

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1014 of 2012

Cuttack this the 24th day of May, 2016

Muralidhar Behera...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *yes*

R.C.
(R.C.MISRA)
MEMBER(A)

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(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)

Muralidhar Behera
Aged about 57 years
S/o. late Rama Behera
At present working as Asst. Technical Officer
Air Wing
Aviation Research Centre (in short ARC)
At/PO-Charbatia
Dist-Cuttack

...Applicant

By the Advocate(s)-M/s. N.R.Routray
S.Mishra
T.K.Choudhury

-VERSUS-

Union of India represented through:

1. The Director General of Security
Cabinet Secretariat
Block-V(East)
R.K.Puram
New Delhi-110 066
2. Special Secretary
Aviation Research Centre(ARC)
Director General of Security
Cabinet Secretariat
Block-V(East)
R.K.Puram
New Delhi-110 066
3. Joint Director
Aviation Research Centre(ARC)
Directorate General of Security
of India
At/PO-Charbatia
Dist-Cuttack
Odisha-754 028



4. Joint Deputy Director(Pers.)
Aviation Research Centre(ARC)
Director General of Security
Cabinet Secretariat
Block-V(East)
R.K.Puram
New Delhi-110 066

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

R.C.MISRA, MEMBER(A):

Applicant presently working as Assistant Technical Officer (in short A.T.O.) in Aviation Research Centre (ARC) Charbatia under the Director General of Security, has approached this Tribunal for direction to be issued to respondents to promote him to the post of ATO as against reserved post(SC) at par with others vide order dated 21.06.2010¹ retrospectively, as per recommendations of DPC dated 18.05.2011 and to maintain his seniority/position in the cadre position of A.T.O.

2. Shorn of unnecessary details, facts in issue are that applicant is an Ex-Service Man and having retired from Indian Air Force, had been re-employed in the post of Junior Technical Officer (JTO)-II in ARC, Charbatia with effect from 01.12.1995. While working as such, he was promoted to JTO-I with effect from 01.08.2001. Vide order dated 21.06.2011(A/1), 19 incumbents of JTO-I were promoted to the grade of Assistant Technical Officer (in short ATO) carrying the scale of Rs.15,600-



39,100 with GR Rs.5400/-, in consequence of approval of the Government of India, as conveyed vide Cabinet Secretariat UO dated 31.05.2011, subject to the condition that in case any variance was found in the final Seniority List of JTO-I with the provisional Seniority List, the concerned individual would be reverted back to his post. Applicant belongs to S.C. community and since he was not promoted to ATO, he submitted a representation dated 28.6.2011 (A/2) to the Special Secretary, ARC Headquarters, New Delhi stating therein that as per the provisional seniority list of JTO-I published vide Office Memorandum dated 18.05.2011, his seniority position was at Sl. No.46 and he having fulfilled the terms and conditions of promotion and having completed 10 years regular service in JTO-I, his case ought to have been considered in the extended zone of consideration for promotion to the post of ATO. While the matter stood thus, applicant, vide Office Memorandum dated 04.01.2012(A/5) was intimated that he was being empanelled for promotion as S.C. candidate along with others. However, it was made clear that owing to the anomaly in the seniority list of JTO-I after merger of all the trades, the order of promotion has been put on hold till finalization of seniority list for which one Board of Officers has been constituted for settlement of the seniority issue. Thereafter, applicant further made a representation dated 3.2.2012(A/6) to the Special Secretary, ARC Hqs., New Delhi with a prayer to consider his



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case for promotion to the post of ATO against the vacancy reserved for S.C. category retrospectively, when order dated 21.06.2011 promoting 19 JTOs-I to ATO had been issued. As his representation was not responded to, he had moved this Tribunal in O.A.No.473 of 2012 and this Tribunal, vide order dated 25.6.2012 disposed of the said O.A. with direction to respondent no.2 to consider and dispose of representation dated 03.02.2012 as per rule giving consideration to letter dated 04.01.2012 and communicate the decision through a reasoned and speaking order. In compliance with the above direction, applicant was communicated vide A/8 dated 13.7.2012 by the office of res.no.1 intimating that as already replied vide communicated^{by} dated 04.01.2012, he had been empanelled in the subsequent DPC for promotion as S.C. candidate along with others and promotion order to this effect was likely to be issued and while the matter stood as such, vide order dated 29.8.2012(A/9) applicant was given promotion to the post of ATO.

3. Grievance of the applicant in this O.A. is that he being the 1st eligible and available reserved category candidate coming within the extended zone of consideration upto Srl.No.95, should have been promoted to ATO retrospectively, i.e., with effect from the date when order dated 21.6.2011 promoting 19 JTOs-I was issued. Though applicant has articulated that the order dated 13.7.2012 (A/8) issued by the respondents in

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compliance with the direction of this Tribunal as bad and illegal, yet, he has not challenged its legality and validity nor has he prayed for quashing of that order. According to applicant, the question of anomaly in the provisional seniority list had no effect in order to give him promotion in view of the fact that he was the sole eligible and available reserved category candidate.

4. Refuting the contentions of the applicant, respondents have filed their counter reply. It has been submitted that in view of ARC Recruitment Rules, 1977 being superseded and thus amended vide Notification dated 02.05.2011, all the trades of Aviation Engineering Cadre were merged by forming a common cadre. In view of merger of 12 trades, a provisional seniority list was published on 12.05.2011 in which applicant's name was placed at Sl.No.46 and in the final seniority list drawn up, his name was placed at Sl.No.56. However, it is stated that applicant is the 1st SC candidate in both the seniority lists, i.e., 12.05.2011 and 30.04.2012. According to respondents, out of 37 vacancies of ATO arising in the year 2011-12, 27 were for un-reserved category and rest 10 were meant for reserved category. Even though there was no final list till 18.05.2011, but the DPC met on 18.05.2011 to fill up 37 vacancies, the result of which, was however, not published due to non-finalization of seniority list. According to respondents, by the time final names were to be released for promotion to the post of ATO,

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the seniority position in the feeder grade of JTO-I was called in question by a number of incumbents in the grade which necessitated modification. However, names of JTOs-I placed Sl.No1 to 20 being undisputed, in the interest of functional requirements, the senior most twenty (20) JTOs-I were promoted and the remaining seventeen (17) JTOs-I whose seniority was under dispute, were held back to be considered for promotion after finalization of seniority list. According to respondents, the name of the applicant being placed at Sl.No.46 and he being an S.C. category candidate was given the benefit of promotion of reservation and included in the list of 37 JTOs-I to be promoted to the grade of A.T.O. The case made out by the respondents is that applicant could not have been promoted as an S.C. category candidate by superseding those who were senior to him and had been recommended by the DPC for promotion. It has been submitted that as per rules of seniority, in such a case reserved category candidate being considered for promotion is to be guided by the principle of maintaining inter-se-seniority. Further, it has been submitted that without violation of any rules on reservation applicant's interest has remained intact. Respondents have submitted that there is no concept of 200 point roster for reservation as urged by the applicant. According to them, had all the recommended JTOs-I been promoted pending anomaly in the seniority list then this would have caused serious administrative complications. They

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have pointed out that in comparison of the seniority appearing below Sl.No.37 of the seniority list (number of candidates recommended for promotion by the DPC), the candidate one Ramtilak whose name was appearing at Sl.No.47 of the seniority list dated 12.05.2011 has now appeared at Sl.No.32 of the modified seniority list dated 30.04.2012.

5. With the above submissions, respondents have prayed that the O.A. being devoid of merit deserves to be dismissed.

6. Applicant has filed rejoinder to the counter. In the rejoinder, it has been submitted that in the seniority list dated 12.05.2011 and in the modified seniority list dated 30.04.2012, name of the applicant is found place at Sl.No.37. Since 37 numbers of vacancies were there in the grade of ATO of which 10 posts were meant for reserved category candidates, orders of promotion issued in a piece meal manner are against the rules of reservation. It is not the case of the respondents that when 19 persons were given promotion vide order dated 21.06.2011, there was no vacancy in the grade of ATO reserved for SC community in between 1 to 19, applicant has emphasized. Therefore, according to applicant, there has been a sheer violation of the principle of reservation.

7. We have perused the pleadings of the parties and heard the arguments advanced by learned counsels in support of their case. We have also gone through the written notes of submission filed by both the sides.



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8. Undisputedly, out of 37 vacancies of ATO arising in the year 2011-12, twenty-seven (27) belonged to un-reserved category and the rest 10 were for reserved categories. It is also not in dispute that there was no final seniority list in the grade of JTOs-I till 18.05.2011 when the DPC met for considering promotion against 37 vacancies of ATO. While the matter stood thus, a number of objections were raised regarding determination of seniority by the JTOs-I which necessitated withholding of promotion. However, names of JTOs-I placed Sl.No. 1 to 20 being undisputed, they were given promotion to ATO. Since the seniority list after 20 was under dispute and had not been finalized, it was decided by the respondents to put on hold promotion of rest of the candidates after finalization of the seniority list. Since the name of the applicant was at Sl.No.46, i.e., after Sl.No.20 of the provisional seniority list which was not free from dispute and had not attained finality, applicant, despite being an S.C. category candidate could not be promoted to ATO. However, after the disputed seniority list could be finalized on 30.4.2012, he was given promotion to the grade of ATO vide order dated 29.08.2012, which he claims to be ante-dated at par with the incumbents promoted to ATO vide order dated 21.06.2011 on the ground that he was the sole SC candidate available for promotion, his name being placed at Sl.No.46 of the provisional seniority list dated 12.05.2011 as well as the in final seniority list dated 30.04.2012. On the other



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hand, it is the case of the respondents that JTOs-I placed at Sl.No.1 to 20 being not disputed and they being senior to the applicant, promotion was given to them. This in other words, makes it expressly clear that the provisional seniority list containing the names of JTOs-I at Sl.No.1 to 20 was treated as the final seniority list. If the plea of the applicant is accepted that he being the sole S.C. category candidate should have been considered for promotion in between the JTOs-I at Sl.No.1 to 20, in such eventuality, he should have challenged the orders promoting those JTOs-I by clearly indicating where precisely his name in the promoted grade of ATOs should have ~~been~~ found place. Because, in the absence of identification of vacancies for reserved category candidates, it is quite indistinct to carve out the roster point in order to insert the name of the applicant in between Sl.No.1 to 20 JTOs-I. Conversely, in the absence of vacancy being earmarked for reserved category candidate in the grade of ATO in between Sl.No.1 to 20, applicant's case for promotion to ATO cannot be considered at par with those incumbents JTOs-I named at Sl.No.1 to 20. Similarly, in the order of promotion dated 29.08.2012 promoting the applicant to ATO in consequence of revised seniority list dated 30.04.2012, his name appears at Sl.No.17. If at this stage applicant's promotion to ATO is ante-dated at par with the promotion of JTOs-I at Sl.No.1 to 20 of the earlier seniority list, then, it will cause prejudice to the interest of

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ATOs promoted vide order dated 21.06.2011(A/1) along with the persons who are senior and have been promoted to ATO vide order dated 29.08.2012 along with the applicant and apparently, those incumbents are not parties in this O.A. Nothing is forthcoming in the matter of maintenance of roster point in the grade of ATO nor anything repugnant to this is under challenge. Applicant has just leaned against the submission of the respondents that they have not stated anything regarding existence of vacancy belonging to reserved category in the grade of ATO when incumbents of JTOs-I placed at Sl.No.1 to 20 of the undisputed seniority list stood promoted. As indicated above, in the absence of any vacancy earmarked for reserved category in the grade of ATO, applicant cannot lay a claim to be considered for promotion and in this respect, onus lies on him to establish that despite existence of earmarked vacancy belonging to reserved category his case was not considered for promotion, albeit, he had fulfilled the eligibility conditions for promotion when the DPC met. Under such circumstance, the Tribunal cannot make a roving inquiry to find out a vacancy in the grade of ATO belonging to SC category and grant relief to the applicant. In a judicial review of the administrative decision, the Tribunal is to examine as to whether the authorities, while dealing with a particular matter, have scrupulously followed and applied the rules or instructions issued by the Government. Apparently, we do not

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find anything distasteful in this regard in the instant O.A. Therefore, it was incumbent on the applicant to substantiate his claim to promotion at par with the JTOs-I placed at Sl.No.1 to 20 of the undisputed seniority by producing unimpeachable document that despite existence of vacancy in the grade of ATO belonging to reserved category in between the said Sl.No.1 to 20, his case has arbitrarily been ignored by the respondents. In the circumstances, the inevitable conclusion that is likely to be arrived at is that acceding to the prayer of the applicant for promotion to ATO at par with Sl.No.1 to 20, in either case, would tantamount to leaving aside the claims of persons who would be affected thereby, thus giving a scope of flood gate of litigations.

9. Apart from the above discussions, a question that strikes us is what is the impugned order or decision which is the subject matter of challenge in this O.A. As it reveals, complying with the direction of this Tribunal in O.A.No.473 of 2012, vide order dated 25.6.2012, applicant was communicated with letter dated 13.7.2012(A/8) by the office of res.no.1 that as already replied vide communication dated 04.01.2012, he has been empanelled in the subsequent DPC for promotion as S.C. candidate along with others and promotion order to this effect is likely to be issued and subsequently, vide order dated



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29.08.2012(A/9), he was given promotion to the post of ATO, which he accepted without any hesitation. If in furtherance of his promotion, he had any grievance, he could have agitated the same before the competent authorities; and admittedly, this has not been done. In the relief sought for in this O.A. applicant has not challenged the legality or correctness of these orders issued by the respondent-authorities.

10. The learned counsel for the applicant in his written notes of submission has cited certain decisions of the Hon'ble Apex Court to the effect that the principles of no work, no pay shall not be applied as a rule of thumb, and there would be exceptions in this regard. We, however, do not find these citations relevant to this case. On the other hand, in the matter of *State of Madhya Pradesh vs. Shrikant Chapekar (JT 1992 (S) SC 638)*, the Hon'ble Apex Court has laid down the law that it is not within the competence of Court/Tribunal to order deemed promotion of an applicant. The Tribunal can only direct reconsideration of a case for promotion, if it comes to a conclusion that the consideration was illegal. In the present case, the applicant has failed to bring to our notice what specific illegality was committed by the respondents. Therefore, the Tribunal does not seek cogent and convincing reasons for interfering in the matter.

Reason

11. For the discussions held above, we hold that applicant is not entitled to any relief sought for in this O.A., which is accordingly, dismissed with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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