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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.285&286 of 2008
Cuttack, this the 16th day of February, 2009

Manoj Kumar Acharya & Anr. Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.285&286 of 2008
Cuttack, this the 16th day of February, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

OA No.285/2008

Manoj Kumar Acharya, aged about 34 years, S/o.Sri Golak Mohan Acharya, At/Po.Pritipur, Dist.Jajpur presently working as Danger Building Worker/High Skilled, Ordnance Factory, At/Po.Badmal, PS.Saintala, Dist. Bolangir, Orissa.

.....Applicant

By Advocate: M/s. S.K.Ojha, S.K.Nayak

- Versus -

1. Union of India represented through the Secretary to Government of India, Ministry of Defence, D.H.Q Post Office, New Delhi-110 011.
2. The General Manager, Ordnance Factory, At/Po. Badmal, PS Saintala, Dist. Bolangir.
3. Director General, Ordnance Factory Board, 10-A, Saheed Khudiram Bose Road, Kolkatta-700001.

....Respondents

By Advocate :Mr. U.B.Mohapatra, SSC

OA No. 286 of 2008

Pramod Kumar Mohanty, aged about 39 years, S/o. Makunda Mohanty, At/Po.Sithalo, Dist. Cuttack presently working as Danger Building Worker/High Skilled, Ordnance Factory, At/Po.Badmal, PS Saintala, Dist. Bolangir, Orissa.

....Applicant

By Advocate: M/s. S.K.Ojha, S.K.Nayak

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....Respondents

By Advocate :Mr. U.B.Mohapatra, SSC

ORDER
MR. C.R.MOHAPATRA, MEMBER (A):-

While the impugned order dated 28.07.2008 in OA No. 285 of 2008 is at Annexure-A/26 and in OA No.286 is at Annexure-A/19 we find no dissimilarity both on facts and law in both these cases. As such though we heard the matter one after the other we proceed to dispose of these OAs in a common order which would govern these two cases.

2. In OA No. 285 of 2008 the Applicant was initially appointed as DBW, SS (Danger Building Worker, Semi Skilled) in the scale of pay of Rs.2650-4000/- and promoted to the post of DBW, SK (Danger Building Worker, Skilled) carrying the scale of pay of Rs.3050-4590/- w.e.f. 02.04.2003. Subsequently, he was again promoted to the post of DBW, HS (High Skilled) carrying the scale of pay of Rs.4000-6000/- w.e.f. 14.07.2008. Similarly, in OA No. 286 of 2008 the Applicant promoted to the post of DBW High Skilled vide order under Anexure-A/18 dated 14.07.2008 with effect from the date when his juniors were promoted to the said grade. Fact remains that the promotions in both the cases were effected only after the decision of the Expert Committee/OFB. Also it is not in dispute that on promotion from Semi skilled to Skilled then High Skilled there has been no change of duties. It is only by way of incentive of placing the employees in higher scale to avoid the stagnation. But in both the cases the orders of promotion of the Applicants were cancelled vide order dated 28.07.2008 against which they submitted representations and, thereafter approached this Tribunal in these OAs seeking quashing of the impugned orders dated 28.07.2008 with further

direction to the Respondents to restore the applicants in the High Skilled Grade with all consequential benefits.

3. The Applicants sought the relief claimed in the OAs on the footing that the Respondents have violated the basic principle of natural justice. Though by cancellation of orders of promotion the Applicants have been visited with the civil consequence no notice was put to them. Further it has been urged that the authorities should not have surrendered their power on the pressure given by the Union and, therefore, the impugned orders are liable to be set aside.

4. It is the case of the Respondents that Respondent No.2 tried to settle the seniority issue by granting notional seniority to the Applicants and similarly affected persons as would be reflected from the order under Annexure-A/24 but it was brought to the notice of the authority that if it is done then a settled thing would be unsettled after a long lapse of time which is not permissible in the eyes of law. Further it has been contended by the Respondents that on the basis of the letter dated 17.07.2008 of the Local Trade Union, the Respondent No.2 had to cancel the promotion and notional seniority of Applicants; as the pressure of the local Trade Union was surmounted in such a way the Respondent No.2 failed to provide show cause notice to the Applicants before the order of reversion of the Applicants was issued. According to the Respondents, the Ordnance Factory, an Industrial Unit of Defence production, is primarily responsible for providing large scale of medium high caliber ammunitions to the Armed Forces of India. It was cautioned by the Union that if the promotion order of applicants is not cancelled then

there will be industrial unrest and thereby the production activities will be hampered. Had there been any agitational programme from the trade Union people, then the Respondent No.2 could not have achieved its target in time. So by considering the sensitive issue of this nature the Respondent No.2 instead of issuing show cause notice before reversion cancelled the orders of promotion of Applicants.

5. From the record as also from the arguments advanced by the parties it is revealed that the promotion of the Applicants to the posts of High Skilled DBW was in no way irregular nor they were given promotion in superseding the claims of their seniors. It was also not the case of the Respondents that both the applicants were ineligible to be promoted to the said post. Rather it is revealed from the record that the names of the Applicants were not properly placed in the seniority list for which they were ignored while giving promotion to their juniors and on rectification of such mistake, the Applicants were given promotion to High Skilled with effect from the date their juniors were promoted. This promotion was also effected after the recommendation of the Expert Committee of the OFB duly constituted for consideration of the cases of some of the left out employees. As such, the Respondents ought not to have surrendered their discretion on the pressure of the Union that too without giving the Applicants any opportunity before canceling their order of promotion as provided in various judge made laws which needs no emphasis. However, by the order of stay granted by this Tribunal while issuing notices to the Respondents calling for their counter, both the Applicants are continuing in the higher post but not getting their salary.

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6. In view of the above, while deprecating the action of the Respondents in cancelling the order of promotion on the pressure of the Union, we hereby quash the impugned order dated 28.07.2008 in both the OAs and as a consequence restore their order of promotion to the posts of DBW, HS and direct the Respondents to calculate and grant the differential pay by way of salary in the High Skilled Grade within a period of 30 days from the date of receipt of copy of this order.

7. In the result, both the OAs stand allowed. There shall be no order as to costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chapati
(C.R. MOHAPATRA)
MEMBER (ADMN.)

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