

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1

23.01.2019

O.A./260/56/2019

FOR INTERIM PRAYER, ON MEMO

U C MAHARAJ

-V/S-

ORDNANCE FACTORY

ITEM NO:11

FOR APPLICANTS(S) Adv. :

Mr. S. K. Ojha

FOR RESPONDENTS(S) Adv.:

Mr. B. R. Mohapatra

Notes of The Registry	Order of The Tribunal
	<p>Heard the learned counsels for both the sides on the question of admission and perused the records.</p> <p>Applicant, presently working as Master Craftsman in the Ordnance Factory, Badmal, has filed this O.A. praying for the following reliefs:</p> <p>i) To direct the Respondent No.2 to consider the grievance of the applicant and to extend the benefit of promotion to the applicant as has been extended to Sri Manoj Kumar Acharya vide office order dated 12.01.2019.</p> <p>ii) To direct the Respondents to maintain parity and extend the benefit of order dated 15.01.2018 passed in O.A.No.599 of 2016.</p> <p>iii) To declare that the Speaking order dated 18.01.2012 (Annex.A/8) is non est in the eye of law in view of orders passed in O.A.No.186/2012 and O.A.No.599/2016.</p> <p>iv) To extend all consequential benefits with effect from the date when other employees promoted.</p> <p>v) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of</p>

justice.

2.As revealed from the O.A., applicant along with others had earlier approached this Tribunal in O.A.No.302 of 2011 being aggrieved with the decision of the Respondents wherein his request for promotion to the post of CM/T based on LDCE – 2010 had not been acceded to. This Tribunal after considering the matter disposed of the said O.A. vide order dated 17.10.2011 as under:

“8.From the aforesaid submissions and pleadings it is undisputed that though the Board had directed the factory Administration to notify the vacancies including the anticipated vacancy upto 31.03.2011, certainly they have failed to carry out the order of the Board. Secondly, the applicants were/are empanelled on the basis of a positive act of selection and Factory Administration has made it clear in their letter dtd. 01.04.2011 that the vacancies are available and the currency of panel is still prevailing and requirement of the factory also existing for filling of the posts immediately. Moreover, it is also undisputed that the Factory Administration, Badmal has extended benefit of promotion over and above the post advertised from time to time and for this year also same procedure has been followed by another Unit under the Administrative control of the Ordnance Factory Board, Kolkata. Even though, Ordnance Factory Board is a party to the case in hand, stands so taken by the applicant have not been replied by the Ordnance Factory Board nor in any where the respondents have taken any such stand that what type of corrective measure has been taken by the Board to rectify the mistake if any committed during 2007, 2008 and 2010 itself.

Further, the decisions so replied on by the Respondents were also existed while giving promotions in the year 2007, 2008 and 2010-11. In the present case, applying the ratio of that Hon’ble Apex Court decision, Board cannot refuse to extend the benefit of promotions to the applicants whereas other unit working under the Board are giving promotions over and above the notified vacancies. Respondents cannot resort to such type of

practice adopting pick and choose method.

In this view of the matter, we leave this matter to the discretion of Respondent No.2, viz., General Manager, Ordnance Factory to reconsider the matter afresh having regard to long standing precedent and practice as aforementioned and pass a reasoned and speaking order within a period of sixty days from the date of receipt of this order. In effect, we quash the impugned orders at Annexure-A/9 dated 29.4.2011”.

3.Complying with the aforesaid direction of this Tribunal, the respondents issued a memorandum dated 18.01.2012(A/8) the relevant portion of which reads as under:

“...In this connection, it may be indicated that vacancy created due to promotion order issued by OFB subsequently is not in the hands of OFBOL and as such the factory cannot foresee such vacancies at the time of advertisement of LDCE vacancies. As appointment of CM through LDCE in this factory was to the extent the vacancies were advertised, your contention for giving employment based on subsequent arising of vacancies is without basis as it lacks merit.

Further, with regard to the direction of Hon’ble CAT, Cuttack in their order dated 17.10.2011 that GM/OFBL to reconsider the matter afresh having regard to long standing precedent and practice it is indicated that if at all an incorrect practice, contrary to the Rules and Instructions laid down by Govt. Of India, was being followed in the past that may not be construed an authority and may not be allowed rarely on the grounds of precedent”.

4.The case made out by the applicant in the present O.A. is that a similarly situated person, viz., Shri Manoj Kumar Acharya had earlier filed O.A.No.186 of 2012 before this Tribunal and this Tribunal vide order dated 2.2.2016 disposed of the said O.A. with direction to the Director General, Ordnance Factory Board to consider the matter and pass a reasoned and speaking order . In

pursuance of this order, a speaking order dated 20.07.2016 (A/10) was passed by the concerned authority wherein the relief sought for by Shri Manoj Kumar Acharya was not granted. Aggrieved with this, Shri Acharya again approached this Tribunal in O.A.No.599 of 2016. This Tribunal vide order dated 15.01.2018 allowed the said O.A. with direction to Respondents to issue necessary orders giving promotion to the applicant therein under the LDCE quota from the year 2010-11 within a stipulated time frame. Against this order, the respondents moved the Hon'ble High Court of Orissa in W.P.(C) No.6137 of 2018 and the Hon'ble High Court vide order dated 10.05.2018 dismissed the Writ Application. In the above backdrop, the respondents issued promotion order dated 12.01.2019(A/13) in favour of Shri Manoj Kumar Acharya in the post of Chargeman (Tech) in the Chemical Stream based on LDCE-2010.

5.It is the submission of the applicant that claiming promotion to CM/T under LDCE quota, applicant has submitted representations to the General Manager, Ordnance Factory, Badmal dated 23.08.2014(A/14). He has also submitted another representation dated 24.01.2018 to the Director General, Ordnance Factories, Ordnance Factory Board, Kolkata requesting consideration of his promotion as has been granted to Shri Manoj Kumar Acharya based on the decision of this Tribunal in O.A.No.599/2016 and since no reply has been received, he has moved this Tribunal in this O.A. praying for the reliefs as mentioned above.

6.We have considered the arguments advanced at the Bar. In our considered opinion, since the applicant has not received any reply in pursuance of his representations as at A/14 and A/15, we are not inclined to issue notice to the respondents. Therefore, without expressing any opinion on the merit of the case, we direct the Respondent No. 2, viz., Director General, Ordnance Factory Board, Kolkata to consider and dispose of the representation of the applicant as aforementioned and pass a reasoned and speaking order within a period of two months from the date of receipt of copy of this order

under intimation to the applicant.

7.The O.A. is disposed of as above at the stage of admission itself. No costs.

8.On the prayer made by the learned counsel, copies of Paper Book along with copies of this order be sent to Respondent No. 2 and 3 by Speed Post at the cost of the applicant for which Mr.S.K.Ojha shall file postal requisites.

9.Free copy of this order be made over to learned consuls for both the sides.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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