

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

CP No. 126 of 2019

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

1. Sri Sanatan Naik aged about 53 years, S/o: Late
Dukha Naik, At/Po:- Mutarifa, PO; Padmapur, PS;-
Jagatpur, Dist:-Cuttack, Orissa.

.....Applicant.

VERSUS

1. Mr. Moloy Chandan Chakrabarty, Secretary, Minister
of Textile, Office of the Textile Commissioner, Post Bag
No. 11500, Mumbai, Pin – 400020.
2. Mr. Satya Prakash Barma, Director, Office of the Textile
Commissioner, PBN – 11500, Mumbai, Pin – 400020.
3. Mr. P. K. Chouhdury, Officer-In-Charge, Power Lcom
Service Centre, I.T.T. Building, At-Gandhichhak,
Choudwar, Dist: Cutack-754025.
4. Mr. P. K. Choudhury, Officer-In-Charge, Regional
Office of the Textile Commissioner, 1 Council House
Street, Kolkata-700064.

.....Respondents.

For the applicant : Mr. S. Mohanty, Advocate.

For the respondents: Mr. P. K. Mohanty, Advocate

Heard & reserved on : 16.12.2020

Order on :01.02.2021

O R D E R**Per Mr. Swarup Kumar Mishra, Member (J)**

The applicant has filed this CP for non-compliance of order passed by the Tribunal on 02.01.2019 in OA No. 819/2014 and prayed to admit the case and issue notice of show cause as to why the respondents shall not be punished in Contempt of Court's act and after hearing the parties the respondent/Opp. Parties be punished as the respondents have violated the order dated 02.01.2019 passed in OA No. 819/2014.

2. The fact in brief as averred by the applicant in contempt petition is that the Tribunal in its order dated 02.01.2019 passed in OA No. 819/2014 had quashed impugned order dated 27.02.2014 and remitted the matter to Respondent No. 2 for reconsideration of his case for regularization of his service against the post of Choukidar or any other vacant posts Group D or Chowkidar. The applicant submitted that Respondent No. 2 without considering the fact of the case rejected the case of the applicant vide rejection order dated 07/08.03.2019 (Annexure A/5) taking the same plea as in the earlier impugned order dated 27.02.2014 which was quashed by the Tribunal in OA No. 819/2014. The applicant submitted that respondent have flouted the order of the Tribunal intentionally and deliberately which is contemptuous. Hence this CP.
3. The respondents in their show cause inter alia averred that after receipt of Tribunal order dated 02.01.2019, the respondents issued a speaking order vide letter dated 07/08.03.2019 and submitted that order of the Tribunal has been complied so the question of punishment does not arise.

4. The applicant in his objection to show cause filed by the respondents submitted that the respondents have taken the same plea which has been taken earlier in the counter and rejected by the Tribunal and since the grounds taken in the counter has been elaborately discussed and rejected by the Tribunal holding that the reasons mentioned in the order dated 27.02.2014 are not tenable.
5. Learned counsel for the applicant relied on some citations including the following:
 - 1) 2009 (Supp-1) OLR 428 Ganesh Panda V/s Kailash Auto Finance LLd.
 - 2) 2008 (ii) OLR 492 Pramoda Kumar Nayak V/s Pratap Kumar Mallick and another.
 - 3) 2017 (i) OLR 1025 Malay Kumar Jena V/s Ratnakar Rout and another.
6. The Tribunal in its order dated 02.01.2019 in OA No. 819/2014 had passed the following direction:

“20. In view of above discussion, we are of the view that taking into account the factual circumstances of the case, the applicant’s case deserves to be reconsidered, particularly since the respondents have not treated the applicant’s appointment at PSC, Cuttack w.e.f. 17.11.2000 as a fresh appointment as per the order dated 15.11.2000 (Annexure A/1 to the OA) and his service was regularized w.e.f. 10.08.1994 against a post of Sweeper in Regional office, Noida. Further, since the applicant was working on full time basis as on 10.09.1993, his case for regularization under the guidelines of DOPT also deserves consideration as per the instructions of DOPT and the reasons mentioned in the order dated 27.02.2014 are not tenable. Hence, the impugned order dated 27.02.2014 (Annexure A/9) is set aside and quashed and the matter is remitted to the Respondent No. 2 for re-consideration of the case of the applicant for regularization of his service against the post of Chowkidar or any other vacant post Group D or sweeper in accordance with the provisions of law. After such re-consideration, the respondent No. 2 shall pass a reasoned and speaking order, copy of which shall be communicated to the applicant within three months from the date of receipt of a certified copy of this order. If the applicant applies for any post of Group ‘D’/Sweeper/Chowkidar to be advertised by the respondents in future, then the applicant will be entitled for being considered for age relaxation, if admissible under the rules.

21. The OA is allowed in terms of the directions in the paragraph 20 above. There will be no order as to costs.”

7. The extract of earlier speaking order dated 27.02.2014 issued by the respondents is reproduced below:

"In compliance of the Order (Oral) dated 03.01.2014 passed by the Hon'ble Central Administrative Tribunal (CAT), Cuttack Bench, Cuttack in the matter of Original Application (O.A.) No.70 of 2010 filed by Shri Sanatan Nayak, son of Late Dukha Naik, working as 'casual sweeper' in Powerloom Service Centre-of the Office of the Textile Commissioner at Cuttack, I have examined the documents available on record and reconsidered the entire matter and found that:

2. Shri Sanatan Naik through the O.A. No.70 of 2010 approached the Hon'ble CAT, Cuttack and prayed that the Order passed vide dated 06.11.2009 (i.e. Annexure-8 in the said O.A.) be set aside and direction be given to the respondent to appoint him in the post of 'Chowkidar' at Powerloom Service Centre (hereinafter referred as 'PSC') cuttack and be given other financial and consecutive benefit. The Hon 'ble CAT vide its Order dated 03.01.2014 has quashed the order under Annexure-8 dated 06.11.2009 and directed the respondents to consider the case of the applicant for the post of 'Chowkidar' at PSC Cuttack keeping in mind the observation [made in the decision of the Apex Court in the case of Secretary, State of Kamataka Vs Umadevi (3), (2006) 4 S~C I] and pass an appropriate order with in a period of three months from the date of receipt of the order. Now the case is as under.

3. Shri Sanatan Naik was initially engaged as a 'Part-time Sweeper' in the Powerloom Service Centre (PSC), Cuttack w.e.f. 26th April, 1982 and was terminated on 3"/4 July, 1989. Aggrieved by the said termination, Shri Sanatan Naik filed an O.A. No.441/89 before the Hon'ble CAT, Cuttack Bench at Cuttack which squashed the said termination vide its judgement dated 01.04.1991 and directed to pay the applicant, Shri Sanatan Naik, daily wages @ 1/30th of the minimum of the month pay and dearness allowances prescribed for the Group D employees and the services of Shri Sanatan Naik may also be utilized for other Group D work/job in addition to his own work as part time sweeper. Accordingly Shri S. Naik was appointed on humanitarian ground as Casual Sweeper w.e.f. 17.06.1991 in PSC, Cuttack and continued upto 27.07.1994.

4. Thereafter, with his consent Shri Sanatan Naik was appointed as a 'Regular Sweeper' w.e.f. 01.8.1994 with posting at Regional Office of the Textile Commissioner, NOIDA since no post of 'Regular Sweeper' has been sanctioned to the Powerloom Service Centres. However, after working as a regular Sweeper, in the Regional Office of the Textile Commissioner, NOIDA, for a period of about. a week. Shri Sanatan Naik repeatedly represented to this Headquarters Office stating that he may be sent back to PSC, Cuttack (his Home Town) urgently and he is unable to stay outside of his native place or account of his family problems etc. and he is ready to work at PSC, Cuttack as Casual Sweeper. But thereafter, he remained absent from his duties as Regular Sweeper in the Regional Office of the Textile Commissioner, NOIDA. On the charge of his habitual absence, the Officer-in-Charge of Regional Office of the Textile Commissioner, NOIDA, vide O.M.No.2/21/94/EST-U/RON/140 dated 10.1.1995, terminated Shri Sanatan Naik from his services as regular Sweeper in the Regional Office of the Textile

Commissioner, NOIDA.

5. Shri Sanatan Naik continued to appeal/represent to this office for his reinstatement at PSC, Cuttack, as Casual Sweeper with the terms and conditions mentioned at Para-3 above. In this regard, he has furnished an undertaking dated 6.4.1999 on a legal bond paper, duly sworn before the notary stating as under:

"I am ready to continue working as daily wage Sweeper in the Powerloom Service Centre, Cuttack on the terms of wages that I had claimed and drawn during my last working in Powerloom Service Centre, Cuttack. That I will not

demand or pressurize or make representation to the department to regularize myself to the post of Sweeper or any Group D post against the interest of the Department.

I also undertake and promise that I shall attend all duties of Group D post including duties of Sweeper and in the event of any shortcomings or irregularities in attending the said duties, my services shall be terminated by the Deptt. forth with without any Notice to me in this regard."

6. The Textile Commissioner has sympathetically and carefully examined the above case of Shri Sanatan Naik and taking into account the family background, length of service as part time Sweeper as well as full time Sweeper at PSC, Cuttack, spirit of CAT, Cuttack Bench judgment dated 1.4.1991 and the status of his employment in this organization etc. considered to appoint Shri Sanatan Naik on humanitarian grounds as casual Sweeper at PSC, Cuttack on full time work basis, at the daily wage rate of 1/30th of the minimum basic monthly pay and dearness allowance prescribed for the Group D employee with the condition that he should attend other duties/work of Group D staff in addition to the duties of Sweeper as full time daily wager in the PSC, Cuttack. Accordingly, Shri Sanatan Naik was appointed as 'Casual Sweeper' on full time work basis in PSC, Cuttack w.e.f. 17.11.2000.

7. In the year 2004, the Office of the Textile Commissioner, Mumbai vide, its Notification No.6(2)/04/Estt-II/343 dated 17/06/2004 invited applications from the eligible candidates for recruitment to the various posts including to the post of Chowkidar (2 UR & 1 OBC, preferable for Ex-servicemen). In response to the above notification, Shri Sanatan Naik (belongs to SC category) had also submitted his candidature for the post of Chowkidar dated 06.07.2004. However, Shri Naik was not eligible in terms of age, as he was over aged i.e. 38 years as on last date of application dated 16.07.2004, as per notification dated 17.06.2004. Hence, his candidature could not be considered at the scrutiny stage itself.

8. In the year 2009, Shri Sanatan Naik submitted another representation dated 10.02.2009 (i.e. Annexure-7 in the O.A. No.70/2010) stating that he came to know some posts of Chowkidar are lying vacant and requested to consider his case for the said post. In reply, the Office of the Textile Commissioner, Mumbai vide its letter No.6/24/2009/EST-II/I 79 dated 06.11.2009 (i.e. Annexure-8 of O.A. No.70/2010) has conveyed the Officer-in-Charge, PSC, Cuttack that the representation of Shri Sanatan Nayak, Casual Sweeper for appointment to the post of Chowkidar at PSC, Cuttack could not be considered, as he was appointed as Casual Sweeper (full time) on humanitarian ground.

9. The above mentioned Annexure-8 dated 06.11.2009 cited in O.A. No.70/2010 filed by Shri Sanatan Naik before the Hon'ble CAT has been quashed by the Hon'ble CAT vide its Order dated 03.01.2014 and directed the respondents to consider the case of the applicant for the post of 'Chowkidar' at PSC Cuttack keeping in mind the observation [made in the decision of the Apex Court in the case of Secretary, State of Karnataka Vs Umadevi (3), (2006) 4 SCC 1] and pass an appropriate order within a period of three months from the date of receipt of the order.

10. I have gone through the relevant portion of the decision of the Apex Court in the above case of State of Karnataka Vs Umadevi cited by the Hon'ble CAT at para-5 in its Order dated 03.01.2014 wherein it is inter-alia mentioned that the State Govts & their instrumentalities should take steps to regularize as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of court or tribunals. The Apex Court has clarified that if such appointment

itself is in violation of the provisions of the constitution, illegality cannot be regularized.

11. Subsequently, the DoP&T has also issued an O.M. No.49019/1/2006-Estt.(C) dated 11.12.2006, with reference to the above judgement, wherein the DoPT at para-2 has mentioned that the Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

12. The Hon'ble Tribunal vide their order dated 03.01.2014 directed to this Respondent to consider the case of the applicant for the post of 'Chowkidar' at P.S.C., Cuttack.

13. Based on the position mentioned above, it is noted that :

Shri Sanatan Naik was not meeting the eligibility criteria as per the Recruitment Rules and as per the Notification dated 17.06.2004 for the post of 'Chowkidar' and hence he was disqualified at the tie of scrutiny stage of the application. Since Shri Sanatan Naik was not meeting the statutory Recruitment Rules for the post of Chowkidar, the said Supreme Court ruling is not applicable in this case.

Secondly, the Supreme Court ruling as, stated above is regarding regularization of irregularly appointed cases. The said Supreme Court ruling again is not applicable in this case because Shri Sanatan Naik was never appointed as 'Chowkidar' and hence question of regularization of irregular appointment is not involved.

The present services of Shri Sanatan Naik as 'Casual Sweeper' is due to the intervention of the Hon'ble CAT. Cuttack in OA No.441/89 fled by the applicant in the year 1989. Hence, the said Supreme Court _ruling again is not applicable in this case as appointment as 'Casual Sweeper' was due to the orders of the Hon'ble Tribunal.

14. I find that Shri Sanatan Naik i.e. the applicant was not meeting the eligibility criteria as per the statutory recruitment rules for the post of Choyykidar and hence he was disqualified for the post 'Chowkidar'. Secondly, he was appointed as Casual Sweeper (full time) not against sanctioned post of 'Sweeper' at P.S.C., Cuttack. Further Shri Sanatan Naik was appointed as Casual Sweeper on the order of Hon'ble Tribunal , Cuttack Branch, Cuttack on 01.04.1991.

15. In view of the aforementioned facts, I don't find any merit in the representation of Shri Sanatan Naik, dated 10.02.2009 for consideration of his appointment to the post of Chowkidar in the Office of the Textile Commissioner, Mumbai. “

8. The subsequent speaking order of respondents dated 07/08.03.2019 is extracted below:

In compliance of the order dated 02.01.2019 passed by the Hon'ble Central Administrative Tribunal (CAT), Cuttack Bench, Cuttack in the matter of Original Application (O.A.) No. 819 of 2014 filed by Shri Sanatan Nayak, son of Late Dukha Naik, working as 'casual sweeper' in Powerloom Service Centre of the Office of the Textile Commissioner at Cuttack, I have examined the documents available on record and reconsidered the entire matter and found that:

2. Shri Sanatan Nayak through the O. A. No. 819 of 2014 approached the Hon'ble CAT, Cuttack and Hon'ble CAT, Cuttack Bench, Cuttack vide their Order dated 02.01.2019 has set aside and quashed the Order dated 27.02.2014 and the matter is remitted back to the Respondent No.2 for re-consideration of the case of the applicant for regularization of his service against the post of Chowkidar or any other vacant post Group D or Sweeper in accordance with the provisions of law. After such re-consideration, the respondent no.2 shall pass a reasoned and

speaking order, copy of which shall be communicated to the applicant within three months from the date of receipt of a certified copy of this order. If the applicant applies for any post of Group D/Sweeper/Chowkidar to be advertised by the respondents in future, then the applicant will be entitled for being considered for age relaxation, if admissible under the rules. Now the case is as under:

3. Shri Sanatan Nayak was initially engaged as a 'Part time sweeper' in the Powerloom Service Centre (PSC), Cuttack w.e.f. 26" April, 1982 and was terminated on 3"/4 July, 1989. Aggrieved by the said termination, Shri Sanatan Nayak filed an O.A. No. 441/89 before the Hon'ble CAT, Cuttack Bench at Cuttack which squashed the said termination vide its' Judgement dated 01.04.1991 and directed to pay the applicant, Shri Sanatan Nayak, daily wages @ 1/30" of the minimum of the monthly pay and dearness allowance prescribed for the Group D employees and the service of Shri Sanatan Nayak may also be utilized for other Group D work/ job in addition to his own work as part time sweeper. Accordingly Shri Sanatan Nayak was appointed on humanitarian ground as Casual Sweeper w.e.f. 17.06.1991 in PSC, Cuttack and continued upto 27.07.1994.

4. Thereafter, in terms of guidelines issued by DOPT vide O.M. dated 10.09.1993 and with his consent, Shri Sanatan Nayak was appointed as a 'Regular Sweeper' w.e.f. 01.08.1994 with posting at Regional Office of the Textile Commissioner, NOIDA since no post of 'Regular Sweeper' has been sanctioned to the Powerloom Service Centre, Cttack. However, after working as a regular sweeper, in the Regional Office of the Textile Commissioner, NOIDA, for a period of about a week, Shri Sanatan Nayak had repeatedly represented to this Headquarters Office sea.ting that he may be sent back to PSC, Cuttack (his Home Town) urgently and he is unable to stay outside of his native place cn account of his family problems etc. and he is ready to work at PSC, C:ittack as Casual Sweeper. But, thereafter, he remained absent from his duties as Regular Sweeper in the Regional Office of the Textile Commissioner, NOIDA. On the charge of his habitual absence, the Officer-In- Charge of Regional Office of the Textile Commissioner, NOIDA vide OM. No. 2/21/94/EST-II/RON/140 dated 10.01.1995; terminated Shri Sanatan. Nayak from his services as Regular Sweeper in the Regional Office of the Textile Commissioner, NO DA.

5. Shri Sanatan Nayak continued to appeal/ represent tc• this office for his reinstatement at PSC, Cuttack as Casual Sweeper with the terms and ccn.ditions mentioned at Para-3 above. In this regard, he has furnished an undertaking dated 06.34.1 999 on a legal bond paper, duly sworn before notary stating as under:

"I am ready to continue working as daily wage Sweeper in the Powerloom Service Centre, Cuttack on the terms of wages that I had claimed and drawn during my last working in Powerloom Service Centre, Cuttack. That I will not demand or pressurize or make representation to the department to regularize myself to the post of Sweeper or any Group D posts against the interest of the Department.

I also undertake and promise that I shall attend all duties of Group post including duties of Sweeper and in the event of any shortcomings irregularities in attending the said duties, my services shall be terminated by the Department fort with without any Notice to me in this regard."

6. The Textile Commissioner had sympathetically and carefully examined the above case of Shri Sanatan Nayak and taking into account the fumily backgromd, length of service as part time Sweeper as well as full time Sweeper at PSC, Cuttack, spirit of CAT, Cuttack, bench judgment dated 01.04.1991 and the status of his employment in this organization etc. considered to appoint Shri Sanatan Nayak on humanitarian grounds as Casual Sweeper at PSC, Cuttack on full time work basis, at the daily wage rate of 1/30" of the minimum basic

monthly pay and dearness allowance prescribed for Group D employee with the condition that he should attend other duties/ work of Group D staff in addition to the duties of Sweeper as full time daily wager in the PSC, Cuttack. Accordingly, Shri Sanatan Nayak was appointed as "Casual Sweeper" on full time work basis in PSC, Cuttack w.e.f. 17.11.2000.

7. In the year 2004, the Office of the Textile Commissioner, Mumbai vide its Notification No. 6(2)/04/EST-II/343 dated 17.06.2004 invited applications from the eligible candidates for the recruitment to the various posts including to the post of Chowkidar (2-UR & 1- OBC, preferable for Ex-servicemen). In response to the above notification, Shri Sanatan Nayak (belongs to SC Category) had also submitted his candidature for the post of Chowkidar dated 06.07.2004. However, in terms of the then existing Recruitment Rules for the post of Chowkidar, Shri Sanatan Kayak was not found eligible in terms of age, as he was over aged i.e. 38 years as on last date of receipt of application i.e. 16.07.2004. Hence, his candidature was not considered at the scrutiny stage itself.

8. In the year 2009 Shri Sanatan Nayak submitted another representation dated 10.02.2009 (i.e. Annexure-6 in the O.A. No. 819/2014) stating that he came to know some posts of Chowkidar are lying vacant and requested to consider his case for the said post. In reply, the Office of the Textile Commissioner, Mumbai vide its letter no 6/24/2009ESTII/179 dated 06.11.2009 (i.e. Annexure-7 of O.A. No. 819/2014) has conveyed the Officer-InCharge, PSC, Cuttack that the representation of Shri Sanatan Nayak, Casual Sweeper for the appointment to the post of Chowkidar at PSC, Cuttack could not be considered as he was appointed as Casual Sweeper (full time) on humanitarian ground.

9. The above mentioned Annexure-7 dated 06.11.2009 cited in O.A. No. 819/2014 filed by Shri Sanatan Kayak before Hon'ble CAT has been quashed by the Hon'ble CAT vide its order dated 03.01.2014 and directed the respondents to consider the case of applicant for the post of 'Chowkidar' at PSC, Cuttack keeping in mind the observation [made in the decision of Apex Court in the case of Secretary, State of Karnataka Vs Umadevi (3), (2006)4 SCC 1] and pass an appropriate order within a period of three months from the date of receipt of the order.

10. As per the relevant portion of the decision of the Apex Court in the case of State of Karnataka Vs Umadevi cited by the Hon'ble CAT at para-5 of its order dated 03.01.2014 it is inter-alia mentioned that the State Governments & their instrumentalities should take steps to regularize as a onetime measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of court or tribunals. The Apex Court has clarified that if such appointment itself is in violation of the provisions of the constitution, illegality cannot be regularized.

11. Subsequently, the DoP&T has also issued an O.M. No. 49019/1/2006/Estt.(C) dated 11.02.2006, with reference to the above judgement, wherein the DoPT at para-2 has mentioned that the Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

12. The Hon'ble Tribunal vide their order dated 03.01.2014 directed to this Respondent to consider the case of the applicant for the post of 'Chowkidar' at PSC, Cuttack keeping in mind the above observation and pass an appropriate order within a period of 3 months from the date of receipt this order. The Department considered and issued a Speaking Order dated 27.02.2014 stating that no merit in the representation dated 10.02.2009 of Shri Sanatan Nayak for consideration of his

appointment to the post of 'Chowkidar' in the Office of the Textile Commissioner, Mumbai.

13. Hon'ble CAT, Cuttack Bench, Cuttack vide their Order dated 02.01.2019 has set aside and quashed the Order dated 27.02.2014 and the matter is remitted back to the Respondent No.2 for re-consideration of the case of the applicant for regularization of his service against the post of Chowkidar or any other vacant post Group D or Sweeper in accordance with the provisions of law. After such re-consideration, the Respondent no.2 shall pass a reasoned and speaking order, copy of which shall be communicated to the applicant within three months from the date of receipt of a certified copy of this order. If the applicant applies for any post of Group D/Sweeper/Chowkidar to be advertised by the respondents in future, then the applicant will be entitled for being considered for age relaxation, if admissible under the rules.

14. Based on the position mentioned above, it is noted that-

(i) In view of the judgement vide Para-53 of State of Karnataka V/s Uma devi and in compliance to DOPT's O.M. dated 10.09.1993, Shri Sanatan Nayak who was working as Casual Sweeper as on 10.09.1993, was appointed to the post of Sweeper on regular basis w.e.f. 01.08.1994 with posting at Regional Office of the Textile Commissioner, Noida, since no post of "Regular Sweeper" has been sanctioned to any of the Powerloom Service Centre under

this organization. Hence, the Respondent No.2 has fulfilled the DOPT's guidelines dated 10.09.1993 though he was working as Part Time Sweeper w.e.f. 26.04.1982, terminated on 03/04.07.1989 and on the order of Hon'ble CAT, Cuttack in OA no.441/89 he was made Casual Sweeper w.e.f.01.04.1991. However, Shri Sanatan Nayak had not adhered to the rules and regulations of the Government of India and remained absent from his duties as Regular Sweeper in the Regional Office of the Textile Commissioner, Noida. His services as Regular Sweeper had been terminated vide Memo.No.2/21/94/EST-IRON/I40 dated 10.01.1995.

(ii) Based on the continuous appeal/representations made by Shri Sanatan Nayak and in spirit of CAT, Cuttack Bench Judgement dated 1.4.1991 as well as the following notarized legal bond paper declaration submitted by Shri Sanatan Nayak, the Textile Commissioner had sympathetically considered his request and appointed him again on humanitarian grounds as casual sweeper at PSC, Cuttack on full time work basis w.e.f. 17.11.2000. The declaration submitted by Shri Sanatan Nayak is reproduced as under:

"I am ready to continue working as daily wage Sweeper in the Powerloom Service Centre, Cuttack on the terms of wages that I had claimed and drawn during my last working in Powerloom Service Centre, Cuttack. That I will not demand or pressurize or make representation to the department to regularize myself to the post of Sweeper or any Group D posts against the interest of the Department.

I also undertake and promise that I shall attend all duties of Group D post including duties of Sweeper and in the event of any shortcomings or irregularities in attending the said duties, my services shall be terminated by the Department forthwith without any Notice to me in this regard."

Since, his re-appointment w.e.f. 17.11.2000 was made purely on humanitarian grounds and based on above stated declaration, he has no right to consider his case for regular appointment.

(iii) Further it is to mention that the appointment w.e.f 17.11.2000 will not come under purview of DOPT's O.M. dated 10.09.1993 since he had already been appointed to the post of Sweeper on regular basis w.e.f. 01.08.1994 which was terminated due to continuance absconding from duties as stated in Para-

(i) above.

(iv) He was re-appointed after the gap of about more than five years i.e. 10.01.1995 to 16.11.2000, the appointment should normally be treated as fresh appointment and as stated in Para (ii) above, his fresh appointment was made purely on humanitarian grounds and based on above stated declaration, he has no right to consider his case for regular appointment.

(v) Hon'ble CAT has relied on the Office Order dated 19.01.2001 (Annexure-1) which reveals that he was ordered to do duty of Chowkidar on the weekly off day of the regular Chowkidar whereas he was never appointed to the post of Chowkidar except performing the duties of Chowkidar once in a week in the absence of regular Chowkidar since he had submitted an undertaking that he shall attend all duties of Group 'D' posts as stated in Para (ii) above. Hence, he has no right to claim the regular appointment for the said post.

(vi) He had earlier also represented for appointment to the post of Chowkidar at Powerloom Service Centre, Cuttack vide his letter dated 10.02.2009 through PSC, Cuttack which was turned down by this office letter dated 06.11.2009.

(vii) At present, no post of Group Dor Sweeper or Chowkidar exists in this office and the nomenclature and classification of the post has been changed as Multi Tasking Staff (Non-Technical) and Group C post respectively with revised educational qualification. A copy of notified Recruitment Rules for the post of Multi Tasking Staff (Non-Technical) is enclosed as Annexure-11. As per revised guidelines of DOPT, the post of MTS (NT) is to be filled up through Staff Selection Commission. The vacant post of MTS(NT) at Powerloom Service Centre, Cuttack has already been reported to Staff Selection Commission (ER), Kolkatta for nomination of suitable candidate. In view of above stated facts, this office does not have any power to give appointment to any person. on any post available in this office except appointments on compassionate grounds.

15. In view of the aforementioned facts, I do not find any merit to reconsider Shri Sanatan Nayak, Casual Sweeper for regularization to the post of Chowkidar or Group D or Sweeper in accordance with the provisions of law in the Organization of Office of the Textile Commissioner, Mumbai."

9. It is seen from the final order dated 02.01.2019 passed in OA No. 819/2014 as quoted in para 6 of this order that the authorities were directed to reconsider the case of the applicant in accordance with provision of law. It was also directed in the said order that the applicant will be entitled for consideration of age relaxation, if admissible under rules. In view of the speaking order dated 07/08.03.2019 as mentioned earlier in this order, this Tribunal is not convinced that any contempt of this Tribunal has been committed by the contemnors. If the applicant is not satisfied with the said order passed by

the respondents, then he has got other legal remedies to be sought for in accordance with law, if so advised.

10. Accordingly the CP is dropped and notices issued are discharged.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)