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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.302 OF 2011

Cuttack this the 17th day of October, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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1. Umesh Chandra Maharaj, aged about 35 years, Son of Sri Nrusingha Ch.Maharaj, now residing at Type-II, Vth Phase, OFBL Estate, At/PO-Badmal, Dist-Bolangir, presently working as DBW/High Skilled, OFBL, Badmal.
2. Sanjib Ku.Sahu, aged about 36 years, Son of late Kunjabihari Sahu, now residing at Type-II, 3rd Phase, OFBL Estate, At/PO-Badmal, Dist-Bolangir, presently working as Supervisor/NT,OFBL, Badmal.
3. Siba Charan Swain, aged about 43 years, Son of Sri Madhaba Nanda Swain, now residing at FA-30/I, IDCO Colony, At/PO-Badmal, Dist-Bolangir, presently working as DBW/Skilled, OFBL, Badmal.
4. Premraj Puta, aged about 38 years, Son of Sri Paramananda Puta, now residing at Type-II, Vth Phase, OFBL Estate, At/O-Badmal, Dist-Bolangir, presently working as Storekeeper, OFBL, Badmal.
5. Bijaya Ku. Tripathy, aged bout 38 years, son of Sri Prakash Ch. Tripathy, resident of Chndrasekhar Nagar, Bolangir, presently working as DBW/SK, OFBL, Badmal.
6. Manoj Ku. Acharya, aged bout 37 years, son of Sri Golak Mohan Acharya, resident of Qr. No.20, IDCO Colony, presently working as DBW/HS, OFBL, Badmal.

... Applicants

By the Advocates: M/s. S.K.Ojha & S.K.Nayak

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1. Union of India represented through its Secretary to Government of India, Ministry of Defence, Defence Head Quarters, New Delhi-110 011.
2. The General Manager, Ordnance Factory, At/PO-Badmal, Dist-Bolangir-767770
3. The Director General, Ordnance Factory Board, 10-A, Saheed Khudiram Bose Road, Kolkata-700 001
4. The Works Manager/Administration, Ordnance Factory, At/PO-Badmal, Dist-Bolangir-767770

...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

O R D E R

A.K.PATNAIK, JUDICIAL MEMBER: Applicants (six in numbers) are the Technical personnel at present working in different capacities under the Respondent-Organization have moved this Tribunal being aggrieved with the decision communicated vide Annexure-A/9 dated 29.4.2011 by the Respondent-Organization wherein their request for promotion to the post of CM/T based on LDCE – 2010 has not been acceded to. In the circumstances, the applicants have sought for the following relieves:

- i) To quash the letter/order dated 29.04.2011 under Annexure-A/9 and Selection Notification dtd. 23.08.2011 under Annexure-A/17
- ii) To direct the Respondents to promote the applicants to the post of Chargeman (Chem.) from the panel published on 12.10.2010.
- iii) To pass any other order/orders as deemed fit and proper in the circumstances of the case for ends of justice.

2. It is the case of the applicants that the Ordnance Factory Board, vide Annexure-A/2 dated 31.03.2010 issued instructions to the authorities of the Factories/Units within its control for filling up of vacancies in the post of Chargeman/Tech & Non-Tech (Stores & OTS) through Limited Departmental

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Competitive Examination for 2010-11, taking into account the vacancies of Chargeman (Tech. & Non-Tech) in the LDCE quota only occurring and available upto 31.03.2010. Soon thereafter, the Ordnance Factory Board vide Annexure-A/3 dated 7.4.2011 issued corrigendum to the effect that Factories/Units, instead of taking into account the vacancies of Chargeman (Tech & Non-tech) in the LDCE quota only occurring and available upto 31.03.2010 shall take into account the vacancies of Chargeman (Tech & Non-tech) in the LDCE quota only occurring and available upto 31.03.2011. According to the applicants, while issuing selection notification, the Factory Administration did not follow the instruction of the Board and only notified 2 vacancies of Chargeman(Chem) in short CM/Chem without taking into account the anticipated vacancies likely to occur as on 31.03.2011, in line with the Corrigendum (Annexure-A/3). The applicants without any objection to the above action of the Factory Administration appeared in the aforesaid examination and came out successful, but could not be promoted due to less number of vacancies in CM/Chem. According to the applicants, four vacancies in CM/Chem. arose when four CM/Chem got promotion to AF/Chem w.e.f. 31.5.2010 and again two vacancies in CM/Chem arose when 02 CH/Chem were promoted to AF/Chem w.e.f. 28.07.2010 subsequently another promotion of 18 incumbents CM/Chem to JWM/Chem resulted a total 24 posts of CM/Chem falling vacant within 31.3.2011. As per the policy 25% of the aforesaid vacancy works out to 06 posts which are meant only for LDCE quota. It is the specific case of the applicants that as per OFB letter dated 7.4.2010, vacancies were to be worked out taking into account the vacancies occurring and available upto 31.03.3011, and in the circumstances, they having qualified in the LDCE Examination should have been promoted against the available vacancies as on 31.03.2011. In this connection, the representation preferred by the Applicant No.2 vide Annexure-A/8

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dated 11.03.2011 having been rejected by the Respondent-Organization as per Annexure-A/9 dated 29.4.2011, the applicants have moved this Tribunal in the present O.As.

3. Respondent-Organization have opposed the prayer of the applicant by filing a detailed counter. Since the grounds urged in the counter are almost akin to the grounds taken by them while rejecting the claim of the applicant vide Annexure-A/9 dated 29.4.2011, it would be profitable to quote hereunder the entire gist of the said rejection letter.

“Sub: Requesting for promotion on the basis of selection conducted for LDCE -2010 to the post of CM/T.
Ref: Your applications dated 11.03.2011 on the subject matter.

Your above referred application was examined by the competent authority and the subject matter was also taken up with OFB, Kolkata for their concurrence towards filling up of the vacancies occurred in LDCE quota during the financial year 2010-2011 towards exercising promotion of CM/T to JWM/T in different disciplines.

In response, OFB, vide its letter No.2982/LDCE/CM(T&NT)/CLARIFICATION/A/NG dated 19.04.2011 has intimated that “appointment can be made from the panel drawn up for the purpose. The panel can be prepared to the extent of the vacancies advertised. No new names can be included in the panel because of occurrence of vacancies subsequently. Those vacancies in the LDCE quota may either be included in the next year's vacancy or a separate panel in the same year may be drawn up by following due procedure. However, the wait list may be prepared. The wait list can be acted upon only in the event of non-availability of a panel candidate. It may also be noted that the waiting list cannot be utilized for the purpose as referred to by the factories. The existing panel with the waiting list will cease to operate after expiry of the panel period or the drawl of the new panel, whichever is earlier.

In view of the above, it is further intimated that the number of vacancies in this factory was published vide F.O.Pt.I.No.53 dated 21.04.2010 for filling up through LDCE – 2010-2011 for the post of CM/T i.e. a) MECHANICAL:02(01 UR & 01 SC), b) CIVIL02 (02 UR and c) CHEMICAL:02 (01 UR & 01SC). Accordingly, after publication of result by OFIL, Ishapore, the eligible candidates have been appointed in their

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respective grade as per the vacancy published and since no further vacancy is available in this factory for filling up through LDCE – 2010, your request for promotion in CM/T based on LDCE – 2010 is regretted and cannot be agreed to”.

4. While justifying their action, the Respondent-Organization, by placing reliance on the decisions of the Hon'ble Supreme Court in Madan lal & Ors. vs. the State of Jammu & Kashmir & Ors. Reported in A.I.R 1995(SC) – 1088 and Union of India & Ors. vs. V.B.Valluvan & Ors. Reported in (2006) 8 SCC 686, to the effect that appointment could be made from the panel drawn up for the purpose and the panel can be prepared to the extent of vacancies advertised and that no new names can be included in the panel because of occurrence of vacancies subsequently, have submitted that both the Original Applications being devoid of merit are liable to be dismissed.

5. We have heard Shri S.K.Ojha, learned counsel for the applicants and Shri U.B.Mohapatra, learned Standing Counsel for the Respondents and perused the materials on record.

6. In course of hearing, Mr.S.K.Ojha Ld. Counsel, appearing for the applicants brought to our notice that though the vacancy position was within the knowledge of the Factory Administration, but without notifying the aforesaid vacancies as per direction of the Board, the Factory Administration notified only 2 existing vacancies. There by the Respondents have deprived up the applicants to avail the benefit of promotion even though they have been empanelled after going through the rigor of the selection. Further he has supplemented his argument bringing to our notice the documents so annexed to the Original Application that in the year 2007 and 2008 though number of vacancies were notified less, after the selection is over since vacancies arose, the Respondents have extended the benefit of promotion to the

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person those who were in the select list and qualified in the LDCE selection for that financial year.

Further he has submitted that for the financial year 2010-11 Ishapore Unit, under the Administrative control of the Ordnance Factories Board, Kolkata also issued LDCE selection notification on 10.04.2010 pursuant to same Board's letter dtd.31.03.2010 & 07.04.2010. In that selection notification 7 nos. of post in the Chargman/Mech. discipline were notified. However, after the selection is over, 13 persons were promoted as against the 7 notified vacancies. Hence, refusal by the Board to give promotions to the persons at Badmal Unit is clear discrimination due to step motherly attitude of the Board. Relying upon the decision of the Hon'ble Apex Court in the case of *Union of India & Ors -vrs- Hemraj Singh Chouhan & Ors* (*reported in AIR 2010 SC 1682*), Mr. Ojha submitted that now the promotion became a fundamental right of any employee enshrined from Art. 14 and 16 of the Constitution. Hence, the applicants can not be deprived up to enjoy their right guaranteed under the constitution due to fault on the part of the Administration.

7. On the other hand, Mr. U.B.Mohapatra, Id. Sr. Standing Counsel appearing for the Respondents vehemently opposed the stand taken by the Applicants by pointing out that even if the promotions have been given to some persons over and above the notification, that can not be a precedent for others to get the similar benefits as giving of promotions over and above the advertisement is not justifiable in view of the decisions of the Hon'ble Apex Court (*supra*). In course of hearing he has also relied upon the decisions so cited in their counter and prayed for dismissal of the Original Application.

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8. From the aforesaid submissions and pleadings it is undisputed that though the Board has directed the factory Administration to notify the vacancies including the anticipated vacancy up to 31.03.2011, certainly they have failed to carry out the order of the Board. Secondly, the applicants were/are empanelled on the basis of a positive act of selection and Factory Administration has made it clear in their letter dtd.01.04.2011 that the vacancies are available and the currency of panel is still prevailing and requirement of the factory also existing for filling of the posts immediately. Moreover, it is also undisputed that the Factory Administration, Badmal has extended benefit of promotion over and above the post advertised from time to time and for this year also same procedure has been followed by another Unit under the Administrative control of the Ordnance Factory Board, Kolkata. Even though, Ordnance Factory Board is a party to the case in hand, stands so taken by the applicant have not been replied by the Ordnance Factory Board nor in any where the respondents have taken any such stand that what type of corrective measure has been taken by the Board to rectify the mistake if any committed during 2007, 2008 and 2010 itself.

Further, the decisions so relied on by the Respondents were also existed while giving promotions in the year 2007, 2008 and 2010-11. In the present case, applying the ratio of that Hon'ble Apex Court decision, Board can not refuse to extend the benefit of promotions to the applicants whereas other unit working under the Board are giving promotions over and above the notified vacancies. Respondents can not resort to such type of practice adopting pick and choose method.

In this view of the matter, we leave this matter to the discretion of Respondent No.2, viz., General Manager, Ordnance Factory to reconsider the matter afresh having regard to long standing precedent and practice as aforementioned and pass a reasoned

and speaking order within a period of sixty days from the date of receipt of this order.

In effect, we quash the impugned orders at Annexures-A/9 dated 29.4.2011.

Ordered accordingly.

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


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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