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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

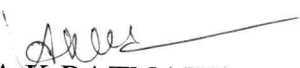
Original Application No. 791 of 2011
Cuttack, this the 08th day of September, 2014

Nirmal Ku. Jesti	Versus	Applicant
Union of India & Ors.		Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ☒
2. Whether it be referred to PB for circulation? ☒


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 791 OF 2011

Cuttack, this the 08th day of September, 2014

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

HON'BLE MR. R.C. MISRA, MEMBER (Admn.)

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Nirmal Kumar Jesti,
Aged about 54 years,
Son of late Deepak Kumar Jesti,
Of Vill/PO- Bijaya Nagar,
PS- Chandbali, Dist- Bhadrak,
At present working as Technician-'B',
Proof & Experimental Establishment,
At/PO: Chandipur, Dist- Balasore.

.....Applicant

Advocate(s)..... M/s. U.N.Jena, M.K.Rath

VERSUS

Union of India represented through

1. Secretary,
Ministry of Defence,
Defence Research & Development Organization (DRDO),
531/B, DRDO Bhawan, Rajaji Marg,
Defence Head Quarter, New Delhi-110105.
2. Director General, R&D,
Room No. 531/B, DRDO Bhawan, Rajaji Marg,
Defence Head Quarter, New Delhi-110105.
3. Director,
Proof and Experimental Establishment (PXE),
At/PO/PS: Chandipur,
Dist : Balasore-756025.
4. Sri Gandhi Ram Murmu, Pers No. 373,
At present working as Technician-'C' in Works Project,
PXE, At/PO: Chandipur, Dist. Balasore.
5. Sri Mangala Kumar Hansda, Pers No. 284,
At present working as Technician-'C' in Weapons Wing,
PXE, At/PO: Chandipur, Dist. Balasore.



6. Sri Deepak Kumar Nayak, Pers No. 628,
At present working as Technician-'C' in Weapons Wing,
PXE, At/PO: Chandipur, Dist. Balasore.
7. Sri Girija Sankar Panigrahi, Pers No. 627,
At present working as Technician-'C' in Work Establishment,
PXE, At/PO: Chandipur, Dist. Balasore.

..... Respondents

Advocate(s)..... Mr. P.R.J.Dash

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ORDER

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

The Applicant who is working as Technician B in Proof and Experimental Establishment at Chandipur, Balasore has filed this Original Application praying for quashing the order dated 17th February, 2011 rejecting his representation dated 28th September, 2010 requesting reconsideration of his promotion to Technician C from the date his juniors i.e. Respondent Nos.4 to 7 were promoted. The main contention of the Applicant is that he is the senior most Technician B having more experience, there was no adverse remarks against him and though he did well in the trade test/interview conducted for the purpose of promotion to Technician C for the reasons best known to the Authorities he was debarred from getting the promotion and the representation submitted against his non promotion was rejected without due application of mind.

2. Despite notice and adequate opportunities no counter has been filed by private Respondents 4 to 7. However, counter has been filed by Respondents 1 to 3 in which it has been stated that for filling up of the posts of Technician C, as per the Rules, Trade Test/Interview was conducted on 23.08.2010. As per the recommendation of the Assessment Board,



Respondent Nos. 4 to 7 were promoted to Technician C basing on their performance and position in the merit list. It has been stated that under the provisions of sub rule (1) of Rule 6 of DRDO Technician Cadre Recruitment Rules, 2000 promotion from one grade to another grade shall be made under the merit based limited flexible completing system which is different from the conventional vacancy based promotional system. Employees in each grade who have rendered a minimum of five years regular service in the grade as on 1st September, of the year of assessment shall be eligible for assessment for promotion to the next higher grade. Under the provision of sub rule 3 of Rule 6 the maximum number of employees in a grade who can be promoted shall be a percentage of the total eligible employees in that grade at each annual assessment. The employees shall be promoted on the basis of their overall merit as decided by the Assessment Board. According to sub rule 4 of rule 6 assessment for promotion from the grade of Technician B to Technician C shall be made by local assessment board at corresponding local assessment centre. According to Sub para 5.4 of para 4 of the guidelines detailed procedure and explanatory notes have been issued which contains a provision for conducting trade test including interview and evaluation of annual performance appraisal report (C-PAR). Further according to sub para 5.5 of para 5 of the said guidelines, while making an overall assessment for promotion to the grade of Technician C a weightage of 75% will be given to the trade test including interview and 25% to the C-PAR. In the assessment year 2010-11 10(ten) employees including the applicant being found eligible were called for appearing at the trade test and interview for promotion. Therefore, applying the percentage of the



maximum number of permissible promotion to the grade of Technician C was determined as 06 and after assessment of the performance and taking into consideration the APR the Local Assessment Board while recommending the names of the private respondents did not recommend the case of the applicant for such promotion. Therefore, the applicant could not be promoted even though he is the senior most Technician B. It has further been stated that the representation of the applicant was examined with reference to the rule and the performance report of the Local Assessment Board but no infirmity having been found in the selection and promotion of private respondents the same was rejected and duly intimated to the applicant. Hence, the Respondents have prayed for dismissal of this OA.

3. Applicant has filed rejoinder in which the applicant besides, more or less reiterating the averments made in the OA, has stated that as the process of promotion made by the Departmental Respondents, in clear violation of the DRDOTC recruitment rules 2000, he is entitled to be promoted when his juniors were promoted.

4. Learned Counsel appearing for the parties have reiterated the stand taken in their respective pleadings and having heard them at length, we have also perused the materials placed on record including the rules for promotion from Technician B to Technician C. Undisputedly, as per rules, promotion to the post of Technician C is on the basis of merit to be adjudged by the Assessment Board viz; 75% on the basis of the trade test including interview and 25% on the C-PAR. Except making bald assertion that he had done well in the interview no material has been produced by the applicant in support thereof. He has also not raised mala fide against any



member of the selection nor has he made the committee member of the Assessment Board as party in this OA. It has been stated by the applicant that selection was made in violation of the Rules without pinpointing any lacunae in support thereof.


5. Law is well settled in a plethora of judicial pronouncements that the principles of seniority cum merit and merit cum seniority are conceptually different. For the former, greater emphasis is laid on seniority, though it is not the determinative factor, while in case of latter, merit is the determinative factor. The principle of merit cum seniority, lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. On the other hand, the rule of seniority cum merit requires promotion to be made by selection on the basis of seniority subject to fitness of the candidate to discharge the duties of the post from among persons eligible for promotion. Where promotion is based on seniority cum merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. In all services, whether public or private there is invariably a hierarchy of posts comprising of higher posts and lower posts. In view of the above, the contention of the applicant that he being the senior most Technician B having more experience should have been promoted irrespective of his performance in the test does not sound logical.


6. In so far as the stand of the Applicant that the selection was conducted by the Respondents in violation of the Rules is concerned, this



cannot be a ground to intervene at this stage as law is well settled that after having taken part in the process of selection knowing fully the procedure of selection, one is not entitled to challenge the criteria or process of selection at a later stage. Surely, if the applicant's name had appeared in the merit list, he would not have ~~been~~ dreamed of challenging the selection. He approached the Court only after he found that his name does not figure in the merit list prepared by the Board/Committee. This apart, on examination of the rule no such infirmity in the process of selection was noticed.

7. In view of the discussions made above, we find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.


(R.C.Misra)
Member(Admn.)


(A.K.Patnaik)
Member (Judicial)

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