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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.432 OF 2009

Cuttack this the *8th* day of April, 2011

CORAM:

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

...
Dineswar Lal Karn, aged about 58 years, Son of late Nawal Lal Das resident of D-20/B, NALCO NAGAR, Dist-Angul at present working as Chief Manager (Mechanical), Grade E-6, NALCO, Angul

...Applicant

By the Advocates:M/s.M.K.Khuntia, A.K.Apat, G.R.Sethi, J.K.Digal, B.K.Patnaik & B.P.Patra

-VERSUS-

1. National Aluminum Company Ltd. Represented by Chairman-cum-Managing Director, NALCO Corporate Office, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda
2. Director P & A NALCO, NALCO Corporate Office, Nalco Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda
3. Deputy General Manager, HRD, NALCO, NALCO Corporate Office, Nalco Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocates:M/s.Manoj Kr.Mishra & Dilip Kr.Patnaik

ORDER

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

1. Applicant, at present working as Chief Manager (Mechanical), Grade E-6, NALCO, Angul has filed this Original Application seeking the following relief:
 - i) To direct the respondents to consider the case of applicant for promotion to E-7 grade.
 - ii) To direct the respondents not to give promotion from E-6 Grade to E-7 Grade in pursuant to order dtd. 28.8.09 and consequential action thereon i.e. the interview test held on 31.8.09 before consideration of applicant's case
 - iii) To direct the respondents to grant on financial and consequential benefits of the applicant flowing from the order of promotion
 - iv) And pass such other order/orders as may be deemed fit and proper for the interest of justice.

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2. The brief facts of the case, according to applicant, are that he is eligible for promotion to E-7 grade as he ranks at Sl.No.561 of the Gradation List of E-6 Grade, commencing from Sl.No.559. According to applicant, in the Executive DPC that was held on 31.8.2009, although incumbents junior to him in E-6 grades were called upon to appear at the interview test, he was not called. Being aggrieved the applicant has moved this Tribunal in the present O.A. seeking the relief as referred to above.

3. It is the case of the applicant that since he is quite eligible for being considered for promotion to E-7 grade in accordance with the Recruitment Rules, ~~ignoring~~ ~~ignorance of~~ his case and at the same time consideration of his juniors for promotion by the Respondents are highly discriminatory and thereby, it amounts to violation of Articles 14 and 16 of the Constitution of India.

4. This matter came up on 4.9.2009, when this Tribunal, while admitting the O.A. did not feel inclined to grant any interim direction. However, it was directed that "any promotion takes place in the meanwhile, the same shall be subject to the final outcome of this O.A. and this condition needs to be incorporated in the order of promotion to be issued by the Respondents".

5. Respondent-NALCO have filed a detailed counter opposing the prayer of the applicant. They have also filed counter to Misc. Application No.304/2010 whereunder it was prayed before this Tribunal to assess the suitability of the applicant for promotion to E-7 grade in the Executive DPC, that was scheduled to be held in June, 2010.

6. According to Respondent-NALCO, the case of the applicant had been considered along with others in June, 2009 DPC for promotion to E-7 grade, but his merit position was found at a lower stage as compared to the executives called for the personal interview. They have submitted that as per NALCO R & P Rules, (In short R



& P Rules)1997, as amended vide circular dated 1.10.2008, promotion from E-6 to E-7 is vacancy based and on merit only. In this connection, the Respondents have brought to the notice of the Tribunal Clause 1.122.4 of R & P Rules dealing with basic factors on which the DPC evaluates the suitability of the candidates and Clause 1.1.22.5, whereby the numerical value of each factors along with the total weightage is assigned. According to Respondents, since as per Clause No.1.1.22.6 of R & P Rules, the list of candidates for vacancy based promotion will be maintained in order of merit in descending order based on the appraisal ratings and seniority weightage, the applicant having been placed in a lower position as compared to other executives who were called to attend the interview, he could not be called upon to appear before the DPC in June, 2009.

7. Applicant has not filed rejoinder refuting the above standpoint taken by the Respondent-NALCO in their counter.

8. We have heard Shri M.K.Khuntia, learned counsel for the applicant and Shri M.K.Mishra, learned counsel appearing on behalf of Respondent-NALCO and perused the materials on record.

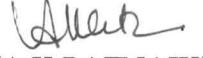
9. The sole point to be considered in this O.A. is whether the applicant has an indefeasible right to promotion to E-7 Grade.

10. It is not in dispute that the applicant is having the required eligibility for being considered for promotion to E-7 grade. It is also not in dispute that the applicant along with others had been considered by the DPC in June, 2009 for promotion to E-7 grade. It is also an admitted position that promotion from E-6 to E-7 grade is vacancy based and on merit only. According to Respondents, his merit position being in a lower position compared to other Executives, he could not be called to appear at the interview test. The applicant having not disputed the promotion from E-6 to E-7 grade

is vacancy based and on merit only, we are of the considered view that the Respondent-NALCO have not committed any illegality in the matter of promotion of Executives from E-6 to E-7 grade. Accordingly, we hold that the applicant's merit position being in a lower strata compared to other Executives and the promotion from E-6 to E-7 grade being vacancy based and on merit only, the applicant has not an indefeasible right to promotion to E-7 grade.

For the reasons discussed above, we hold that this O.A. is devoid of merit and accordingly, the same is dismissed. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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