

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH,CUTTACK

O.A.No.855 of 2011

Cuttack this the 29th day of July, 2015

P.Padmanav...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?* No
2. *Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?* No

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)



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

P.Padmanav

Aged about 44 years

S/o. late P.Basudev Rao

Sr.Armourer

Aviation Research Ordnance Centre(Ordnance) Cadre

At present working in the SFO(Security)

A.R.C., Charbatia

PS-Chudwar

District-Cuttack

Orissa

...Applicant

By the Advocate(s)-Mr.S.B.Panda

-VERSUS-

Union of India represented through

1. The Director General of Security
Aviation Research Centre
Cabinet secretariat
Government of India
Block-V(East)
R.K.Puram
New Delhi
2. The Special Secretary
A.R.C.,
Directorate General of Security
Cabinet secretariat
Government of India
Block-V(East)
R.K.Puram
New Delhi
3. The Joint Deputy Director (Pers.B)
ARC, Directorate General of Security
Cabinet secretariat
Government of India

Block-V(East)
R.K.Puram
New Delhi

4. The Joint Deputy Director (Administration)
Aviation Research Centre (ARC)
Government of India
At-Charbatia
PS-Chaudwar
District-Cuttack
Orissa

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

R.C.MISRA, MEMBER(A)

Applicant in this Original Application is working as SFO
(Security) Section at A.R.C., Charbatia at Chowdwar in Odisha.

He has approached this Tribunal claiming the following relief.

- i) Rule Nisi may be issued calling upon the Respondents to show cause as to why the relief sought for herein shall not be granted in favour of the applicant and upon showing their no cause and/or insufficient cause, the said rule may be made absolute.
- ii) The applicant may be granted all promotional benefits with retrospective effect (deemed promotion) as per the then vacancy roster and with all financial benefits as arrears flowing therefrom, as the organization has continuously extracted the services of the applicant in accounts Unit at ARC, Charbatia since inception and also continues to do so even after shifting of the CSD.
- iii) Upon given such arrear benefits, the applicant may be given option to opt for merger with any other equivalent cadre and post of the ARC or an of its sister concern so as to enable the

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applicant to retain all his service benefits/rights

iv) Any other consequential relief(s) as would be deemed just and proper may be granted in view of the facts and circumstances of the case.

2. The short facts of this O.A. are that the applicant joined the ARC, (Ordnance) Service in the year 1986 in the post of Junior Armourer and was posted to Charbatia. He was serving in the Central Storage Depot (in short CSD), which was located only in the Charbatia Centre of the A.R.C. The applicant had been promoted as Senior Armourer in the year 2003. In the meantime, the CSD was shifted to SFF (Special Frontier Force) at Kalsi and 31 posts in the Ordnance Cadre were abolished. However, present 14 incumbents including the applicant were allowed to continue till their superannuation after which their posts would be abolished.

3. The applicant in the O.A. has presented a plethora of facts regarding cadre review and restructuring in the ARC, as well as consequent abolition of posts. He has also made reference to orders of the Tribunal in O.A.Nos.487 and 488 of 2011, as well as the pendency of O.A.No.833 of 2010 and O.A.No.765 of 2011. These facts do not have a direct bearing on the prayer of the applicant with regard to his promotion. The O.A. lacks clarity in respect of these submissions. However, with regard to his claim of promotion, it is submitted that he initially joined as a Junior Armourer in the year 1986, and was promoted as Senior

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Armourer in the year 2003. In the year 2007 and 2008, he submitted representations to the respondent-authorities for considering his promotion to the next higher grade, viz., Sub Inspector. Having failed to elicit any response from the authorities, he filed this O.A. making the prayers as stated above.

4. Respondent-Department have filed their counter reply opposing the prayer of the applicant with regard to promotion. According to Respondents, as per the amended Recruitment Rules, 15 years regular service in the grade of Senior Armourer is required to be considered for promotion to the post of Sub Inspector. Since the applicant was promoted to the post of Senior Armourer in the year 2003, he is due for promotion to the grade of Sub Inspector in the year 2018. Moreover, the applicant's claim for promotion with effect from 15.12.2006 is unsustainable since there was no vacancy of the post of Sub Inspector as on that date.

5. With these submissions, respondents have prayed that the O.A. deserves to be dismissed being premature apart from being devoid of any merit.

6. Applicant has filed rejoinder to the counter, more or less reiterating the same facts as in the O.A.

7. We have perused the pleadings of the parties and heard the learned counsel for both the sides. We have also gone through the written notes of submission filed by both the sides.

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8. In the written notes of submission, applicant has pointed out that as per Memorandum dated 1.3.1995(A/1), which has been issued by the ARC, Government of India on the subject - ***Amendment of ARC (Ordnance) Service Recruitment Rules, 1995***, it has been categorically provided that the essential qualification for promotion to the grade of Sub Inspector is Senior Armourer with 10 years' service in the grade and therefore, appropriate direction may be issued to the Respondents to consider the case of the applicant for promotion to the grade of Sub Inspector that was due in the year 2013 on completion of 10 years' service as Senior Armourer. It is also submitted that the Recruitment Rules were amended in the year 2002 with prospective effect which ^{were} ~~was~~  not applicable to the applicant's case for promotion.

9. The learned Senior Central Government Standing Counsel in his written notes filed on behalf of the Respondents has submitted that according to Recruitment Rules, promotion to the post of Sub Inspector can be considered after a residency period of 15 years in the post of Senior Armourer. Since the applicant was promoted as Senior Armourer in the year 2003, his eligibility for promotion will be in the year 2018, and not earlier. However, he has not enclosed any copy of the amended Recruitment Rules in proof of his submission. On the other hand, he has submitted that the applicant has not annexed a copy of Recruitment Rules to the O.A., as the basis of his claim.

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This part of submission of the Respondents is absolutely baseless, since the applicant has filed a copy of Aviation Research Centre (Ordnance) Service (Amendment) Rules, 1995 as notified on 6.2.1995. In these Rules at Serial No.4 of the Annexure it is clearly notified that for promotion to the post of Sub Inspector, Senior Armourers with 10 years' service shall be considered. There is no document available in the pleadings with regard to any further amendment of Rules.

10. We have given our anxious thoughts to the arguments advanced by both the sides. In the absence of production of any document, the submission of Respondents that 15 years residency period is required in the post of Sr.Armourer is found to be baseless. On the other hand, the learned counsel for applicant has produced a copy of the Rules as discussed above. The Respondents have failed to counter the claim of the applicant effectively. They have on the other hand, pleaded that the applicant's prayer is vague, and not supported by Rules or Court decisions. This is an unacceptable plea. The Respondents have no where denied the eligibility of the applicant for promotion as per the Recruitment Rules notified on 6.2.1995. In this regard, we would like to observe that no employee has a right to be promoted; but an employee can lay a claim for consideration of his promotion as per the Rules. Promotion is to be considered on the basis of service records and performance of the employee, after he meets his basic eligibility. Promotion

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is certainly not a vested right, since it has to be earned by dint of hard work, dedicated service and integrity as reflected in the ACRs/Service Records. But Respondents cannot arbitrarily deny such consideration if the applicant is eligible for the same as per the Recruitment Rules. The facts of this O.A. indicate that Ordnance Cadre was abolished, but 14 incumbents including the applicant were allowed to continue in their posts till their superannuation. Once they are allowed to continue, their promotion claim cannot be overlooked. Every employee has a reasonable expectation to rise further in his career by way of promotion. In view of the factual position as discussed above, we make the following directions.

- i) Respondents to consider the applicant's promotion to the grade of Sub Inspector in the light of Amended Recruitment Rules, 1995(A/1) provided, these amended Recruitment Rules are in force to cover the case of the applicant.
- ii) Subject to other conditions of the Rules, if the applicant is found eligible for promotion, he be so granted with effect from the date the same is due and admissible.
- iii) In case the applicant is promoted retrospectively, he shall only be given the benefit of notional promotion and other service benefits except any financial benefits.

11. The above directions shall be complied with by the Respondents within a period of 120(one hundred twenty days) from the date of receipt of this order.



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12. In the result, the O.A. is disposed of as above, leaving the parties to bear their own costs.

(R.C.MISRA)
MEMBER(A)




(A.K.PATNAIK)
MEMBER(J)

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