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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.477 of 2010

Cuttack this the 30th day of January, 2013

CORAM:

**HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)**

Shri Pradipta Kumar Mohanty,
aged about 62 years,
S/o.late Chaturbhuj Mohanty,
retired SDE(Trunks), Telephone Bhawan,
under GMTD, Bhubaneswar
at present residing in A/18 (Shop-cumresidence),
Ruhika Market,
Baramunda, Bhubaneswar,
PIN-751 003

...Applicant

(By Advocates:M/s. S.K.Ojha)
D.K.Mohanty

-VERSUS-

Union of India represented through

1. Secretary,
Government of India,
Ministry of Communications & Information Technology, Department of
Telecommunications,
421, Sanchar Bhawan,
20-Ashoka Road,
New Delhi-110 001
2. Chief General Manager,
Eastern Telecom Project,
Bharat Sanchar Nigam Limited,
Kolkata,
Pin-700 027
3. Deputy General Manager,
Telecom Microwage Project,
Plot No.82,
Sahidnagar,
Bhubaneswar,
PIN-751 007

...Respondents

(By Advocates:Mr. S.B.Jena)



ORDERSHRI R.C.MISRA, MEMBER(A):

Applicant in this Original Application has challenged the order of rejection of his prayer for ad hoc promotion issued by the Ministry of Communications & Information Technology, Department of telecommunications, who is Respondent No.1 herein vide Annexure-A6 dated 22.2.2010.

2. Facts of the matter, as alleged by the applicant, in short are that officers junior to him in the cadre of SDE were promoted as Sr.SDE whereas he was left out. Admittedly, a disciplinary proceedings had been initiated against the applicant, on conclusion of which punishment of reduction by one stage increment for six months without cumulative effect was imposed on him. When the juniors to the applicant were promoted to the next higher grade one disciplinary proceedings was still continuing against him. However, his claim was that he should have been considered for ad hoc promotion in the light of DOP&T O.M. No.22011/4/91-Estt(A) dated 14.9.1992. Putting forth his grievance, the applicant had approached this Tribunal in O.A.No.683/2005. This Tribunal, after adjudicating the matter disposed of the said O.A. vide order dated 30.1.2009 directing the Respondents therein to consider the case of the applicant for ad hoc promotion from the date on which his juniors were given such ad hoc promotion in the light of the DOP&T O.M. cited supra within a period of 45 days from the date of receipt of copy of the order and communicate the result to the applicant within a period of 15 days thereafter. In compliance with the direction of this Tribunal, the Department of Telecommunications, vide their order dated 22.2.2010(Annexure-A/6) informed the applicant that his case for ad hoc promotion to STS of ITS, Group-A had been considered in the light of Para-5 of the DOP&T O.M. dated 14.9.1992. It had been further informed therein that the applicant had been considered for ad hoc promotion in October, 2002 but not for regular promotion and therefore, Para-5 of the DOP&T O.M. is not relevant in his case. Further, it was intimated that none of his juniors has been promoted on regular basis to STS of ITS, Group-A and that a prosecution case was still

pending against him. In view of these facts the applicant was informed by the authorities that he was not eligible for ad hoc promotion as per Paragraph-5 of DOP&T O.M. dated 14.9.1992.

3. The relief sought by the applicant is that this order of rejection vide Annexure-A/6 should be quashed since it is not in conformity with the above mentioned O.M. of DOP&T and that pendency of the disciplinary or criminal proceedings should not have operated as bar for his ad hoc promotion.

4. In the counter it has been mentioned by the Respondents that the applicant had been considered for ad hoc promotion to STS Grade along with his immediate juniors in October, 2002, but he was left unassessed due to non-availability of his ACR for the relevant period and that he was also not cleared from vigilance angle inasmuch as disciplinary and criminal cases were pending against him. Further, it has been submitted by the Respondents that Para-5 of DOP&T O.M. as referred to above, is applicable in respect of officers where disciplinary case has not been concluded even after expiry of two years from the date the first DPC kept its findings in a sealed cover and the DPC referred here is for regular promotion and not for ad hoc promotion. Since in the meantime, the applicant has retired from Government service on attaining the age of superannuation on 31.10.2008 he was actually not available for ad hoc promotion. Accordingly, they have intimated the applicant on 22.2.2010 in compliance of the orders of this Tribunal in O.A.No:683/2005.

5. It is relevant in this case to have a look at the DOP&T O.M. dated 14.9.1992. The Respondents have taken the stand that this circular is applicable for regular promotion and not for ad hoc promotion. However, Para-5 of the said O.M. starts with "**Procedure for ad hoc promotion**".

6. From this, it is quite clear that Para-5 of DOP&T O.M. is with regard to Procedure for ad hoc promotion only. The Respondents have taken this continued plea that the said O.M. is applicable for regular promotion but not for ad hoc promotion. In the face of it, therefore, the contention of the Respondents



appears to be incorrect. Para-5 of the O.M. mentions that in spite of the six monthly review referred to in Para-4, there may be cases where the disciplinary and criminal case against the Government servant is not concluded even after a period of two years from the date of the meeting of the first DPC which kept its findings in respect of the Government servant in a sealed cover. In such a situation, the Appointment Authority may review the case of the Government servant provided he is not under suspension to consider the desirability of giving him ad hoc promotion, keeping in view certain aspects as mentioned in the O.M. which are quoted below.

- a) Whether the promotion of the officer will be against public interest
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

7. It may be mentioned herein that the applicant and the Respondent were given an opportunity for filing written notes of submission, which they have filed. We have gone through the contents of the same.

8. The Office Memorandum dated 14.9.1992 of the Department of Personnel and Training is on the subject of promotion of Government servants against whom disciplinary and court proceedings are pending or whose conduct is under investigation. There is an emphasis about ~~effects~~ ^{steps} to be taken up for expeditious finalization of proceedings. Para-5 of the O.M. is about procedure for ad hoc promotion in cases where the proceedings are not concluded even after two years of the 1st DPC which kept its findings in a sealed cover.

In the face of it, the Respondents cannot take a stand that Para-5 of the O.M. is not relevant for ad hoc promotion. Such a stand is factually incorrect. The

instructions of the Government have to be correctly read, and holistically interpreted. In the counter filed by Respondents, it ^{has} been stated that none of the junior ^{to} the applicant has been promoted to STS Grade on regular basis. The question here is, if not on regular basis, on what basis the promotions have been given. Has it not been on the basis of proceedings of a Departmental Promotion Committee ? It is incumbent upon the authorities to correctly and judiciously apply the instructions to the Government servants. Without going into the merits of this individual case, this principle needs to be emphasized as a matter of general application.

9. For the reasons discussed above, it can be concluded that the direction of this Tribunal issued earlier to consider the case of the applicant in line with DOP&T O.M. dated 14.9.1992 has not been properly and judiciously followed by the Respondents. The mention that Para-5 of the O.M. does not apply to ad hoc promotion is in the face of it an incorrect statement as elaborately explained in Para-8 above. In the interest of justice, it is desirable that the Respondents should reconsider this matter in keeping with DOP&T O.M. dated 14.9.1992. Accordingly, the Respondents are directed to take a decision as stipulated above and issue a well reasoned order with due application of mind, within a period of 45 days from the date of receipt of this order. In the fitness of things, the impugned order dated 22.2.2010 vide Annexure-A/6 to the O.A. is quashed.

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


(R.C.MISRA)
MEMBER(A)

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(A.K.PATNAIK)
MEMBER(J)