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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.249 of 2013

Cuttack this the 08th day of July, 2014
CORAM;

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

1. NALCO EMPLOYEES' SANGHA
At-NALCO Nagar, Angul
Represented through its General Secretary –
Sri Dilip Kumar Mishra,
Sr.Executive Asst.
Aged about 52 years
S/o.lateBiraBikram Mishra
At present residing at Quarter No.-T B – 68
NALCO Nagar, Angul
2. Madan Mohan Dehury
Aged about 51 years
S/o.BaishnabCharanDehury
Designation – Sr.SSW Grade – 1
At-Quarter No.B-708, Nalco Nagar
Smelter Plant
Angul
3. SukadevaSahu
Aged about 50 years
S/o.PurostamSahu
Designation – Sr.SSW Grade-1
At-Quarter No.A/227, Nalco Nagar
Angul

...Applicants

By the Advocate(s)-M/s.S.Palit
S.N.Nayak
A.K.Nahak

-VERSUS-

1. National Aluminum Company Limited (NALCO)
Represented through its CMD
At-Nalco Bhawan, P-1, Nayapalli
Bhubaneswar
Dist-Khurda-751 061



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2. General Manager (H &A) – Charge ED
National Aluminum Company Limited (NALCO)
Corporate Office, At-Nalco Bhawan
P-1, Nayapalli
Bhubaneswar, Dist-Khurda-751 061
3. General Manager (Smelter)
National Aluminum Company Limited (NALCO)
At-Nalco Nagar
Angul-759 145
4. Assistant General Manager (HRD)
Smelter Plant
National Aluminum Company Limited (NALCO)
At-Nalco Nagar
Angul-759 145
5. Aluminum MazdoorSangha
At-NALCO Nagar, Angul represented by its President
Sri GokulanandaJena,Aged about 52 years
S/o.lateNandu Jena
At-Qr.No.TB 56, NALCO Nagar
Angul

...Respondents

By the Advocate(s)-M/s.D.K.Pattnaik

T.Mishra
S.Behera
P.K.Padhi
S.L.Choudhury
M.Mishra

ORDER**R.C.MISRA, MEMBER(A)**

Applicants in this Original Application are the NALCO Employees Sangathan represented through its General Secretary and two more employees of the NALCO Smelter Plant at Angul. Having a common cause of action, they have approached this Tribunal seeking the following relief.



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- i) To quash the circular dated 28.01.2013 under Annexure-A/11, and the subsequent circulars dated 7.2.2013, 14.3.2013 and 17.4.2013 under Annexure-A/15 series.
- ii) Direction to the Respondents to declare the list of the selected candidates as per the Trade test held earlier as per the Circular dated 25.1.2010 under Annexure-A/2.

2. Facts of the case are that the applicant No.1 NALCO Employees Sangha (in short Sangha) is a registered Union under the Trade Union Act, 1926 having its registered office at NALCO Nagar, Angul. This union claims to have a total membership of 1600 employees including 383 employees of W category working at Smelter Plant, NALCO Nagar, Angul. They claim that they have been working for a period of more than 10 years having a satisfactory record of service with their employer. Since the employees of W category did not have any normal scope for further promotion and career advancement, the recognized Unions of NALCO discussed this matter with the Management and as per this discussion, a modality was fixed for parallel conversion from unskilled W – series category to T series category by an order dated 25.1.2010 of the Respondent-NALCO. This order was also further clarified by another order dated 13.5.2010. The Board of Directors thereafter approved this matter and agreed to allow 75 numbers in smelter plant and 60 members in Captive Power Plant (CCP) for conversion from W category to T category. After this decision, the management of NALCO started the process of conversion of employees from W Category to T Category. As a part of this process, they started to conduct the trade test of the unskilled category employees who were



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meeting the eligibility criteria as per the guidelines notified and individual employees were asked to indicate their willingness in a format. Thereafter the Respondents – NALCO^{CO} conducted the trade test and interview of 304 employees for parallel conversion. In the unit level discussion held on 24.5.2010 between the Union and the Management of the CPP, it was informed that the conversion process has been accomplished and some remaining employees who are literate at the time of joining the company will be given a chance for conversion test process very soon. By an order issued by the Management on 25.10.2011, the decision was also intimated to allow conversion upto a maximum 75 numbers in smelter plant and 60 numbers in CPP. According to applicants, as per the said test/interview, 9 numbers of employees at Damanjodi mines have been converted to T series from W series in the year 2011. The Respondents also intimated the Joint Secretary of NALCO Employees Sangha, i.e., applicant in this O.A. vide letter dated 4.4.2012 that all possible efforts will be taken for publication of the list of successful employees for their placement from W category to T category by 14.4.2012, but after the issue of this letter, the results of the trade test were not declared. On the other hand, another order was issued on 28.1.2013 in which it was indicated that the issue of conversion of employees in W series to T series has been pending for finalization in respect of S & P employees for quite some time. After the detailed examination of all the issues, it has been decided that the conversion will be limited to a maximum number of vacancies identified for the two units,


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i.e., 7⁵ for smelter and 60 for CPP limited to actual number found suitable in the selection process. It was decided that there will be a fresh selection for the above purpose to be decided by ED (S&P). The selection criteria for the conversion based on the application of interested employees were also notified with minor modification of guidelines, which was issued earlier vide letter dated 25.1.2010. The legality of this order is the subject matter of challenge in this O.A.

3. The facts of this O.A. further reveal that the employees protested against this order and took resort to mass dharana, the NALCO Management instituted a dispute before the Regional Labour Commissioner (RLC) (Central), Bhubaneswar and the RLC started conciliation proceedings under the I.D.Act. The conciliation, however, failed and the RLC submitted a failure report to the Government. Applicants in this case have raised the issue that the order dated 28.1.2013 is arbitrary and it goes against the legitimate expectation of the eligible candidates who had already appeared in the trade test and interview before the Selection Committee held in the year 2010. The further point which has been raised by the applicants is that the NALCO Management is estopped from changing the modality fixed by them earlier after the interview process had attained its finality. In the new guidelines, the Respondents have introduced a pre-employment standard in medical test and this standard cannot be expected from the old and experienced employees who have rendered their service to the NALCO for so many years. According to



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conversion from W to T category was started with the issue of the letter dated 25.1.2010. According to Respondents, the earlier exercise undertaken on the conversion test at Smelter and CPP could not be completed due to reasons beyond the control of respective managements; and two years have passed since then, which created new and compelling situations. Although the policy decision in this regard was taken in the year 2010 at corporate level, finalization of the vacancy for the purpose could not be made till December, 2011. At that time, applicant No.1 was the recognized union. The selection of candidates could not be finalized at that stage for want of compliance to official procedure. In the meantime, the process of secret ballot for verification of membership of the union was also initiated and code of conduct was enforced. However, the said selection process could not be re-started till recognition was granted to the majority union. After the recognition of the majority union in April, 2012, the Company Management made a further recommendation of the policy of conversion and formulated a new policy for slight modification which will be in the interest of organization. Therefore, the communication dated 28.1.2013 of the Corporate Office was only issued with a view to facilitate a conversion process afresh and those cannot be termed as whimsical and arbitrary. Regarding the legitimate expectation, which has been raised by the applicants, it is submitted that 286 candidates had appeared in the test as against 75 vacancies only. As such, expectation of the applicants Union has got no meaning in this regard. Further, the Respondents have never



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given any assurance to the employees that this conversion will be completed. There was a letter issued by the Assistant General Manager(HRD) on 4.4.2012 addressed to 1st applicant in this O.A. which indicates that all possible steps will be taken for publication of the list of successful employees in so far as conversion test is concerned. But this letter does not amount to any assurance to the employees in this regard and the principle of promissory estoppel^Q will not apply in the present case. Regarding the introduction of the medical test, Respondents have pleaded that the employees on conversion will do new jobs of technical nature wherein they will have to deal with costly and sophisticated machines. They have to be medically fit to perform the job and therefore, asking for a medical fitness is very much within the right of the management since the management cannot expose the old and unfit persons to hazards of the machine. The slight modifications which have been introduced in the eligibility criteria are operational requirement of the management which cannot be challenged by the employees. The Respondents have also averred that the matter was referred to the Regional Labour Commissioner, Central under the I.D.Act for conciliation, but the conciliation failed due to irrational attitude of the applicant. It is the stand of the Respondents that the subject matter of this O.A. is a matter of policy which can come within the realm of Industrial Dispute and therefore, the matter does not come within the scope of the Tribunal for adjudication.



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5. With these contentions the Respondents have submitted that the O.A. does not have any merit and accordingly, the same is liable to be dismissed.

6. Aluminum Mazdoor Sangha (AMS) have filed an intervention petition in this case and this Tribunal, on 13.9.2013 having allowed the prayer for intervention, AMS stands as an intervener -Respondent.

7. In the counter reply filed by the intervener/AMS, it has been mentioned that although the Tribunal had directed counsel for the applicant to submit copy of the O.A., no such copy was served on the intervener/AMS. The interveners have submitted that they raised the issue of conversion of employees from W category to T category immediately after the election with the Management of NALCO. Accordingly, meetings were held on 25.7.2012 and 1.8.2012. This issue was discussed and the Management assured that they would look into all the aspects and resolve the matter by the end of August, 2012. The NALCO Management after examination of all the issues decided for fresh selection and issued letter dated 28.1.2013, according to which, the selection process was started. When this process was about to ^{be} complete, the Tribunal had passed an interim order of stay dated 25.4.2013, for which the process has stopped. The interveners have raised the point that the applicants have also participated in the fresh test and they have specifically stated that the applicant Nos. 2 and 3 in the present O.A. have appeared at the interview on 26.4.2013. According to intervener-Respondent applicants having

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appeared in the fresh interview are ^e stopped to challenge the validity and legality of the same and therefore, the O.A. being devoid of merit is liable to be dismissed.

8. Besides the above, it has been submitted that the matter was raised under the I.D. Act before the Regional Labour Commissioner (Central) to take up conciliation proceedings. The conciliation proceedings ended in failure and therefore, the applicants, should have moved the higher forum against the failure of conciliation as per the provisions of I.D. Act instead of approaching the Tribunal. The interveners have also supported the introduction of the standard medical test as a necessary part of the process of conversion as decided by the Respondents. Finally, the interveners have pleaded that ^e for the preset applicants have filed this O.A. with a view to stall and delay the process, which was finalized under the new guidelines.

9. With these points, Intervener-Respondents have opposed the prayer of the applicants.

10. We have heard the learned counsel for both the sides and perused the records. We have also gone through the rejoinder filed by the applicants.

11. Having regard to the pleadings of the parties, the following points emerge for determination by the Tribunal.

- i) Whether the O.A. is maintainable before the Tribunal in view of the fact that the applicant No.1 had raised Industrial Dispute under the I.D. Act, 1947 before the Regional Labour Commissioner (Central) and the conciliation proceedings ended in failure.



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- ii) Whether the Respondents were right in deciding not to publish the result of the trade test conducted in 2010 and on the other hand by conducting a fresh test in 2013.
- ii) Whether the Respondents were within their right to make some modifications in the conditions of conversion from W category to T category in communication dated 28.1.2013 from those which published vide letter dated 25.1.2010.
- iii) Whether the letter issued by the AGM, HRD on 4.4.2012 (Annexure-A/10) intimating the applicants that all possible efforts will be taken for publication of list of successful candidates for their placement from W category to T category by 14.4.2012 will work as a promissory ~~stopped~~ ^{rescinded} on the action of the Respondents.

12. With regard to the first issue, it is to be noted that there was a conciliation proceedings under Section 12 of the I.D.Act with regard to this issue, but the said proceedings ended in failure. The failure report filed by the Regional Labour Commissioner has been submitted to the appropriate Government. Section 12(5) of the I.D.Act provides that if on consideration of the report by the Conciliation Officer, the appropriate Government is satisfied that there is a case for reference to the Labour Court or Tribunal, it may make such a reference. In a case where such reference is not considered, it will intimate the reasons to the concerned authorities. In the present case, report regarding failure has been submitted by R.L.C. (Central) to the appropriate Government and therefore, nothing further is required in this regard. The Respondents' argument is that the intervention



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of the Administrative Tribunal is uncalled for as the dispute centers round the policy decision between the management and the union.

13. Having considered the submissions, we are of the opinion that powers of the Administrative Tribunal cannot be interpreted in such a restrictive manner. Section 19 of the A.T.Act provides that ***"subject to the other provisions of the Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for the redressal of his grievance"***. In view of this provision, if a person has been aggrieved by an order in a matter which falls within the jurisdiction of the Tribunal must not be denied an opportunity of being heard by the Tribunal. As regards the plea of the Respondents that this is a policy matter which can ^{come R} conform only under the provisions of I.D.Act between the Management and the Union, is not acceptable in view of the fact that conversion of employees from W category to T category relates to conditions of service and therefore, the matter having appertained to the jurisdiction of the Tribunal, a person aggrieved thereby has every right to approach the Tribunal. Apart from being a policy matter, if an individual employee is affected by its implication directly, nothing prevents him to approach Tribunal.

14. For the detailed deliberations aforesaid, we would answer this issue in the affirmative by holding that the instant O.A. is maintainable before this Tribunal.



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15. The facts of the case reveal that the Management started their process of conversion from W to T category by using the modality in pursuance of letter dated 25.1.2010. The management has also conducted the trade and skill test through the Selection Committee. However, the results of such test were not published. In respect of the fact that on 4.4.2012, AGM, HRD intimated the applicants that all possible efforts will be taken to publish the results by 14.4.2012, the results were actually not published. On the other hand, the Corporate Office of NALCO issued a fresh guidelines dated 28.1.2013 whereby they modified certain criteria as in the earlier guidelines dated 25.1.2010 and based on this, conducted a fresh selection. The most important modification made was that candidate will have to produce medical fitness for the new job on conversion and the standard of the medical test will be the same as pre-employment medical examination. In this letter of January, 2013, Respondents cancelled all previous actions initiated with regard to conversion from W series to T series in terms of letter dated 25.1.2010 in so far as CPP and Smelter Plant are concerned. The facts of the case would lead us to the conclusion that it is no doubt unusual for the NALCO Management not to publish the result of the trade test which they had conducted in the year 2010. But it appears that due to certain internal reasons they did not publish the result and in fact decided to make certain modifications in the criteria for conversion. Learned counsel for the NALCO Management have submitted that this falls within the domain of policy management for changing the criteria of

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conversion. It is also his case that the employees converted from W category to T category will be handling sophisticated machines and will be exposed to certain industrial hazards. Therefore, fitness and health of the employees are of paramount importance in this regard. The Tribunal cannot therefore, sit in judgment over such policy changes. Although it ^{have been} would find definitely better for the NALCO Management had they taken a better view from the beginning, without giving any further scope for change in policy, but we would certainly agree with the learned counsel for the Respondents that it is within the domain of management of the company to decide what criteria are to be followed for deciding fitness of the employees for conversion to technical category. The Tribunal would not be in a position to comment upon the actual operational requirements of this PSU and it will be only ^Rbe expected that the management would be taking well informed decision in this regard keeping both the operational interest as well as welfare of its employees in view. Introduction of modification by way of a fitness and health criteria cannot be termed as unreasonable in this context. It is also found that the earlier selection process which was initiated in the year 2010 has been annulled and a fresh process has been undertaken, which means that the management is not making any discrimination between one employee and the other. It was mentioned by the applicant's counsel that nine employees were already given the facility of conversion through the earlier process. In this regard, the Respondents have submitted that the nine employees who have been



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 given the facilities of conversion were employees of Damajoddi Mines which is different and in which the process of conversion was completed earlier. However, the present subject is regarding conversion of employees at Smelter Plant and CPP which are two different units and in which the new guidelines for conversion have been introduced. Therefore, apparently, no discrimination has been shown in this regard. Considering the various facts and issues involved in this case, we are inclined to hold that the NALCO management was within their right to make certain modification in the criteria of conversion from W to T category. The exigencies in which they have made this modification have to be left to their best judgment in the interest of ^{the} various functioning of the plants as well as the welfare of the workers

16. It is also admitted in this case that the present applicants have participated in the fresh test which was conducted by the management. Having appeared in the fresh test /interview conducted by the management for conversion they are stopped from ^{challenging} ~~changing~~ this at this point of time when admittedly, the process of conversion under the new guidelines has reached a stage of finalization. In view of the above discussions, we answer the issue Nos. 2 and 3 in favour of the Respondents.

17. ^{is} Another issue ^{is} raised regarding the letter dated 4.4.2012, in which it was intimated that all possible efforts will be made for publication of the list of successful employees. This letter was issued by the AGM, HRD of the

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Smelter Plant, NALCO Nagar, Angul. Learned counsel for the applicant has pleaded that after having issued such a letter, the Management is stopped from making any further change in the policy and thereby not to publish the result of selection made pursuant to the earlier policy. Learned counsel for the Respondents has however, pleaded that the officer who has issued this letter is not the appropriate authority to give such an assurance. Besides, he has pointed out that the officer had to write this letter under duress since the management was gheraoed by the workers. Therefore, this letter will not create any right for the applicants to get the benefit of conversion from W to T category. Learned counsel for the applicant has pointed out the law pronounced by the Hon'ble Apex Court in the case of State of Bihar vs. Kalyanpur Cement Limited reported in 2010(SCC)274 in order to support his contention that doctrine of promissory estoppel will apply in the present case. On the other hand, learned counsel for the Respondents has argued that the principles which were laid down by the Hon'ble Apex Court in the case for application of doctrine of promissory estoppel do not apply to the present case. According to said judgment, in order to invoke the aforesaid doctrine a party must make an unequivocal promise to the other party and it has to be established that the party invoking the doctrine has altered his position relying on the promise. It is also laid down by the Hon'ble Apex Court that the doctrine cannot be pressed into aid to compel the Government or the public authority to carry out a representation or promise which is contrary to law or which was



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outside the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppel cannot be invoked in the abstract. It is the submission of the learned counsel for the Respondents that the principle decided in this case goes heavily against the submissions made by the learned counsel for the applicant. The AGM, HRD who wrote such a letter has no role to play in the finalization of selection process and did not have any authority to make such a promise. NALCO Management also had every right to make changes in the guidelines for conversion after the issue of such a letter. It is the prerogative of NALCO Board of Directors which is the authority competent to take any action in this matter and it is the AGM,HRD, who is not competent to make such a promise. Incorporating the change in the criteria and going for a fresh selection as per the changed policy do not amount to violation of the principles of promissory estoppel. In fact before filing of this O.A. applicants themselves have appeared in the selection for the trade test and they themselves had made the interim prayer of stay on the publication of the result which had been granted by the Tribunal. However, having examined the points raised by both the learned counsels, we are inclined to take a view that the doctrine of promissory estoppel is not attracted to the present case and accordingly, issue No.4 is answered.

18. In view of the foregoing discussions which have been made above, we do not find any illegality in the action of the Respondents in annulling the earlier process of conversion from W category to T category and

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initiating fresh selection process on the basis of some modified criteria. It is also observed that conversion cannot be called a promotion. There are several employees and the posts identified for conversion in smelter plant and CPP are limited in number. The Management may have several functional constraints in the ~~post~~^{plant} operational interests of the plants. Applicants themselves have appeared in the fresh test which was conducted and thereby they have acquiesced in the new policy adopted by the management. Having said so, it is of course the duty of NALCO management to maintain absolute fairness in such matters and also make best efforts to maintain harmony and peaceful industrial climate in the company. Viewed in this context any unusual delay in the finalization of such process is likely to create disharmony, which will not be in the long run, in the interest of the company as it is said '*procrastination is the biggest thief of time*' and according to common parlance - "*a stitch in time saves nine*". An unnecessary prolongation of various administrative procedures is likely to create discontentment and disgruntlement between the management and the employees. Therefore, the Respondents will be well advised to publish the results of the trade test under the new guidelines expeditiously and to that end they should remove the administrative bottlenecks like identification of posts etc., because of which they have admittedly failed to publish the result of the trade test earlier. Maintenance of peaceful and healthy industrial relationship is the key to



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productivity and growth and this in turn will enhance the workers' welfare in any industrial undertaking.

19. For the reasons that have been discussed in the preceding paragraphs and with the above mentioned observations, the O.A. is dismissed. No costs.

(R.C.MISRA)
MEMBER(A)



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(A.K.PATNAIK)
MEMBER(J)