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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 412 of 2008

Cuttack, this the ~~20th~~ day of September, 2011

Goutam Ghosh

.... Applicant

-v-

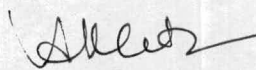
Union of India & Others

.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? ✓


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 412 of 2008

Cuttack, this the 20th day of September, 2011

CORAM:

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

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Goutam Ghosh, on of Late Kamalesh Ghosh, aged about 56 years, at present working as Senior Lecturer in the Institute of Hotel Management, Catering Technology and Applied Nutrition, Bhubaneswar-751 007.

.....Applicant

By legal practitioner: Mr.G.Rath, Sr Counsel

&

Mr.A.K. Mohanty

-Versus-

1. Union of India represented by the Secretary, Ministry of Tourism Govt. of India, New Delhi-110 001
2. Additional Director General, Ministry of Tourism, Government of India, New Delhi-110 001
3. The Principal, Institute of Hotel Management & Catering Technology & Applied Nutrition, VSS Nagar, Bhubaneswar-751007
4. Chairman, Board of Governors, Institute of Hotel Management & Catering Technology & Applied Nutrition, VSS Nagar, Bhubaneswar-751 007
5. Smt.Arya Panigrahi, daughter of Sri Fakir Charan Panigrahi, aged about 54 years, at present working as HOD in the Institute of Hotel Management and atering Technology and Applied Nutrition, VSS Nagar, Bhubaneswar-751007
6. The Director (Admn. & Finance), National Council for Hotel Management and Catering Technology, A-34, Sector-62, Noida-201301

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC

&

Mr.D.P.Dhalsamant, Counsel (For Res.5)

ORDER

MR. A.K.PATNAIK, MEMBER (JUDL.):

The Applicant is a Senior Lecturer in the Institute of Hotel Management, Catering Technology and Applied Nutrition, Bhubaneswar. He has filed this OA challenging the promotion of Respondent No.5, who while working as Senior Lecturer Cum Senior Instructor was promoted to the post of HOD of the Institute of Hotel Management and Catering Technology & Applied Nutrition, Bhubaneswar in the pay scale of Pay of Rs.10, 000-325-15,200/- with usual allowance with immediate effect vide order under Annexure-A/21 dated 09-07-2007. He has prayed to quash the said order of promotion of Respondent No.5 under Annexure-A/5; to declare constitution of DPC for promotion to the post of HOD in the IHM, Bhubaneswar as illegal and contrary to the provisions of Recruitment Rules; to declare the entire proceedings of the DPC *ab inito* void and to direct the Respondents to consider his case for promotion to the post of HOD w.e.f. 09-07-2007 (i.e. from the date Respondent No.5 was promoted and posted as HOD of the IHM, Bhubaneswar).

2. Two separate counters have been filed one by the departmental Respondents and the other one by the Respondent No.5 denying the contentions raised by the Applicant in support of

his prayer made in the OA. Applicant has also filed rejoinder to the counter filed by the Respondents.

3. Heard Learned Counsel appearing for respective parties and perused the materials placed on record.

4. The contention of the Applicant's Counsel is that after having the qualification of Degree in Commerce and 3 years Diploma in Hotel Management, the Applicant was appointed as Lecturer in Food Craft Institute, Bhubaneswar on 2nd February, 1979 which Institute was subsequently taken over by the Government of India and renamed as Institute of Hotel Management and Catering Technology and Applied Nutrition (in short 'IHM', Bhubaneswar). Thereafter, he was promoted to the post of Senior Lecturer in IHM, Bhubaneswar w.e.f. 01-01-1986 and from 05-06-1990 to 23-07-1996 he worked as Principal Food Craft Institute, Gangtok Sikkim, on deputation basis. He worked as Officer on Special Duty in Food Craft Institute, Patharajpur (Orissa) from 14-08-1997 to 09-05-2003. After completion of 24 years of service he was granted the financial up gradation under ACP to the pay scale of Rs.10, 000/- to 15,200/- w.e.f. 01-02-2003 on the recommendation of the duly constituted

Departmental Promotion Committee constituted for the above purpose.

(i) The post of HOD was created in the Institute w.e.f. 23-09-1985 and was lying vacant till July, 2007. As per the Recruitment Rules, 1984, the post of HOD was a direct recruitment post and the eligibility criteria for such post was that the candidate should be a Graduate with three year Diploma in Institutional Management/Food Service Management and should have at least 7 years experience in relevant field at a Senior Level. While he was having the eligibility as per the Rules, Respondent No.5 did not have the qualification of passing in the three years Diploma Course in Hotel Management. In pursuance of the notifications issued by the Respondent-Department under Annexs-A/7,A/10 & A/11, for filling up of the post of HOD, IHM, Bhubaneswar, he has applied and appeared at the interview but could not be selected as the Respondent-Department later on cancelled the selection undertaken pursuant to Annxs-A/7,A/10 & A/11.

(ii) The Revised Recruitment Rule, 2003 for the post of HOD in the IHM, Bhubaneswar came w.e.f. 11-06-2003. The Departmental Promotion Committee was convened on 06-07-2007. (iii) The

contention of the Applicant is that the DPC instead of his ACRs for the years 2001-2002 to 2005-06 took into consideration his ACRs for the year 2002-03 to 2006-07 and without taking into consideration the past experience of the applicant as Principal, FCI, Gangtok and OSD, FCI Pathrajpur recommended the case of the Respondent No.5 for promotion to HOD, IHM, Bhubaneswar although, Respondent No.5 does not have the essential qualification of three year Diploma in Hotel Management and bridge course.

(iv) The post of HOD, IHM, Bhubaneswar has been lying unfilled since 23.09.1985. As per the Recruitment Rules prevailing at the relevant time the post ought to have been filled in by way of direct recruitment. Therefore, filling up of the said post on promotion by Respondent No.5 following the amended Recruitment Rules which came into force in the year 2003 is not sustainable. In this connection reliance has been placed to the case of **Arjunsingh Rathore V B.N.Chaturvedi & Ors** (2008) 2 SCC (L&S) 387. The Respondent No.5 did not have any qualification prescribed for the post of HOD as per 1984 RR. Hence the promotion of Respondent No.5 as per RR 2003 was bad and illegal.

(v) Further contention of the Applicant's Counsel is that the applicant reliably believes due to average grading in his ACRs for some of the years his case was not recommended by the DPC for promotion to HOD, IHM, Bhubaneswar but without looking into whether such below bench mark grading had ever been communicated to the Applicant and, therefore, by application of law laid down by the Hon'ble Apex Court in the case of **Dev Dutt V UOI and Others**, AIR 2008 SC 2513 non-recommendation of his case and recommendation of the case of the Respondent No.5 for promotion is not sustainable.

On the above grounds, Applicant's Counsel has reiterated his prayer made in this OA.

5. On the other hand, Learned Counsel appearing for the Respondent- Department so also Respondent No.5 have strongly refuted the contentions of the Applicant's Counsel. The contention of the Respondents' Counsel is that as per the letter of the Government under Annexure under Annexure-R/3 dated 27.1.1997 the said post of HOD in IHM; Bhubaneswar stood abolished with effect from 27.01.1997. By way of restructuring, some academic posts including one post of HOD in the Hotel Management and Catering Technology

and Applied Nutrition, Bhubaneswar were made available by the letter under Annexure-R/6 dated 12th May, 2006 and therefore, became vacancies of the year 2006-07. Therefore, filling up of the vacancies of 2006-07 by the RR 2003 cannot be unjustified. Further stand of the Respondents is that as per the RR 2003 the post was to be filled up through promotion from among Sr. Lectures having at least five years experience, three year Diploma/Degree or should have passed a bridge course as prescribed by the National Council for Hotel Management and Catering Technology, New Delhi. The Respondents' Counsel by referring to the letter under Annexure-R/10 dated 27th August, 2004 have stated that the contention of the Applicant that the Respondent No.5 does not have the bridge course qualification is a mere conjecture and surmises. They have also denied the contention of the Applicant that the DPC found him unfit because of the average grading in his CCR and it was contended that the DPC constituted by the high level officers assessed the suitability of the applicant vis-à-vis the Respondent No.5 and thereafter recommended the name of Respondent No.5 taking into consideration the overall grading of the ACRs etc.

(i) Over and above the arguments stated above, it was specifically contended by Respondent No.5's Counsel that though the applicant has raised objection with regard to the recommendation made by the DPC but none of the members of the DPC has been made as a party to this OA. Further it was submitted by him that after graduation, the Respondent No.5 possessed the post graduation in Home Science from Utkal University, and Post Diploma in Deicities in the year 1976. Thereafter she was appointed as Assistant Lecturer under the Respondent-Department in the year 1976, became Lecturer in 1979 Sr. Lecturer w.e.f. 1.1.19867 and Post Diploma in advanced Hospitality Management which is utmost beneficial for discharging the duties of HOD. Next contention of the Respondent No.5 is that the applicant has no right to claim that rules governing condition s of service should be forever the same as the one when he entered service. The Government has every right to amend/alter the Rules which cannot be objected to by an employee and the authority/Government has every right to take a decision as to which method should be adopted for recruitment to any particular post. It may depend on various factors relevant for the purpose e.g. status of the post, its responsibilities and job requirement, the

suitable qualifications as well as the age as may be desirable may also be taken into consideration while making such an administrative decision. Hence it was prayed by him that as the promotion of the Respondent No.5 was in accordance with Rules on the recommendation of the DPC headed by experts and well experienced officers, no interference is warranted and this OA being devoid of merit is liable to be dismissed.


6. We have considered the rival submission of the respective parties and perused the materials placed on record. Prima facie it is noticed that the stand taken by the Applicant in this OA is replete with contradictions. According to the Applicant the post of HOD ought to have been filled up by way of direct recruitment as per the RR 1983 and on the other hand his prayer is to quash the promotion of the applicant to the post of HOD and direct the Respondent-Department to promote him to the said post with effect from the date when Respondent No.5 was promoted to the said post. We are at a loss to appreciate the grounds in their proper perspective so far as the claim of the Applicant is concerned. Be that as it may, the stand of the applicant that since the vacancy was of the year prior to RR 2003 which should have been filled up by the existing

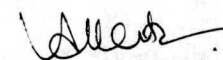
Recruitment Rules 1983 is not convincing because it is seen that by the order under Annexure-R/3 dated 27.01.1997 the post of HOD stood abolished w.e.f. 27.01.1997 and on restructuring the post was made available only by the order under Annexure-R/6 w.e.f. 12th May, 2006 and, therefore, the Respondent- Department have rightly filled up the post by way of promotion as per RR 2003. As regards the contention of the applicant that the applicant does not have the qualification of bridge course is far from truth as it is the specific case of the Respondents which is also borne out from the record that the Respondent No.5 has cleared bridge course which is the required qualification for promotion to the post of HOD as per RR 2003. She had to get 9 credit points to pass the bridge course examination. She was awarded 8 credit points and she pledged to the National Council to consider one credit point based on her technical qualification so that she need not have to appear at the examination further. In response to the representation National Council in their letter No. AF 4(1)/2001-NC 1787 dated 27th August, 2004 (Annexure-R/10) informed that the office has examined the case in detail and updated her credits based on testimonials furnished. As such, she will not be required to take up any further examination. In view of the above it

is held that this stand of the applicant does not hold any water so as to grant him the relief claimed in this OA. We find that the DPC was constituted by the high level officers having experience and expertise in the field. They have recommended the case of the Respondent No.5 after making overall assessment of the case of the applicant vis-à-vis the Respondent No.5. We see no reason for any animus of the Members of the DPC towards the applicant. They have gone by the records/performance of the candidates and recommended the case of the Respondent No.5. It is trite law that Tribunal cannot sit as an appellate authority to examine the recommendation of the selection committee like a court of appeal to call for the personal records and constitute selection committee to undertake this exercise. It is the contention of the Applicant that the DPC did not recommend his case based on the average grading in his ACRs. But we find such assertion of the applicant to be presumptuous. The DPC recommendation was after overall assessment and not solely on the basis of the grading of the ACRs of the candidates. The applicant made some uncalled for allegation of *mala fide* but without making any Member of the DPC as party. It is trite law that allegation of *mala fide* and irregularity in constitution of selection committee are

often made by the unsuccessful candidates but it is the duty of the Tribunal to see how far it is justified. On examination we find no basis for such allegation.

7. For the discussions made above, this OA stands dismissed by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)