

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
TA No. 260/22/2011

Date of reserve : 1.5.2019
Date of order : 14.5.2019

CORAM:

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

Sushil Kumar Mishra, aged about 59 years, S/o Late B.N.Mishra, presently working as Deputy General Manager I/c. Business Planning Department, Rourkela Steel Plant, Rourkela, resident of E-20, Koel Nagar, Rourkela-14, Dist. – Sundargarh.

.....Applicant

By the Advocate(s) – Mr. N.R.Routray

VERSUS

1. Steel authority of India Ltd. Represented through its Chairman, Ispat Bhawan, Lodhi Road, New Delhi – 110003.
2. Director (Personnel), Steel Authority of India Ltd., Ispat Bhawan, Lodhi road, New Delhi – 110003.
3. Managing Director, Rourkela Steel Plant, Steel Authority of India Ltd., Rourkela, Dist. – Sundargarh.

.....Respondents.

By the Advocate(s) – M/s. J.Pattnaik
T.K.Pattnaik
B.Mohanty
P.K.Nayak
S.Pattnaik

O R D E R

PER MR. GOKUL CHANDRA PATI, MEMBER (A) :

This Transfer Application (in short TA) was originally filed by the applicant before Hon'ble High Court and subsequently, it was transferred to this Tribunal for adjudication. In this TA, the applicant has sought for the following reliefs :

- i) The action of the Opp.PARTIES in not according promotion to the petitioner to E-8 grade shall not be declared illegal, arbitrary and without any authority of law.
- ii) The Opp.PARTIES shall not be directed to accord promotion to petitioner to E-8 grade retrospectively with all consequential benefits.

If the Opp. Parties fail to show cause or show insufficient cause the rule be made absolute.

2. The applicant had challenged the action of the respondents not to promote him to the rank of E-8 (equivalent to General Manager). It is stated that the criteria for promotion to E-8 grade is on the basis of the criteria like Average Credit Point in the current scale of pay, points for qualification, years of experience and points obtained as per the assessment of the Departmental Promotion committee (in short DPC), which carry 50, 10, 10 and 30 points respectively. The applicant was promoted to E-7 grade w.e.f. 30.6.2000 (Annexure -1) and after 4 years in E-7 grade, he acquired eligibility to be considered for promotion to E-8 grade. It is also stated in the TA that due to improper valuation of the service record of the applicant, he was denied promotion to E-8 grade although there was no adverse entry in his confidential record.

3. During the year 2005, 8 DGMs were promoted to E-8 rank, ignoring the applicant. He submitted a representation dated 11.11.2005 (Annexure -4) for consideration of his case for promotion. He was sent a reply vide letter dated 20.12.2005 (Annexure-5) stating the reasons for non-promotion. It is stated in the Ta that subsequent to 2005 promotion, promotion to E-8 grade was also considered in 2006 and promotion order was issued on 19.2.2007, but the applicant was again ignored. The applicant submitted another representation dated 6.4.2007 (Annexure-7). It is stated in the Ta that in spite of clean service record of the applicant, his case for promotion to E-8 grade has been ignored, while promoting his juniors and such action of the respondents is illegal.

4. Counter has been filed by the respondents disagreeing with the averment in the TA that the service career of the applicant was without any blemish, since he was imposed a punishment of 'censure' vide order dated 21.8.1998 (Annexure-A to the Counter). It is also stated that his case was considered for promotion, but not recommended by the DPC for promotion to E-8 grade although he was duly considered along with other eligible officers. It is stated that promotion to E-8 grade is done all India basis and seniority is not the sole

criteria for promotion, as stated in the TA. It is further stated in the Counter that the officers who were promised in the year 2005 and 2006 were higher in the merit list than the applicant. It is stated that the allegation of arbitrariness and improper consideration made by the applicant are not backed by cogent reasons, when he was not found suitable by the DPC. It is also stated in the Counter that the applicant has no right to be promoted in view of the fact that he was lower in the merit list prepared by the DPC for promotion.

5. The applicant has filed Rejoinder stating that after the punishment of censure, the applicant was promoted to E-7 grade. Hence, this penalty is not a bar for his promotion to the next promotion to the E-8 grade. It is further stated that as appears from the Counter, the penalty of censure is the reason for ignoring the case of the applicant for promotion and that the merit list prepared by the Committee showing the applicant to less meritorious is incorrect.

6. We heard learned counsel for the applicant. He submitted a detailed date chart for the case and stated that the applicant's promotion has been denied by the respondents in spite of the fact that there is no disciplinary or criminal proceedings has ever been initiated against the applicant. He submitted that the respondents have referred in the Counter to a punishment of censure imposed on the applicant in the year 1998. He stated that this ground for denying promotion to the applicant is not sustainable in view of the fact that the applicant was promoted to E-7 grade on 30.6.2000, subsequent to imposition of the penalty.

7. Learned counsel for the respondent was also heard. He pointed out that as per the para 8.1 of the promotion policy for the Executives of SAIL, promotion from E-7 to E-8 will be through interview by a Selection Board. He further reiterated the averment made in the Counter that in the merit list prepared by the DPC the applicant was placed below the other officers who have been promoted. He also produced a letter dated 30.4.2019 from the respondents stating that the applicant secured 34.67 marks for promotion year 2005 from E-7 to E-8 grade, compared to the minimum cut-off marks of 55.67. Similarly,

for promotion for the next year, the applicant secured 41 marks compared to the cut off marks of 52.70. Learned counsel for the respondents also filed a copy of the order passed by the Tribunal in TA No. 7 of 2013 in which in a similar case, antedating of promotion to E-8 grade in deviation from the recommendation of the DPC was not allowed by the Tribunal.

8. We have considered the matter with regard to the submissions by the parties. Nothing has been produced by the applicant to show that the DPC or the Selection Board which had considered his case was biased against him or the recommendation was arbitrary or contrary to the existing rules or the policy for promotion. Who is suitable for promotion and who is not will depend on the assessment of the DPC in accordance with the promotion policy, copy of which is enclosed at Annexure-B of the Counter. No specific violation of the promotion policy at Annexure-B has been alleged by the applicant in his pleadings. The applicant's grievance is because of the fact that he was not promoted to E-8 grade although there was nothing adverse in his service records and since he was promoted to E-7 grade on 30.6.2000. It is also revealed that the applicant secured less than the cut off marks for promotion from E-7 to E-8 grade during the years 2005 and 2006.

9. In view of the reasons as stated above, we do not have any justification to interfere in the matter. Accordingly, the TA is liable to be dismissed and hence, it is dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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