasanta Kumar Mishra has filed this Original application under Section 19 of the Administrative Tribunals Act, 1985, challenging the inaction of the Respondents in not promoting him to the Highly Skilled Grade with effect from the date when others were given such promotion.

2. The controversy raised by the applicant is that the sanctioned strength of A.C.Fitter under the Respondent-Factory in the year 1997 was 39 which was increased to 40 after promoting a Labour as A.C.Fitter through departmental test. He has further claimed that there were "41 vacancies/strength in the grade of A.C.Fitter". His calculation of 41 is based on the calculation that 38 persons were in position, one Shri S.K.Sharma did not join the post after recruitment, one Shri S.K.Mohapatra expired, and one Shri B.K.Pradhan resigned from his post. In terms of the Ministry of Defence letter No.11(1)/2002/D(Civ.I), dated 20.5.2003, the cadre of Artisan Staff (in this case, A.C.Fitter) was to be restructured with effect from 1.1.1996 by merging the posts of Highly Skilled Grade I and Highly Skilled Grade II into Highly Skilled Grade in the scale of pay of Rs.4000-6000/-. It was further stated in the

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said instruction that all the existing Highly Skilled Grade I and Highly Skilled Grade II employees on the strength as on 1.1.1996, including those who were wasted out due to retirement, death, etc., on or after 1.1.1996 but prior to 20.5.2003 are to be redesignated as Highly Skilled Grade and placed in the corresponding scale of pay in the ratio of 65:35:10. As the merged grade of Highly Skilled has to be structured on 55% basis of the total strength of employees in the A.C.Fitter group and the strength being 40 or 41, the total number of Highly Skilled grade personnel should be 22. But the Respondents, for reasons best known to them, promoted only 21 A.C.Fitter from Skilled Grade II to Highly Skilled Grade and thereby left out the applicant whose name appears at Sl.No.22 of the revised seniority list of the Skilled Grade as on 1.1.1996.

3. Per contra, the Respondents have stated that the O.A. is devoid of merit, being based on wrong facts and incorrect calculation. They have taken the position that in the year 1997, there was no Government sanction separately for the post of Fitter (AC). They have further submitted that Ordnance Factory Board used to grant sanction for the total strength of the Factory and the General Manager of the Factory was authorized to further distribute the sanctioned strength, trade-wise, as per functional requirement of the Factory. By submitting the statement of the

distribution of posts in ratio rates with reference to sanctioned strength duly vetted by the Local Accounts Office, Ordnance Factory, Badmal, they have shown that the number of Fitter (Refrigeration and A.C.) varied from a minimum of 26 in the year 1996 to the maximum of 38 in May 2003. They have submitted that the first phase of restructuring was done in the ratio of 65:35 in the grade of Skilled and Highly Skilled and 10% of 35% in Highly Skilled were placed in the Master Craftsman. On that basis, in the first phase 30 Fitter/AC (Skilled) were promoted to Fitter/AC (Highly Skilled) and in the second phase 8 more Fitter/AC (SK) were promoted to Fitter/AC (Highly Skilled); both the instances of promotions having been granted in the year 2004. They have stated that the allegation made by the applicant that his case was not considered for promotion to Highly Skilled Grade along with others is baseless and that he could not be promoted only due to want of vacancy and not because of any other reason. They have stoutly denied that the strength of Fitter/AC in the Factory had ever been a strength of 41 posts and have stated that the applicant has failed to establish as to how he was deprived of promotion and that he did not have any case at all.

4. We have heard the learned counsel for both the parties and have perused the records placed before us.

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5. The sole question in this Original Application is, whether the sanctioned strength of Fitter/AC in the Highly Skilled category after merging Highly Skilled Grade I and Highly Skilled Grade II categories with effect from 1.1.1996 was 38, or more. The applicant had raised this issue before the Secretary, Ordnance Factory Board earlier by his representation dated 12.3.2004, to which he was given a reply by their letter dated 2.4.2004 with the approval of the General Manager which reads as follows:

“Your point of contention is that the sanctioned strength of Fit/AC trade should have been 41 instead of 38. In support, you have stated in para 03 of your application that the posted strength of Fit/AC was 39 during 1997 which subsequently increased to 40. In this regard, it is intimated that the records available at this office reveals that the posted strength of Fit/AC, at no point of time till date, has reached the figure which you have indicated. Moreover, Fy. Management has the authority to add to or reduce the number of posts in different trades from time to time on the basis of changes in functional requirement. Thus, the decision of sanctioned strength of 38 in Fit/AC trade taken based on the functional requirement should not be debated further.

In spite of this reasoned reply given to him, the applicant in this Original Application at paragraph 2 has again raised the same issue. We are, however, unable to appreciate his presentation or the logic in his submission. It appears that the applicant has failed to appreciate the

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difference between the sanctioned strength and recruitment of personnel with reference to the sanctioned strength. In paragraph 2 of his Original Application the applicant has submitted (as also during oral submission) that when the sanctioned strength of Fitter/AC was 39 in the year 1997, the strength increased to 40 because of promotion of one Labour Fitter/AC grade. Needless to mention here that promotion to a grade takes place only when there is a vacancy in the sanctioned strength. In other words, the fact that an employee was promoted in the year 1997 from the grade of Labour to Fitter/AC would mean that if the strength of Fitter/AC in 1997 was, say 26, the people in position would have been only 25 requiring induction of one more person either by promotion or by direct recruitment to make good the strength to the sanctioned level of 26 and not that because of promotion or direct recruitment, the sanctioned strength goes on increasing. This misconception in understanding of the relationship between sanctioned strength and the recruitment, it appears, has created a grievance in the mind of the applicant which is unreal/unsustainable. The fact is, as submitted by the Respondents, that the number of posts allotted to Fitter/AC grade was 38 and therefore, 55% of 38 is only 21 and the applicant being 22nd in the Seniority List could not get promotion. Having regard to these facts and circumstances

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of the case, we see no merit in this Original Application which is accordingly dismissed. No costs.

(M.R. MOHANTY)

JUDICIAL MEMBER

18/08/05

(B.N. SOM)

VICE-CHAIRMAN