

20

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK


**ORIGINAL APPLICATION .NO.686 OF 2010**


Cuttack this the 27<sup>th</sup> day of April, 2012

Chinni Koteswar Rao ..... 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 Tribunal or not? ✕

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

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

21  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**ORIGINAL APPLICATION .NO.686 OF 2010**

Cuttack this the 27<sup>th</sup> day of April, 2012

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Chinni Koteswar Rao, aged about 59 years, Son of Chinni Narasimham, At: D.171, NALCO Nagar, PS-Chandrasekharpur, Bhubaneswar-751 023, Dist-Khurda, at present working as GM (Finance), NALCO Corporate Office, NALCO Bhawan, Nayapalli, Bhubaneswar-751 061

...Applicant

By the Advocates : M/s.P.C.Sethi & A.K.Moharana

-VERSUS-

1. National Aluminum Company Limited, represented through its Chairman-cum-Managing Director, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar-751 061, Dist-Khurda
2. Sri Arun Kumar Sharma Director (Production), NALCO Bhawan, P/1, Nayapalli, Bhubaneswar-751 061, Dist-Khurda
3. Ashok Sapra, House no.28, Block No.0, Lajpat Nagar, 1<sup>st</sup> Floor, New Delhi-110 024
4. S.S.Manurkar, Plot No.20, House No-S-2-123, Medical & Health Colony, Near Vijayapuri Colony, Saheb Nagar Road, Vanaspahali Puram, Hyderabad-500070

...Respondents

By the Advocate : Mr.Rajib Rath

O R D E R

**A.K.PATNAIK, MEMBER(J):**

In this Original Application the applicant has sought for the following relief.

- i) To direct the Respondent No.1 to promote the applicant with retrospective effect from June 2007 by quashing the order of the Respondent No.1 dated 17.06.2010 under Annexure-A/9.
- ii) To direct the Respondent No.1 to fill up all the post that were lying vacant in the year 2007 for

100

the grade of E-9 and give promotion to the applicant w.e.f. June 2007 i.e., the date of conducting of DPC

- iii) To direct the Respondent No.1 to promote the applicant in the year 2007 to the grade of E-9 by quashing the order of promotion of the Respondent No.2 under Annexure-A/3 with effect from 1.11.2007.
- iv) To direct Respondent No.1 to give arrear salary and consequential benefits along with interest @ 18% per annum to the applicant from the date of promotion.
- iv) And pass such other order/orders as may deemed fit and proper in the interest of justice.

2. Shortly stated, the case of the applicant is that he initially joined under the Respondent-NALCO as Accounts Officer in the Grade of Executive-2 in the year 1981 & subsequently he was promoted from the Grade of Executive-3 to Executive-8 in between 1984 to 2004. While the matter stood thus, the DPC met for considering promotion to the Grade of Executive-9 wherein though the case of the applicant was considered, yet he was not promoted whereas Respondent No.2 was promoted vide order dated 31.10.2007 (Annexure-A/3).

Aggrieved with the above, the applicant submitted representations dated 24.10.2009 followed by another representation dated 15.4.2010 to the Respondent No.1. As his representations did not yield any consideration, the applicant has moved this Tribunal in the instant OA seeking the relief as referred to above.

LAU

3. It is the case of the applicant that he was promoted to the Grade of Executive-8 level by superseding other employees because of his outstanding ability and performance but he has been denied promotion to E-9 with mala fide intention. According to the applicant, only two posts out of four vacancies available in the year 2007 have been filled up by promotion of two employees i.e. Respondent Nos. 3 and 4 from the cadre of General Manager, thereby leaving two posts in the Grade of E-9 vacant..The same should have been filled up from amongst the meritorious employees according to the NALCO promotion rules and therefore the acceptance of recommendations of the DPC by Respondent No.1 is contrary to the NALCO Promotion Rules made for the post of Executive Director in the Grade of E-9 level. It is the further case of the applicant that the Promotion Rule No.1.1.22.3 clearly mentions that promotion to all other grades including the Grade E-9 shall be vacancy based and on merit only. In the circumstances, it is the contention of the applicant that there being two more vacancies, he should have been promoted as the promotion to Grade of E-9 is vacancy based.

All

94

4. The Respondent No.1 in their counter while admitting the contention of the applicant that promotion from E-8 to E-9 is vacancy based and on merit only has stated that the Clause 1.1.22.5 of Promotion Rules prescribes that promotion would be on the basis of Appraisal ratings (80 marks), Seniority (10 marks) and Interview/Assessment of DPC (10 marks). According to the Respondent No.1 as per Rule 1.1.22.23 merit is the sole criterion for consideration for promotion from the grade E-8 to E-9. It has also been submitted that the applicant had been considered along with other eligible executives, but he was found unsuitable. As regards the vacancy position in the year 2007, it has been stated that there were only two vacancies and consideration was also done for another one anticipated vacancy in that year for which Respondent No.2 was empanelled and against those two vacancies, it has been submitted that Respondent Nos. 3 and 4 were given promotion. According to Respondent No.1 there being no illegality meted out to the applicant nor there being any infringement of promotion rules, the O.A. being devoid of merit deserves to be dismissed.

4. We have heard Shri P.C.Sethi, learned counsel for the applicant and Shri R.Rath, learned counsel appearing for

16/11/07

Respondent-NALCO and perused the materials on record. We have also gone through the rejoinder filed by the applicant as well as the reply to rejoinder filed by Respondent No.1. Having regard to the submissions so made by both the parties, the short point to be determined is to whether any right of the applicant in so far as promotion to E-9 is concerned has been infringed ?

5. It is an admitted fact that the promotion to E-9 is a vacancy based one and to be made on merit only. It is also an admitted fact that the applicant had been considered along with other eligible incumbents by the DPC for promotion to E-9 in the year 2007. So also, the applicant has not made any grievance against the promotion of Respondent Nos. 3 and 4 to the E-9 grade. On a reference being made to his representation dated 24.10.2009 followed by another representation dated 15.4.2010, it reveals that the applicant had brought to the notice of Respondent No.1 the sequence of events from 2006 to 2009 when successive DPCs met for considering promotion to E-9 wherein although he had been considered but could not be promoted; and in the circumstances, he had prayed in his representation under Annexure-A/7 as under:

all



96  
*"Under the above circumstances, may I request you Sir, to review the case of the undersigned in redressing my grievance rendering justice in view of my rendered service and career growth".*

6. In response to the above, the Respondent No.1 vide communication dated 14.06.2010 under Annexure – 9 intimated the applicant as under:

*"Sub: Appeal for injustice in career growth:*

*Dear Sir,*

*This refers to your representation addressed to Chairman-cum-Managing Director on the above mentioned subject. In this context, we would like to intimate you that your appeal has duly been examined and considered by the competent authority.*

*Management has given due consideration to your case and appreciate your contribution to the organization. You are aware that as per Nalco R&P Rules for Executives, 1997 (no:1.1.22.3 specifically) the promotion from one level to another is made as per the recommendation of DPC and approval competent authority thereon.*

*As per the said rule promotion to a higher grade i.e., E7 and above, is based on merit only. Therefore, while recommending for promotion, the DPC assesses the suitability of eligible executives taking into account the comparative merit position in the concerned cadre and grade, which is based on certain relevant factors; such as performance, conduct, appraisal rating and recommends in order of merit keeping in view the availability of vacancy and organizational need.*

*So far as your merit position is concerned, it was found relatively at a lower stage compared to that of the promoted executive of your cadre and grade. As such, the DPC did not recommend your case for promotion to next higher grade. Since merit is considered as prime factor for promotion to the grade under consideration, your feeling of supersession is not correct.*

*Hence, you will appreciate the position*

*Sd/*

*(P.C.Panigrahi)*

*General manager (H&A)"*

10/11

97

7. Perusal of the representations of the applicant vide Annexures-A/7 and A/8 vis-à-vis impugned communication dated 14.06.2010(Annexure-A/9) makes it conspicuously clear that the applicant is not perhaps aggrieved with the promotion of Respondent No.2 to the grade of E-9 in the year 2007 inasmuch as no such grievance has ever to have been ventilated by him to the Respondent No.1 at any point of time as soon as the Annexure-A/3 was issued. Viewed from this angle, there being no specific relief claimed before the Respondent No.1 nor any such relief so claimed having been considered and rejected by the latter, it cannot be held that a cause of action in that score has ever arisen for approaching the Tribunal. In other words, what we mean to say is that the relief sought for by the applicant in this O.A. is not in consonance with the relief sought by the applicant before Respondent No.1 as per his representations (Annexures-A/7 and A/8) and as such, seeking relief to quash Annexure-A/3 dated 31.10.2007 by the applicant is a misconceived one and there is no cause of action. This apart, having been considered by the DPC held in the year 2009 for promotion to E-9, the applicant cannot make a "U" turn and lay a claim in the year 2009 that he should have been promoted against E-9 that

10/11



was lying vacant in the year 2007. In the circumstances, it would be far stretching by the Tribunal to come to the aid of the applicant.

8. In so far as his non-promotion by the DPC in the year 2009 is concerned, similarly, the applicant has not made any specific point before Respondent No.1 as to who has been illegally or favourably promoted to E-9 notwithstanding the fact that he has had a better marking than the executive so promoted. In this view of the matter, the relief sought for by the applicant for quashing Annexure-A/9 seems to be irrational and does not stand to judicial scrutiny inasmuch as even conceding for the sake of argument, the same is quashed, in effect, it would yield no fruitful result.

9. For the reasons discussed above, we hold that the relief claimed by the applicant is baseless and unfounded as there exists no cause of action for the applicant to seek such relief as he has claimed in this O.A. In this view of the matter, while answering the point in issue in the negative, we hold that the instant O.A. as <sup>laid</sup> ~~is~~ is a misconceived one and accordingly, the same is dismissed. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

BKS

  
(A.K. PATNAIK)  
JUDICIAL MEMBER