

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/80/2013

Date of Reserve: 01.05.2019

Date of Order: 30.07.2019

CORAM:

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

Rajib Kumar Bisoi, aged about 26 years, S/o. Sri Pravat Kumar Bisoi, At/PO-Kulad, Dist-Angul, Odisha.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Steel & Mines, Shastri Bhawan, New Delhi.
2. Chairman-cum-Managing Director, NALCO, NALCO Bhawan, P-1, Nayapalli, Bhubaneswar, Dist-Khurda.
3. Executive Director, Mines & Refinery Complex, NALCO, At/PO-Damanjodi, Dist-JKoraput, Odisha.
4. General Manager (H&A), Mines & Refinery Complex, NALCO, At/PO-Damanjodi, Dist-Koraput, Odisha.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the order dt. 01.12.2012 under Annexure-A/8.
- ii) To direct the Respondent No.3 to give appointment to the applicant in pursuance to Annexure-A/4.
- iii) And pass any other appropriate order/orders, direction/directions which would be deemed fit and proper in the facts and circumstances of the case.

2. Briefly stated, the facts of the matter are that in pursuance of an advertisement dated 01.09.2010(A/1) issued by the Respondent-NALCO, the applicant was an aspiring candidate for the post of Junior Operative Trainees

(in short J.O.T.). Having cleared the written test, the applicant was called upon for interview/viva voce test that was held on 27.12.2010. Thereafter, he was issued with an offer of appointment dated 07.02.2011 (A/2) with an indication that if he accepts the terms and conditions therein, he should report for joining between 03.03.2011 to 10.03.2011, with a further stipulation that he should report for medical test prior to 7 days of his intended joining. The applicant appeared for the medical test on 22.02.2011 and on 03.03.2011, he was asked to come later along with the apprenticeship certificate as he was then undergoing apprenticeship. The applicant submitted the apprenticeship certificate in July, 2011. Again the applicant received a letter dated 10.03.2012 calling upon him to join the post in question by 31.03.2012. After receiving the joining letter, the applicant again appeared for medical test on 24.03.2012. However, the medical test was conducted on 26.03.2012 and he was declared medically fit for joining the post of JOT. While the applicant reported to join the post in question, he was informed by Respondent No.3 that he shall be intimated shortly regarding his joining. Since no reply was received thereafter, the applicant submitted a representation dated 23.07.2012 (A/6) to Respondent No.3 and this representation having not been responded, the applicant approached this Tribunal in O.A.No.746 of 2012. This Tribunal disposed of the said O.A. vide order dated 8.10.2012 with a direction to Respondent No.3 to redress the grievance of the applicant, as raised in the representation under Annexure-A/6 and communicate the decision to the applicant within a period of 45 days from the date of receipt of copy of the order. In compliance with the direction of this Tribunal, the respondents disposed of the representation of the applicant and

communicated the decision to the applicant vide letter dated 01.12.2012(A/8), the relevant part of which reads as under:

"That, your initial selection was made on the basis of your declaration that you are a land affected person/candidate of S&P Complex and none of your family members has been employed in Nalco against the Land acquired. However, at the time of joining during March, 2011, on verification from S&P Complex, it was confirmed that your father, namely Sri Pravat Kumar Bisoi, was appointed in CPP, Nalco during Sept. 1985 as a Land oustee. As such, your case was not be considered as a Land Affected Person and therefore you are asked to submit the National Apprentice Certificate issued by NCTVT/SCVT, in compliance with the terms and conditions of the Advertisement No.2/2010 at par with other general category candidates. However, you could not submit the said certificate and requested for extension in joining time for submitting the NAC. It is clarified here that such general category candidates undergoing Apprenticeship training at M&R Complex were considered for the post and they could produce NAC by 25.3.2011. But you submitted a provisional certificate issued by S&P Complex Training Department vide letter dated 2.11.11 indicating about passing out the All India Trade Test. The same was examined and was still considered by extending the joining date by the management, and accordingly, you were allowed to join by 31.3.2012. However, you did not join the post by the due date and the validity of the selection panel expired.

In addition to the above, it is also observed on record that the initial affidavit submitted by you towards being Land Affected Person of S&P Complex is false and hence the same cannot be relied upon for joining the post under the LAP category. All your allegations about the management not permitting you to join is false and with mala fide intention and the same are not accepted. As you have failed to join the post within the extended time limit and the validity of the selection panel has expired, your case can no more be considered for joining the post of JOT(Fitter)".

3. Aggrieved with this, the applicant has filed the instant O.A. praying for the reliefs as mentioned above.

4. The grounds based on which the applicant has laid his claim are that on fulfilling the conditions of recruitment he was found suitable and offer of appointment was issued with a condition that he should undergo medical test prior to his joining. It is the case of the applicant that he appeared for medical test on 24.03.2012, but the same was deferred to 26.03.2012 as would be

evident from A/5. After he being declared medically fit, when he reported for duty, Respondent No.3 verbally denied his joining and intimated that he would be given joining after the ensuing Employees Union Election. He simply believed this assurance given by Respondent No.3 and thereafter, no communication was made asking him to join the post in question, as a result of which he had approached this Tribunal in the earlier round of litigation.

5. Opposing the prayer of the applicant, respondents have filed a detailed counter. The main thrust of the counter is that after a lapse of about eight months of the scheduled date of joining, the applicant submitted a certificate issued by NALCO, S&P Complex Training Department vide his letter dated 2.11.2011 indicating about his passing out the All India Trade Test. According to Respondents, as per the R&P Rules for Non-Executives in NALCO, the approved panel is valid for a period of one year and in exceptional cases, life of the panel may be extended by the appointing authority for two spells of six months each depending upon requirement. Since the selection for the post of JOT (Fitter) was approved on 31st January, 2011, the time stipulation of one year of the panel expired on 30th January, 2012. Respondents have pointed out that the advertisement was for filling up 240 JOTs and after completion of the 1st phase recruitment process, only 183 candidates had qualified for appointment as JOTs. Out of 183 candidates, 177 joined the posts and one candidate was disqualified on medical ground and 04 of them did not respond. The applicant was the only candidate who made a representation to consider his case after passing out the NACI. In view of the suitability of the candidature and the shortfall of 44 fitters in the list phase recruitment, it was though prudent to consider his case as a general candidate as he was meeting all other criterion and the selection panel was still valid, the other factors

being there was a shortage of fitter posts in the unit. Consequently, a proposal was moved to allow the applicant to join the post of JOT(Fitter) as per the Rules of the Company. It has been pointed out that the applicant was intimated vide letter dated 10.03.2012 (A/4) to join the post latest by 31.3.2012 with the approval of the competent authority, but he did not join on or before 31.3.2012. Hence, the respondents have submitted that as the validity of the panel has expired on 31.03.2012, the relief sought for by the applicant in this O.A. should not be allowed.

6. Applicant has filed a rejoinder to the counter in which it has been submitted that the validity of the panel was extended for two spells of six months each, i.e., from 31.01.2012 to 30.06.2012 and 30.06.2012 to 31.01.2013. The applicant had submitted his representation on 23.07.2012, but the respondents with an oblique motive did not take any action.

7. We have heard the learned counsels for both the sides and perused the records. In the fitness of things, we would like to quote hereunder the relevant part of intimation for joining in the post of Junior Operative Trainee as issued to the applicant vide letter dated 10.03.2012(A/4).

"With reference to the above, we are to intimate that your subsequent furnishing of the Apprentice Certificate has been accepted by the Appointing authority and accordingly you are hereby permitted to join the post of JOT(Fitter) by 31.03.2012".

8. The whole point revolves round the fact that the applicant did not turn up to join the post by 31.01.2012 and since the validity of panel expired on 31.01.2012, the applicant was not allowed to join. This is also the categorical case of the respondents while passing orders in compliance of the orders of this Tribunal dated 08.10.2012 in O.A.No.746/2012. Clause 1.3.11.2 of Annexure-R/7 filed by the respondents provides that "the panel as approved

by Appointing Authority shall be valid for a period of one year. In exceptional cases life of the panel may be extended by the Appointing Authority for two spells of six months each depending on requirements". However, the plea of the applicant that the panel had been extended on two spells for a period of six month each from 31.01.2012 to 30.06.2012 and 30.06.2012 to 31.01.2013 stands unsubstantiated. The fact remains that the applicant had undergone medical test on 26.3.2012 has been admitted by the respondents in Para-18 of the counter. The allegation made by the applicant in his letter dated 23.7.2012 (A/6) that on being referred for medical examination vide letter dated 23.03.2013, he went through the medical examination and reported to the authorities for duties at Damajodi on 24.3.2012 when he was informed that he could not join and the authorities asked him to go back to his native, so that they can inform him by issuing letter regarding the date of his joining. The conduct of the applicant in giving the said letter mentioning details, date and place where had reported for duty and expressed his willingness to join the post in question is also supported by the further action in approaching this Tribunal in O.A.No.746/2012, which was disposed of by passing a further order. In spite of this, the respondents rejected the representation of the applicant vide order dated 1.12.2012 (A/8) without specifically considering the claim made by the applicant that he was not allowed to join. This being the position, it cannot be said that the applicant did not turn up to join the post in question by 31.03.2013 in pursuance of letter dated 10.03.2012(A/4). In view of this, the inescapable conclusion that only could be done is that although the applicant was willing to join the post of JOT(Fitter) by 31.03.2012, but for the reasons best known, he was prevented from doing so. In the circumstances, this O.A. has to be decided in favour of the applicant.

9. For the discussions held above, we quash the impugned order dated 01.12.2012 (A/8) and direct the respondents to allow the applicant to join the post of JOT (Fitter) forthwith, at any rate, not later than four weeks from the date of communication of this order.

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

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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