

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 9 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Rupambika Deo, aged about 44 years, W/o Ashok Kumar Patra, a permanent resident of 2/15 Kanchanjanga, VIP Enclave, Chandrasekharapur, Bhubaneswar, Dist.- Khurda. Presently working as Manager (Administration), In Corporate Office, NALCO, At-NALCO Bhawan, Nayapalli, Bhubaneswar, Dist.-Khurda.

.....Applicant

VERSUS

1. Chairman-cum-Managing Director, National Aluminium Company Limited, At-NALCO Corporate Office, At-NALCO Bhawan, Nayapalli, Bhubaneswar, Dist-Khurda.
2. Chief Manager (HRD), At-NALCO Corporate Office, At-NALCO Bhawan, Nayapalli, Bhubaneswar, Dist-Khurda.
3. Mr.A.K.Das, Manager (Administration), At-Captive & Power Plant, NALCO, At-Nalco nagar, Dist-Angul.
4. Mr.A.B.Deb, Manager (Administration), At- Corporate Office, NALCO, At-NALCO Bhawan, Nayapalli, Bhubaneswar, Dist.-Khurda.
5. Mr.S.Behera, Manager (Administration), At-M & R Complex, Damanjodi, NALCO, At-Damanjodi, Dist-Koraput.
6. Mr.B.Mohapatra, Manager (Administration), At-Smelter Plant, NALCO, Angul, At-Nalco Nagar, Dist-Angul.
7. Mrs. P.M.Das Manager (HRD), At-Captive & Power Plant, NALCO, At-Nalco nagar, Dist-Angul.
8. Mr.P.S.Hota, manager (HRD), At-Smelter Plant, NALCO, At-Nalco Nagar, Dist-Angul.

.....Respondents.

For the applicant : Mr.S.Palit, counsel

For the respondents: Mr.N.R.Rout, counsel

Heard & reserved on : 4.11.2019

Order on : 14.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant had filed the OJC No. 4714/2002 before Hon'ble High Court with her grievances and after the National Aluminium Company Limited (in short NALCO) was notified under Administrative Tribunals Act, 1985, it was transferred by Hon'ble High Court for adjudication by the Tribunal vide order dated 24.2.2012 of the Hon'ble High Court. It has been registered as TA No. 9/2012. The prayer for relief in this TA are as under :

“Under aforesaid facts and in the circumstances, it is humbly and most respectfully prayed that this Hon'ble Court may graciously be pleased to issue a writ or Writs in the nature of a Writ of Certiorari,

thereby quashing the Letter/Order, dated 20th March, 2002 under Annexure-14, declaring the same as illegal;

And be further pleased to issue/pass a writ or writs in the nature of a Writ of Mandamus, thereby directing the Opposite Parties Nos.1 and 2 to give promotion to the petitioner with effect from the year 2000 onwards.

And further be pleased to issue/pass any such other or further writ or writs or order or orders and/or direction or directions as would deem fit and proper under the facts and in the circumstances of the case on hand.

And for this act of kindness, the petitioner shall as in duty bound ever pray.”

2. The applicant in this TA had joined NALCO after being duly selected in response to an open advertisement and she joined the post of Executive Assistant (Administration) in NALCO in October, 1982. She claims to have been promoted as Public Relation Officer (in short PRO) under the General Administration Department on 1.1.1986 on promotion. It is claimed by the applicant that although she was initially appointed as Executive Assistant (Administration) under P.R. Department, which was an ex cadre post at that time. Copy of the promotion order dated 31.12.1985 is annexed at Annexure 2 of TA. On 1.1.1987 the applicant was confirmed in the post of PRO vide order at Annexure A/3. Thereafter she was promoted as Sr. PRO on 1.7.1989 vide order dated 30.6.1989 in which she was confirmed vide order dated 7.7.1990 (Annexure 4 & 5 respectively). On 1.7.1993 she was promoted as Assistant manager (Public Relation) vide the order of the same date at Annexure 6.

3. The applicant was subsequently promoted on 1.1.1997 as Manager (Public Relation) vide order at Annexure 7. In the year 2000, she was not given promotion for which she represented contesting her placement in any cadre other than General Administration. When the applicant was again overlooked for promotion in 2001, she represented again on 20.4.2001 (Annexure 9), and on 28.11.2001 (Annexure 10), requesting for a copy of the seniority list which was never communicated to her. Vide order dated 14.1.2002 (Annexure 11) she was informed that her cadre has been changed from Public Relation & Corporate Communication (in short PR&CC) to Human Resources and Administration (in short H&A) cadre with seniority fixed in H&A Cadre.

4. Being aggrieved, the applicant again represented vide representation dated 22.2.2002 (Annexure 12). It is stated that the applicant collected a copy of the seniority list dated 7.3.2002 (Annexure 13), after which she represented about her placement in the seniority list. Vide the impugned order dated 20.3.2002 (Annexure 14), the respondents informed her that her claim about seniority is not acceptable and if she wants her cadre can be changed to PR & CC for which she may give a representation. The applicant submitted another

representation dated 21.3.2002, claiming that she all along belonged to the Administrative cadre and that she was placed in PR & CC cadre without her consent. She also informed that the reason for stating that she originally belonged to PR & CC cadre is not known to her.

5. It is further averred that out of 6 persons in the seniority list for H&A cadre, 3 persons have been confirmed subsequent to the applicant in her cadre and 2 persons did not have requisite qualifications. It is also claimed that she was qualified to hold the post of Sr. Manager (Administration) as per the amended 1997 Rules. She has mentioned some example of other employees who were allowed to continue in spite of the fact that they did not have the requisite qualification. Since no action was taken by the respondents for her grievance, she approached Hon'ble High Court in the OJC, which was transferred to this Tribunal.

6. The counter has been filed by the respondents. It is stated that when the applicant joined service, the PR Wing of NALCO was an ex-cadre discipline, vide Annexure I of the Recruitment Rules for Executives 1984 (Annexure F to the counter). It is stated that the applicant was promoted in the ex-cadre discipline from time to time. The claim in the TA that the applicant was promoted as PRO in the Administration Department has been denied by the respondents. It is stated that the Head of the PR Section was also the Head of the Administration Department, but it will not imply that the PR cadre was borne in H&A cadre. It is also stated that in her representation at Annexure 8 of the TA she had admitted that she was holding an ex-cadre post and hence, her claim that she belonged to Administrative cadre was incorrect.

7. It is further stated in the counter that in the year 1997 NALCO Recruitment and Promotion Rules, 1997 (Annexure G of the Counter) was framed in which the Public Relation Wing was shown as a separate cadre under NALCO which has been also stated in the representation dated 10.3.2000 (Annexure 8) in which the applicant represented to be taken over to H&A cadre. It is stated that the applicant's representation was considered and rejected vide order dated 29.4.2000 (Annexure A to the counter), informing the applicant that she was borne in PR&CC cadre. On her subsequent representation she was brought to H&A cadre by representation dated 28.12.2000 (Annexure B of the Counter) which has not been enclosed in the TA and on consideration of the request of the applicant, she was brought over to H&A cadre vide order dated 13.8.2001 (Annexure C). It is averred that the orders at Annexure A, B & C clearly show the fact that the applicant was allowed to change over to H&A cadre on her representation and that she was not borne in H&A cadre originally. It is also stated that the material facts have

been suppressed by the applicant. It is averred that the executives not possessing Post Graduate Degree/Diploma in Journalism or mass Communication were not eligible for promotion beyond E-4 grade as per the 1997 Rules. Since the applicant did not have the qualification to go beyond E-4 level, she represented on 28.12.2000 (Annexure B) to change over H&A cadre. It is stated that vide letter dated 11.5.1995 (Annexure D to the counter) the applicant was advised to obtain necessary qualification and she was promoted to E-4 level to Manager (PR) on 1.1.1997 subsequently. The respondents in their Counter have denied the contention of the applicant that she was superseded by the DPC at any time. In reply to her representation a letter dated 14.1.2002 was issued in which it was clearly stated that she was not entitled for any benefit as claimed by her. She was given option to revert back to PR&CC Department if she does not want to continue in H&A cadre.

8. It is stated in the Counter that since she came over to H&A cadre on her request, she is not entitled to claim any seniority above the employees who are already borne in this cadre previously. Since she was submitting repeated representations she was intimated vice letter dated 20.3.2002 (Annexure 14 to the TA) not to make any further representation in the matter. However, taking a lenient view the respondents fixed her seniority below the executives who were promoted to E-4 level along with the applicant in H&A cadre instead of placing her at bottom of all E-4 level officers. It is stated that a number of complaints have been received from the existing officers of the H&A cadre. Some of the representations were enclosed at Annexure E series of the Counter. It is stated that since she was promoted to E-4 grade on 1.1.1997 in PR&CC cadre, her position was maintained in the gradation list in H&A cadre by taking the date 1.1.1997 as a relevant date. It is further stated that the applicant was promoted to E-4 rank only after grant of relaxation with regard to the qualification otherwise she would have continued in the lower post. With regard to the example of one Mrs. D.Kapoor, it is stated that her case was not relevant for the purpose of applicant's grievance.

9. No rejoinder to the counter has been filed by the applicant in this case. Heard learned counsels for the applicant and the respondents. Learned counsel for the applicant reiterated the pleas taken in the TA and submitted that there is no specific prayer with regard to the private respondents in the TA but that will not affect the applicant's claim because of the settled position of law in the following judgments :

- i) Madhya Bharat High Court in Laxman Gopal -vs- Gangabai, W/o Sadashiv & Anr. [Air 1955 MB 138]
- ii) Bombay High Court in Shingounda Shidgounda -vs- Ganesh Yeswant & Ors. [AIR 1965 Bom 243]

- iii) Andhra Pradesh High Court in Pendyala Narasimham –vs- Pendyala Venkata Narasimha Rao [Air 1963 AP 78]
- iv) High Court of Orissa in Paradip Port Trust –vs- M/s Misrilal Mines (Pvt) Ltd. [60 (1985) CLT 122]
- v) High Court of Orissa in Managobinda @ Madhabananda Misra & Ors. –vs- Brajabandhu [Air 1986 Ori 281]
- vi) High Court of Orissa in National Insurance Co. Ltd. –vs- Bijay Kumar Sahu & Anr [2002 (I) OLR 148]

Learned counsel for the applicant reiterated the contention that the applicant had been placed in PR&CC cadre without her consent for which she had represented to brought over to her original cadre of H&A. This was accepted vide order dated 13.8.2001 (Annexure A), which cannot be taken as a change of cadre on applicant's own request, for which she could not have been placed below her erstwhile juniors. He vehemently opposed the plea of the respondents that her request for transfer to H&A cadre was a change of cadre on her own request, since the representation was for restoration to her parent cadre i.e. H&A cadre, by the respondents who had shown her in the PR&CC cadre without her consent. It was submitted that serious injustice has been done to the applicant, for which she was entitled for the claims made in the TA.

10. Learned counsel for the respondents was heard. He filed copy of the following judgments in support of his case that the applicant is not entitled to any relief as prayed for in the TA :

- i) Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Others –vs- State of U.P. and others [(2006) 10 SCC 346]
- ii) Union of India & Others –vs- Deo Narain & Others [(2008) 10 SCC 84]
- iii) Unni Menon –vs- Union of India & Others [(2011) 2 SCC 378]

He reiterated the contentions made in the counter that the applicant was all along continuing against the ex-cadre post, since PR Department was continuing in ex-cadre capacity under H&A Department and it was converted to a separate cadre in 1997. He further reiterated that the applicant was never in the H&A cadre, for which her claim that originally she belonged to H&A cadre has no basis.

11. We have considered the submissions made by the learned counsels for the applicant as well as the respondents and also perused the pleadings on record. The relevant issue to be decided in this case is whether the claim of the applicant that she originally belonged to the H&A cadre is substantiated based on the materials available on record.

12. The applicant was first appointed in 1982 as Executive Assistant and then vide order dated 31.12.1985 (Annexure 2), she was promoted as the PRO w.e.f. 1.1.1986 on probation for a period of one year. The promotion order was addressed to the applicant with the designation of Executive Assistant, NALCO,

M&R Complex, Damanjodi. She was confirmed in the post of PRO on 1.1.1987 after satisfactory completion of probation period. The applicant has not furnished the copy of the order as she was initially appointed as Executive Assistant, NALCO. Then she was promoted to Sr.PRO and then promoted to Assistant Public Relation Manager. She was promoted as Manager (PR) vide order dated 7.2.1997. When she was not promoted in the year 2000, she submitted the representation dated 10.3.2000 (Annexure 8) stating as under :

- “4. That I was looking after the General Administration jobs such as township administration, office administration, guest house administration and rehabilitation work along with PR functions from my date of joining the Company.
5. That during the year 1986 I was given the promotion to the post of public relations officer and I was made responsible for the general administration jobs along with public relations job.
6. That after my promotion to Gr.-I, I was governed under the executive R&P Rules of 1984 and as per the said rules General Admn. was an exclusive cadre and public relations was an ex cadre post and my shifting to public relations was due to my efficiency and dedication to work and requirement of the company and in the interest of work.
7. That I was promoted thereafter in the year 1989 as Sr.PRO in the year 1993 as APRM and in the year 1997 as DPRM/Manager(PR).
8. That I was continuing to look after general administration jobs (such as protocol, guesthouse admn., rehabilitation work) besides public relations till 1997 since at site public relations is part of administration.
9. That during 1997 I joined at Corporate Office on transfer from M&R Complex.
10. That during 1997 the R&P Rules for executives was revised thereby integrating general Administration and Personnel Cadre and separating Corporate communication & PR as a separate cadre.
11. That on enquiry it is now revealed that I have been shown in CC & PR cadre instead of General Administration cadre.
12. That basically I have been inducted in General Administration cadre, have the necessary qualification for the said cadre but I have now been put in a cadre to which I was on deputation and I do not meet the qualifications standard of the depute cadre.
13. That for my career advancement, I need to continue in Personnel and Administration cadre instead of the cadre where I have been put without my consent.”

13. In reply to the representation dated 10.3.2000, the respondents issued a letter dated 29.4.2000 (Annexure A to the counter) rejecting the representation, stating as under :

“That you were recruited in non-executive cadre (General Admn.) according to your qualification. Thereafter, you were promoted to the executive grade as a Public Relation Officer. Since then your seniority is being maintained in PR&CC cadre and your subsequent promotions were also made in that cadre. It is to mention here that as per Nalco R&P Rules for Executives, 1984, PR&CC was an ex cadre, but subsequently it was caderised and taken as a separate cadre in 1997 Rules. You are also aware that in the year 1993 a seniority list was circulated wherein your seniority was shown in PR&CC Cadre. Apart from that during circulation of proposed Cadre Scheme in the year 1995, a seniority list was also circulated to make the executives aware of their cadre, inter-se-seniority as well as line of promotion in accordance to their qualification. In this regard, a lot of suggestions were received and after a thoughtful deliberation on the suggestion and career growth of employees the proposed Cadre Scheme took a shape. It may also be noted that from time to time the Seniority List of Executives is being circulated and your name is being shown either in PR or PR&CC Cadre.

Further, the management had also given much emphasis on the career growth of executives and therefore while advising all the executives, those who had not possessed the requisite prescribed qualification, had also given a grace period of 2 years to acquire the same. For the purpose, you were also advised vide IOM No.CPD/RR/002.3/1369/95, dated 11.5.95 to acquire the prescribed qualification for your cadre. Despite to the above, you have not acquired any requisite prescribed qualification so far.

It is not a fact that you were not aware of your cadre and you were on deputation to the present cadre. Rather all the facts had been intimated to you well in advance and ample opportunity had been given for your career growth.”

14. In reply to the letter dated 29.4.2000 (Annexure A to the Counter) the applicant submitted the letter dated 28.12.2000 (Annexure B to the counter) in which it is stated that she was recruited by NALCO as Executive Assistant (Administration) in the year 1982 against the open advertisement for Executive Grade I (General Administration Cadre) held in the year 1982 and she was given the General Administration job before her promotion as PRO in 1986. It was stated that although she was recruited in the General Administration cadre she was promoted to PRO due to her efficiency. She made the following prayer in her representation dated 28.12.2000 :

“Since I have qualification for promotion to E-5 grade in HRD & Admn. Department and I have done both kind of jobs, I may be promoted in the PR Cadre. If no vacancy is found in this cadre, I may be promoted in the HRD & Admn. Cadre and allowed to work in Public Relations Department.”

From above, it appears that the applicant's first request was for promotion to E-5 grade in PR cadre and if there is no vacancy in PR Cadre, then the promotion should be given to her in the H&A Cadre and allowed to work in PR Department.

15. It is seen that vide letter dated 29.4.2000 (Annexure A to the Counter), the representation dated 10.3.2000 of the applicant was rejected. The contentions in the letter dated 29.4.2000 (extracted in para 13 above) included the averment that in the year 1993, the seniority list circulated showing the applicant in PR&CC Cadre. This averment has not been contradicted by the applicant in her representation dated 28.12.2000 (Annexure B) in which the applicant's emphasis was on her promotion to E-5 grade in PR Cadre and if no vacancy is there in PR Cadre, then her promotion in H&A Cadre was requested. Clearly, before separate PR&CC Cadre was constituted in 1997, the seniority list circulated in 1993 showed the applicant in PR Department which has not been objected by the applicant. No document has been furnished by the applicant in support of the averment that she originally belonged to General Administration cadre. The order appointing her initially in 1982 has not been furnished. Copy of the advertisement in 1982 stated to be for recruitment of Executive Assistant under Administration Cadre has not been enclosed in the Ta. She has never claimed promotion against a post in H&A Cadre at par with her juniors if she belonged to the H&A Cadre. It appears that although PR Department was functioning under General Administration till 1997, the

applicant's seniority was being reflected with other executives working under PR Department as stated in the letter dated 29.4.2000 and it was not objected by the applicant. In fact, the letter dated 29.4.2000, rejecting her representation dated 10.3.2000 (Annexure 8), has not been challenged in this OA.

16. From above discussion, we are of the considered view that the applicant has not been able to prove her contention that she ought to have been shown under H&A Cadre as she was posted in PR&CC Cadre without her consent as she was recruited under H&A Department. The assertion of the respondents that she was included in the seniority list of PR Cadre in 1993, has not been contradicted or objected by the applicant. She had been confirmed against the post of OPRO and Senior PRO, which was accepted by her. Hence, the question at para 11 is answered as under :

“The claim of the applicant that she originally belonged to H&A Cadre is not substantiated based on the materials available on record.”

17. The judgments cited by learned counsel for the applicant will not be helpful for her under the factual circumstances as discussed above. Since she had never claimed any seniority position vis-à-vis others in H&A Cadre prior to the year 2002 and accepted promotions against posts under PR Department, which were borne under General Administration Department till formation of a separate PR&CC cadre. She raised objections regarding her cadre after she was informed that she would not get any promotion to E-5 grade in PR Cadre. The respondents on their part had informed the applicant vide letter dated 11.5.1995 (Annexure D of the Counter) to acquire necessary qualifications for promotion to higher grade in PR&CC Cadre. There is nothing on record to show that the applicant had requested for her inclusion in H&A Cadre within a reasonable time after receipt of the letter dated 11.5.1995. She was allowed promotion as Manager (PR) in the year 1997 vide order dated 7.2.1997 (Annexure 7), which was accepted by the applicant. No document or authority has been furnished by the applicant to prove validity of applicant's claim that she belonged to the H&A Cadre and she was shown in PR&CC Cadre without her consent.

18. In the circumstances the transfer of the applicant to H&A Cadre vide order dated 13.8.2001 (Annexure C of the Counter) has to be deemed to be a transfer on her own request and hence, there is no infirmity in the action of the respondents with regard to fixation of her seniority in H&A Cadre. Thus, the TA lacks merit and is liable to be dismissed. Accordingly it is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath