

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/1096/2014

Date of Reserve:02.04.2019

Date of Order:14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Harish Chandra Das, aged about 54 years, S/o. Mahendranath Das, working as Technical Officer – C(TO-C) in Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, Defence Research & Development Organization, New Delhi-110 054.
2. Director General, R&D, Defence Research & Development Organization, Directorate of Human Resource Development, DRDO Bhawan, Rajaji Marg, New Delhi-110 105.
3. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore.
4. Ms.S.sen
5. Sri U.N.Giri.
6. Sri R.D.Kundu.

Respondent Nos. 4 to 6 are at present working as TO-C under Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore, Odisha.

...Respondents

By the Advocate(s)-Mr.B.Swain

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J)

Applicant is presently working as Technical Officer – C(TO-C) in Proof & Experimental Establishment, Ministry of Defence under the administrative control of Respondent No.4. He had earlier approached this Tribunal in

No.774 of 2013 assailing his non-promotion to the post of Technical Officer-C. This Tribunal disposed of the said O.A. vide order dated 6.1.2014 with direction to Respondent No.2 to consider the representation submitted by the applicant and communicate the decision thereon to him by way of a reasoned and speaking order. It was further directed that if the applicant was found to be suitable/eligible for promotion from Technical Officer-B to Technical Officer-C, then expeditious steps be taken to promote him within a stipulated time frame. Complying with the aforesaid direction, the applicant was communicated a letter dated 13.11.2014 (A/6), the relevant paragraphs of which are as follows:

4. That promotion in DRTC are based on Limited Flexible Complementary Scheme as per SRO 296/2000 as amended from time to time. As per SRO, any TO-B who has completed five years of residency becomes eligible for promotion to next rank i.e., TO-C. All eligible candidates of any particular year are called for assessment in that year.
5. That various Assessment Boards are constituted at various locations across the country to assess all the eligible candidates. These Boards are constituted subject wise. The nearest Board of his subject Mechanical Engineering was in ANURAG & hence Shri Harish Chandra Das, TO-B was assessed in ANURAG-2.
6. That as has been mentioned by Shri Harish Chandra Das, TO B, best 30% (of the eligible TO-B) are promoted to next higher rank of Technical Officer-C. It may be noted that best 30% are chosen on DRDO level and not on Lab level or Board level (i.e., the merit list is drawn at DRDO level by CEPTAM) based on result from various Assessment Boards across the DRDO. Equal weightage is given to assessment marks and average (50% each) while drawing the final merit list of eligible candidates. Those who are in top 30% are promoted.
7. That the assumption of Shri Harish Chandra Das, TO-B, petitioner is that best 30% is decided at lab level or Board level is absolute wrong. Hence it is not possible to consider his promotion w.e.f. 1st September, 2012.
8. NOW THEREFORE Shri Harish Chandra Das, TO B is advised to compete the eligible candidates next time and try to come among the top 30% of eligible employees on DRDO level by his better performance. As per latest record he has already been achieved

the target of figuring the best 30% of eligible TO-B in year 2014 and accordingly he has been promoted to TO-C.

9. In terms of CAT, Cuttack Bench order dated 06.01.2014 against the subject O.A., the speaking order has been issued by CEPTAM, Delhi vide their letter No.DRDO/CEPTAM/SD/91301/LCE/HSC/c/b/01 DATED 30 Oct. 2014 for their dissemination.

2. Aggrieved with this, the applicant has approached this Tribunal in the present O.A. praying for the following reliefs:

- i) Let the impugned order dated 13.11.2014 passed by the Respondent No.3 under Annexure-A/6 be declared as illegal and as such liable to be set aside.
- ii) Let the Respondents be directed to promote the applicant to TO-C from the date Respondent No.4 to 6 were promoted to the rank of TO-C, i.e., w.e.f. 01.09.2012 with all service and financial benefits within a stipulated time.
- iii) Let any other appropriate order/orders, direction/directions may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.

3. The grounds urged by the applicant in support of reliefs claimed are that though he had appeared before the Board at Anurag-1 on the subject "Instrumentation Engineering", but the Respondent No.3 in the impugned order at a Para-5 has stated differently, which clearly shows that the Respondent No.3 after receipt of the notice of contempt petition has passed the impugned order contrary to the direction of this Tribunal. It is stated that the applicant appeared the Assessment Board at Anurag-1 with different Chairmen and Members. It is quite automatic that the marks awarded by the said Board will not tally with the marks awarded by the Board held at PXE, Chandipur and Anurag-1. In order to avoid such discrepancy, the Respondents were earlier holding the Board at a particular place with one set of Chairman and Member whereas the said policy for the first and last time was deviated in

the year 2012. The applicant has submitted that he was eligible to be promoted to TO-C with effect from 01.09.2012 when Private Respondent Nos. 4 to 6 were given promotion to the said post, but the official respondents, arbitrarily and unreasonably ignored his claim for promotion.

4. Private Respondent Nos. 4 to 6 although duly noticed have neither entered appearance nor filed any counter.

5. Contesting the claim of the applicant, the official respondents have filed a detailed counter. They have submitted that the promotions in DRTC are based on Limited Flexible Complementary Scheme (LFCS) under SRO 296/2000 as amended from time to time. As per the said SRO any Technical Officer B (TO-B) who has completed five years of residency period in grade is called for assessment in that year and only 30% of eligible candidates can be promoted to next rank, i.e., Technical Officer C (TO-C). It has been submitted that the assessment is done by Central Assessment Board, based on combined performance in APAR and Interview grading. In such a scenario, it is very much possible that senior TOs do not make it to the next grade and junior Technical Officers are promoted. Equal weightage is given to assessment marks, APAR marks and average (50% each) while drawing the final merit list of all the eligible candidates and those who are in top 30% meritorious candidates are promoted. Official respondents have pointed out that as per prescribed percentage within overall limits done on DRDO level, the merit list is drawn up by CEPTAM, Delhi based on result obtained from various assessment boards across the DRDO. Accordingly, it is not possible to consider the applicant's promotion with effect from 01.09.2012, as promotion with the DRTC is a merit-cum-performance based scheme. It has been submitted that various Central Assessment Boards are constituted at various locations across

the country to assess the performance of all the eligible candidates and are constituted subject wise. The nearest Board of applicant's assessment subject Instrumentation was in ANURAG-1, Hyderabad where his performance was assessed.

6. Applicant has filed a rejoinder to the counter. In the rejoinder, applicant has pointed out that as would be evident from A/7 series, Assessment Board, 2009 had been held at PXE Chandipur wherein 30% of the candidates made to appear before the Board and were promoted from TO-B to TO-C whereas in the Assessment Board, 2012, while he was directed to appear the Assessment Board at Anurag-1, rest 7 nos. of eligible TO-B appeared the Assessment Board at PXE, Chandipur and instead of giving promotion to 30% of 07 nos. of candidates who had appeared the Board at PXE, Chandipur, 03 nos. of TO-B were promoted to the rank of TO-C. The applicant though appeared the Assessment Board at Anurag-I, he was not given promotion nor was he intimated about the marks secured by him the Assessment Board.

7. We have heard the learned counsels for the parties and perused the records. We have also gone through the written notes of submissions filed by both the sides.

8. From the pleadings of the parties, it is an admitted position that the applicant was eligible to appear before the Assessment Board in the year 2012 for promotion from TO-B to TO-C. It is also an admitted position that as per SRO-296/2000, only 30% of eligible candidates can be promoted to next rank, i.e., Technical Officer C (TO-C). It is a matter of fact that as per the recruitment rules, 50% marks are meant for Assessment Board and other 50% marks are awarded based on the last 05 years APARs of the employee concerned. This point the official respondents have made it very clear in their counter by

stating that the assessment is done by the Central Assessment Board based on combined performance in APAR and interview grading. If it be so, what were the marks secured by the applicant vis-a-vis the selected candidates in respect of APAR and interview grading ? What were the combined marks secured by them ? If at all, the best 30% were selected and appointed in the year 2012, who were those candidates and what were their positions in the merit list drawn up vis-a-vis the applicant on the basis of combined performance in APAR and interview grading ? It was therefore, imperative on the part of the official respondents to bring to the fore those facts lucidly while passing the impugned communication dated 13.11.2014 (A/6) in compliance of the direction of the Tribunal in O.A.No.774 of 2013. But, for the reasons, best known, they did not choose to do so neither in the said impugned communication nor in the counter-reply to the O.A.

9. Integrity and transparency in the matter of selection to a post are the underlying elements which absorb the needs of provisions of the constitution enshrined under Articles-14 & 16. Any deviation in adhering to the provisions of recruitment rules framed under Article-309 of the Constitution would bring chaos and confusion in the minds of the candidates in the zone of consideration thus, having a far reaching consequence on the provisions of Articles 14 & 16 of the Constitution of India. Propriety therefore demands for the authorities at the helm of affairs to be more vigilant and to that extent a duty is cast on them, to curb any such dubious means adopted, so as to make the selection free and fair. By no stretch of imagination, the communication made vide A/6 is in compliance with the direction of this Tribunal, apart from the counter-reply filed by the official respondents. That apart, the official respondents in a casual manner have passed the impugned communication

by stating that the applicant was appearing before the Assessment Board in Mechanical Engineering whereas he was appearing in Instrumentation. Even the official respondents did not issue any corrigendum in this regard and have attempted to mend the matter by making some superfluous submissions in the counter-reply.

10. At this juncture, we would like to note that while disposing of O.A.No.774 of 2013 vide order dated 6.1.2014, this Tribunal had directed the Director General, R&D, Defence Research & Development Organization, Directorate of Human Resource Development, DRDO Bhawan, New Delhi (Respondent No.2) to consider and dispose of the representation whereas the order impugned has been passed by one R.Aappavuraj, Scientist 'H'(OS), Director, PXE, Defence R & D Organization, Proof & Experimental Establishment, Chandipur, Balasore, who was Respondent No.3 in the said O.A. This amounts to disregard and flouting the orders of this Tribunal. The official respondents should note that they should be more careful while dealing with the court matters and any deviation in this regard will be viewed seriously.

11. From the above discussions, this Tribunal is of the opinion that the selection made by the Assessment Board, 2012 for promotion from TO-B to TO-C cannot be said to be above board. In view of this, the impugned communication dated 13.11.2014 (A/6) is quashed and set aside. Accordingly, the Director General, R & D, Defence Research & Development Organization, Directorate of Human Resource Development, DRDO Bhawan, Rajaji Marg, New Delhi (Respondent No.2) is directed to reconsider promotion of the applicant to TO-C with effect from 01.09.2012 when private respondent Nos.4 to 6 were so promoted, having regard to the observations made above

and pass appropriate orders within a period of 90 (ninety) days from the date of receipt of this order. It is made clear that in case the applicant is found suitable and consequently, promoted as TO-C with effect from 01.09.2012, he shall be entitled only to the benefit of notional promotion.

12. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHAHDNRA PATI)
MEMBER(A)

BKS