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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK
ORIGINAL APPLICATION NO. 138 of 2007
Cuttack this the 16th day of January, 2009

Anupam Nandi

.....Applicant

-VERSUS-

Union of India and others

.....Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO.138 of 2007
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CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Anupam Nandi, aged about 45 years, S/o. late N.G.Nandi, Regional Controller of Mines, Indian Bureau of Mines, Mahani Complex, 2nd floor, 308 Dist Center, Chandrasekharapur, Bhubaneswar

... Applicant

By the Advocates: Mr.G.A.R.Dora
Smt.G.Rani Dora
J.K.Lenka

-VERSUS-

1. Union of India represented through its Secretary, Department of Mines, Indian Bureau of Mines, Ministry of Coal and Mines, Govt. of India, New Delhi
2. Controller General, Indian Bureau of Mines, Indira Bhokaur Civil Lines, Naggpur - 440001
3. Regional Controller of Mines, Indian Bureau of Mines, Mahanee Complex 308, District Control, Chandrasekharapur, Bhubaneswar-751016
4. Shri Harkesh Meena, Deputy Controller of Mines, Indian Bureau of Mines, PO-Kamla Nehru Nagar, Jabalpur, Madhya Pradesh-482002
5. Shri M.S.Waghmare, Deputy Controller of Mines, Indian Bureau of Mines, 29, Industrial Suburbs IInd Stage, Jumbur Road, Gorguntapalayam, Yashwantpuram, Bangalore-560022
6. Shri K.S.Yadav, Deputy Controller of Mines, Indian Bureau of Mines, 108, Nehru Nagar-II, Dehradun-248001

... Respondents

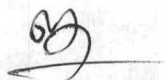
By the advocates: Mr.S.Behera, ASC

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Aggrieved by his non-selection to the post of Deputy Controller of Mines, as per the selection conducted during 2006, the applicant has filed this Original Application seeking the following relief:

- “(i) Set aside the selection and consequent promotion of Respondent Nos. 4 to 6 to the post of Deputy Controller of Mines at Annexure-10 series.



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- (ii) Direct fresh considration/sectiontreating the entries in the C.C.R. of the applicant for the year 2001-2002 not adverse and to take into consideration applicant's CCR for the year 2005-2006 and to select/promote the applicant with consequential benefits
- (iii) Pass any other order/orders as deemed fit and proper which would afford complete relief to the applicant in the facts and circumstances of the case."

2. The relevant facts, which are necessary for the disposal of this O.A. are as follows:

The applicant was selected as Assistant Controller of Mines and joined the said post on 25.9.1980. While continuing as such, the applicant was promoted to the post of Sr. Assistant Controller of Mines on 22.11.2001, which post he joined on 23.11.2001. While he was working as such, there occurred some vacancies in the posts of Deputy Controller of Mines and as per the recommendations of the Departmental Promotion Committee (Annexure-10 series dated 26.12.2006), some of his juniors, viz., Respondents 4 to 6 have been promoted by ignoring the seniority of the applicant. Although the applicants had filed so many representations, his case was not considered on the grounds that there were adverse remarks in his ACR for the year 2001-02.

It is the case of the applicant that though some adverse remarks were in his ACR for the year 2001-02, those adverse remarks should not have been considered by the DPC while recommending promotion to the post of Deputy Controller of Mines as it was incumbent on the part of the DPC to take into consideration the CRs only of five years preceding the selection. That apart, it is the further case of the applicant that even if some adverse remarks were in his ACR during 2001-2002, immediately on such remarks he was promoted to the post of Sr. Assistant Controller of Mines on 22.11.001. Hence the remarks, as per the principles laid down by the Apex Court, made just before the



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promotion to any post shall not be taken as a decisive factor regarding further promotion in the service.

3. When this O.A. came up for admission, this Tribunal had ordered notice and in pursuance to the notice, a counter has already been filed for and on behalf of the official respondents. Though notices were issued to the private Respondents 4 to 6, they have neither been represented by any counsel nor have they filed any counter reply.

4. Heard Shri G.A.R.Dora, learned senior counsel for the applicant and Shri S.Behera, learned Additional Standing Counsel appearing on behalf of the Respondent-Department.

5. The learned counsel appearing for the applicant submitted that as the applicant was promoted to the post of Sr.Assistant Controller of Mines on 22.11.2001, taking into consideration his service records and performance in the feeder category of Assistant Controller of Mines and as per the seniority list published and followed in the Department, the applicant being senior to Respondents 4 to 6, should have been selected and promoted to the post of Deputy Controller of Mines as per the selection made on 26.12.2006 as evidenced from Annexure-A/10 series. It is further contended by the learned counsel for the applicant Shri G.A.R.Dora that normally as per the rules followed in the Department all the eligible candidates were to be considered on the basis of the ACRs for the period from 2002 to 2006 and if so, the stand taken by the Respondents in their counter that the applicant could not be promoted to the post of Deputy Controller of Mines holds no water, particularly when adverse remarks were already expunged on the representation of the applicant as evidenced from Annexure-A/5, Office




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Memorandum dated 28.4.2008 of the Government of India, Ministry of Mines, Department of Mines in the Bureau of Mines (IBM) and this fact was already represented by the applicant to the Controller General of IBM (Indian Bureau of Mines), Nagpur, as per Annexure-A/6 dated 2.6.2004. Further it is the case of the applicant that even if any adverse remarks were in his ACR for the period 2001-02, the applicant was already promoted to the post of Sr. Assistant Controller of Mines on 22.11.2001 as per Annexure-A/1 order. Thus, it transpires that the adverse remarks made in the ACR of the applicant for the period 2001-2002 were ignored while considering promotion to the post of Sr. Assistant Controller of Mines. Further, it is contended by the learned counsel for the applicant that even if any adverse remark was there in the CCR of the applicant, the same was taken into consideration by the Departmental Promotion Committee while considering promotion of the applicant to the post of Sr. Assistant Controller of Mines, as evidenced from Annexure-A/1 promotion order. To substantiate this point, the learned counsel for the applicant placed reliance on the following judgments of the Apex Court.

- a) 1984(1)SLR 342 (J.D.Srivastava vs. State M.P. and Ors.)
- b) AIR 1987 SC 948 (Brij Mohan Singh Chopra vs. State of Punjab)
- c) 1992(2) SLR 2 (Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada); and
- d) 1996(2) SLR 615 (Narasingh Patnaik vs. State of Orissa).

It is also contended by the learned counsel that the adverse entries were made by the RCOM in the ACR of the applicant for the year 2001 – 02 without



18 watching his performance as he was on leave from 3.12.2001 to 31.3.2002 and during this period the applicant was discharging the additional responsibility of RCOM and had cleared up huge pending works lying unattended to. According to the learned counsel for the applicant, all those remarks were communicated to the applicant and subsequently the same have been expunged as per the order dated 28.4.2004 and if so, the claim of the applicant that he should have been selected to the post of Deputy Controller of Mines along with his juniors-Respondents 4 to 6 is justifiable.

6. To the above contentions of the counsel for the applicant, the learned Additional Standing Counsel, relying on the counter filed for and on behalf of the official Respondents, submitted that the applicant is not entitled to any relief claimed in the O.A. The learned counsel for the official Respondents further submitted that as the applicant was not ordered to dispose of all the pending matters in the absence of Regional Controller of Mines, it was the duty of the applicant to do the entire work with the approval of the RCOM or any senior officer and that the applicant taking advantage of the situation, violated the instructions and letters issued by the senior officers including the RCOM of Ranchi. Further, the learned counsel submitted that the Controller General, IBM expunged/modified/retained certain remarks in the ACR of the applicant for the year 2001-02. It is further stated that the adverse remarks were recorded in the CR of the applicant for the period 2001-02 and the DPC which considered the applicant's promotion from the post of Senior Assistant Controller of Mines to the post of Deputy Controller of Mines had considered the ACRs for the period 2000-01 to 2004-05 in respect of all the eligible candidates and observed the applicant 'unfit'. The learned counsel for the



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Respondents further submitted that the judgments relied on by the counsel for the applicant are not applicable to the facts of the case in hand as non-promotion of the applicant is based on relevant ground. They have added that since the vacancy pertains to the year 2006-07, ACR from 2000-01 to 2004-05 were rightly considered and if so, the applicant should not be aggrieved by his non-promotion. With these submissions, the official respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. On anxious consideration of the contentions raised by the counsel on either side and on perusing the records produced before this Tribunal and also in the light of the principles laid down by the Apex Court in the judgment relied on by the applicant, the question to be decided in this O.A. is whether the applicant is justified in approaching this Tribunal and whether the applicant is entitled to any relief claimed in the O.A. or not.

8. The fact that the applicant was promoted to the grade of Sr. Assistant Controller of Mines on 23.11.2001 has not been disputed and in the same manner the seniority of the applicant over Res. 4 to 6 is also not in dispute. Hence, the question to be considered is whether non-promotion of the applicant to the post of Deputy Controller of Mines notwithstanding the adverse remarks in the ACR for the period 2001-2002 is correct or not. The relevant recruitment rules pertaining to the promotion to the post of Deputy Controller of Mines mandate that a person having Degree in Mining Engineering from a Recognized University and having been within the age prescribed in the said rules and 10 years experience in the supervisory capacity, or such experience as required for the promotion to the post of Deputy Controller of Mines, can be selected for promotion to the post of

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Deputy Controller of Mines. A DPC for considering the promotion to the post of DCM also has to be constituted with the members as contemplated in the promotion rules. As per the promotion rules, the DPC has to assess the ACRs and other performance of the candidates basing on their seniority and experience in the Department. The eligibility of the applicant for promotion in line with the said rules is not in dispute, but he has not been recommended by the DPC solely on the ground that there were adverse remarks in his ACR for the year 2001-2002. As contended by the counsel appearing for the applicant, it is seen that despite adverse remarks recorded in the ACR of the applicant for the period 2001-02, he was promoted to the post of Sr. Assistant Controller of Mines on 23.11.2001 immediately thereafter, and if so, the ratio decided in *Narasingh Patnaik vs. State of Orissa (supra)* to the effect that if a Government servant is promoted to a higher post notwithstanding the adverse remarks such remarks lose their sting, is quite applicable to the facts of the instant case. This view has been taken by the Apex Court relying on an earlier decision in *Baikuntha Nath Das vs. Chief District Medical Officer, Baripada (Supra)*, wherein the Apex Court had categorically held that if a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose sting, moreso if the promotion is based upon merit (selection) and not upon seniority. Further, it is to be noted that even if any adverse remarks are made in the ACR of the applicant for the period 2001-02, these remarks have been already expunged as evidenced from Annexure-A/5, the memorandum of Government of India dated 28.4.004. While going through the said order, we have seen that the remarks made in the ACR of the applicant which are relevant for the promotion to the post concerned have

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been expunged. In this context, the contention in the counter is only to the effect that expunging by itself is not a reason to ignore the same for the subsequent promotion to the post of Deputy Controller of Mines does not hold any water. Having considered the ins and outs of the facts now revealed from the records, we are of the view that though the applicant has been promoted to the post of Deputy Controller of Mines subsequently, he was entitled to be promoted to the above post with effect from the date his juniors- Respondents 4 to 6 were so promoted.

9. Having regard to what has been discussed above, we direct the official Respondents to consider the case of the applicant for promotion to the post of Deputy Controller of Mines with effect from the date his juniors - Respondents 4 to 6 have been so promoted. It is also ordered that as the applicant has been already promoted to the post of Deputy Controller of Mines subsequent to the promotion of private Respondents 4 to 6, the promotion of the applicant shall only be ante-dated to the date of promotion of Respondents 4 to 6 with all service benefits, except the financial benefits.

10. In the result, the O.A. is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER