

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/383/2013

Date of Reserve:29.04.2019

Date of Order:03.07.2019

CORAM:

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

Dr.Chandraprabha Mohanty, aged about 60 years, W/o. Shri Pradeep Kumar Mohanty, resident of Village/PO-Dadhibamanpur, Baialishmouza, PS-Sadar, Dist-Cuttack and Assistant Director (Retired), Vocational Rehabilitation Centre for Handicapped, Plot No.1, 2, 5 & 6, Khandagiri, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.B.Mohapatra
S.K.Sahoo
G.Panda

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Labour & Employment, Shram Shakti Bhawan, Fafi Marg, New Delhi.
2. Director General, Employment & Training, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi.

...Respondents

By the Advocate(s)-Mr.A.K.Mohapatra
Mr.P.R.J.Dash

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Shorn of unnecessary details, it would suffice to note that the applicant while working as Assistant Director, Vocational Rehabilitation Centre for Handicapped under the Ministry of Labour & Employment, retired from service with effect from 31.03.2013 on attaining the age of superannuation.

She had earlier approached this Tribunal in O.A.No.107 of 2013 with a prayer for direction to be issued to the respondents to suitably modify the Office Order No.09/2013 dated 31.01.2013 and to give her promotion to the post of Deputy Director, Rehabilitation with retrospective effect from the date on which such promotion became due, with all consequential benefits. This Tribunal, vide order dated 08.03.2013 disposed of the said O.A. in the following terms:

"4.In consideration of the above submission, we direct the applicant to make a representation to Respondent No.2 within ten days from to-day and if any such representation is received by Respondent No.2 within ten days from to-day, then, the same shall be considered and disposed of by way of a reasoned and speaking order and the result thereof communicated to the applicant within a period of six weeks from the date of receipt of this order".

2. In pursuance of the aforesaid direction, the applicant submitted a representation dated 13.03.2013 (A/7) to the Director General, Employment & Training, Ministry of Labour & Employment, New Delhi (Res.No.2) praying for the following:

"In the above premises, it is highly desirable in the interest of justice at least, to pass appropriate orders, making my promotion effective from 15.01.2012, i.e., the day on which I attained eligibility to hold the promotional post and to refix my salary and pension in the scale of pay attached to the promotional post, within the time limit stipulated by the Hon'ble Tribunal in that behalf. Other admissible post-retirement dues payable to me may also be calculated and paid to be accordingly, within the aforesaid time limit.

I, therefore request your good self to personally look into the matter and pass necessary orders, making my promotion to the post of Deputy Director (Rehabilitation) effective from 15.01.2012, i.e., the day on which I attained eligibility to hold such promotional post, together with all consequential pecuniary benefits, within the time limit stipulated by the Hon'ble Tribunal in that behalf...."

3. In consideration of the aforesaid representation and in compliance with the direction of this Tribunal, Respondent No.2 communicated the decision to the applicant vide A/8 dated 16.04.013, which is extracted hereunder:

"I am directed to refer to your representation dated 13.03.2013 and to say that a DPC meeting was to be conducted on 16.11.2012 for promotion to the post of Dy.Direcgor (Rehabilitation), but could not be conducted due to ACRs grading of Sh.L.K.Varte, who is at No.1 position in the zone of consideration. His ACRs grading for the period 2002-03 and 2003-04 were below benchmark and the same was not communicated to him. As per DoP&T O.M. dated 13.04.2010, below benchmark gradings in ACRs prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officers for representation.

2. Sh.L.K.Varte, AD® had been intimated on 21.11.2012 regarding below benchmark gradings of his ACRs for the period 2002-03. A representation dated 03.12.2012 was received for the period 2002-03 and 2003-04. Representation of Sh.L.K.Varte was sent to Sh.K.K.Bhatt, DD®, who was the then reporting officer of Shri L.K.Varte. Finally, his ACRs grading for the period 2003-03 was retained without any changes and for the period 2003-04 was up graded as "Good" for all purposes (copy enclosed) on 16.01.2013.
3. After completing the formality of ACRs upgradation, the file was put up on 16.01.2013 to seek convenient date from Additional Secretary (L&E) who was the Chairman of DPC. Meanwhile, Additional Secretary (L&E) was promoted to the post of Secretary and joined in the Deptt. Of Disinvestment.
4. It is relevant to mention here that as per Guidelines on additional charge of the current duties of another post under FR 49, vide O.M. dated 24.01.1963 "The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direction from an Act of Parliament..." In view of this, no other Officers could chair the DPC meeting except Additional Secretary (L&E). Hence, a proposal for ad hoc promotion to the post of DD® was initiated, Smt.C.P.Mohanty, AD® and Sh.Narendra Kumar, AD® were recommended for ad-hoc promotion but it was

not decided that where they would be posted. Hence, their promotion order was issued without separate posting place.

5. It is also mentioned that as the promotion order was issued on 31.03.2013 and there was not any post of DD® in Cuttack. In view it was not prudent to post her outside the station on the date of her retirement.
6. As per DoP&T Guidelines, promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s) (Copy enclosed).

This issues with the approval of DG/AS”.

4. Being aggrieved with the aforesaid decision of the respondent no.2, the applicant has approached this Tribunal in the instant O.A. seeking for the following reliefs:

- i) To quash the impugned order dated 16.04.2013 under Annexure-A/8.
- ii) To direct the respondents to suitably modify the Office Order No.09/2013 dated 31.01.2013 under Annexure-A/4 and give promotion to the applicant to the post of Deputy Director, Rehabilitation with retrospective effect, from the date on which such promotion became due, with all consequential benefits, within a time limit that may be stipulated by this Hon'ble Tribunal in that behalf.
- iii) To grant such other/further relief(s) as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.

5. Opposing the prayer of the applicant respondents have filed their counter to which applicant has also filed a rejoinder. During the course of hearing, learned counsel for the applicant brought to the notice of this Tribunal an office order dated 08.09.2011 by virtue of which the applicant, while working as Assistant Director (Rehabilitation), Jaipur has been granted 2nd financial upgradation under the MACP Scheme in Pay Band of Rs.15,6000-39,100/- with Grade Pay of Rs.6600/- with effect from 09.08.2009. As mentioned above, the applicant has prayed for her promotion to the post of Deputy Director ® with effect from 05.01.2012 which carries the same scale

of pay, i.e., Rs.15,600-39,100/-(PB-3) with Grade Pay of Rs.6600/-. However, the fact remains that the post of Deputy Director ® is a Group A Gazetted post. In this connection, it is to be noted that the respondents have not disputed the eligibility of the applicant for promotion to the post of Deputy Director ® with effect from 05.01.2012. On the other hand, it is only the case of the respondents that because of below-bench mark grading in the ACR for the period 2003-03 & 2003-04 of one L.K.Varte who was at Sl.No.1 in the zone of consideration, promotion of the applicant got delayed, apart from the fact that that the Additional Secretary (L&E) who was supposed to be the Chairman of the DPC consequent upon his promotion as Secretary had already joined the Department of Disinvestment.

6. We have considered the rival submissions advanced at the Bar. It is an admitted position that the DPC for considering promotion to the post of Deputy Director ® was to be conducted on 16.11.2012, but because of below bench mark for the year 2002-03 and 2003-04 in respect of Shri L.K.Varte, who was No.1 in the zone of consideration, the DPC could not be convened. This explanation of the respondents appears to be preposterous and hence, does not hold any water. If at all DPC was to be conducted on 16.11.2012 and admittedly ACRs for the preceding five years were to be taken into consideration in respect of incumbents in the zone of consideration, there was no need for the respondents to get into the below bench mark given in the ACR of Shri L.K.Varte for the periods 2002-03 & 2003-04. Even if grading in the ACRs for those period were not upgraded, the same would not in any way have set in motion the promotion of Shri L.K.Varte. Even considering that the ACRs of said Shri Varte for the period in question was to be considered by the DPC on 16.11.2012, he having been rated below bench mark, the rules or

instructions issued by the Government of India in this regard would have come to play and owing to this, the promotion of other eligible incumbents in the face of there being vacancies in existence, should not have been deferred or delayed. It is a case where for the fault on the part of the respondents, the applicant has been made to suffer. It is a case where even though the applicant was willing to work on the higher post, but she was prevented from doing so. This apart, it is not understood as to what prevented the respondents from considering the applicant for promotion to the post of Deputy Director ® with effect from 05.01.2012 when she had already been getting the same pay scale with Grade Pay as that of the Deputy Director having been granted the benefit of 2nd MACP in PB-3 with Grade Pay of Rs.6600/- with effect from 09.08.2009. In the circumstances, the applicant would have only availed of the designation by way of promotion at the relevant point of time. Further, the reason for not issuing any posting order along with the promotion order has not been explained satisfactorily by the respondents.

7. Be that as it may, since the applicant has already been granted 2nd financial upgradation under the MACP Scheme in PB-3 with GP Rs.6600/- with effect from 09.08.2009 which is the pay scale prescribed for the post of Deputy Director (R) and admittedly, the applicant has been so promoted on the date of his retirement on superannuation, i.e., 31.3.2013 and the said promotion order could not be implemented since it was to be effective from the date of assumption of charge and no posting order was issued on 31.1.2013 when the applicant retired from service; the ends of justice would be met if the date of promotion of the applicant to the post of Deputy Director (R) is treated to be 31.01.2013 with all consequential benefits of promotion.

The Respondents are directed to reconsider the matter within two months and issue appropriate orders.

8. In the result, the O.A. is disposed of accordingly, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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