

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 5 of 2020

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

Jitendra Dash aged about 38 years,
 S/o Late Saktidhar Dash, Resident of
 At- Arangabad, Po- Mirajpur via-Dharmasala, Dist- Jajpur

.....Applicant

VERSUS

1. Union of India, represented through Secretary Ministry of Communication and IT, Department of Post, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi-110116.
3. The Chief Post Master General, Odisha Circle, At/Po- Bhubaneswar, Pin-751001, Dist- Khurda-751001.
4. Superintendent of Post Offices, Cuttack north Division, Cuttack At/Po- Cuttack, Dist- Cuttack-753001.

.....Respondents.

For the applicant : Mr.P.P. Behera, Counsel (not present on 17.09.2020)

For the respondents: Mr.G.R. Verma, Counsel

Order reserved on: 17.9.2020

Order on: 07.10.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has sought for the following reliefs in this OA:-

“In view of the facts stated in Para-4 above the applicant prays for the following relief(s)- Your Lordship may be graciously pleased to direct the Respondents to consider the case of the applicant and appoint him under the Compassionate Appointment/Rehabilitation Assistance;

AND

Also May be pleased to allow all financial and consequential benefits to the applicant;

AND

Cost of the application may kindly be allowed.

AND

Any other/ further order/ orders or direction/ directions as deemed fit in the circumstances of the case may be allowed.....”

2. Facts of the case in brief as stated in the OA are that the applicant's father while working as sub-postmaster under the respondents died prematurely on 10.4.1995 leaving behind two widows, two sons and one daughter. The applicant had applied for appointment on compassionate ground (in short ACG) and had filed the OA No. 706/2003 when no action was taken by the respondents on his request for ACG. This Tribunal disposed of the OA vide order dated 2.12.2005 (Annexure-A/2 of the OA) with direction to the respondents to consider the applicant's case for ACG with the observation that the grounds of delay and no indigence based on the terminal benefits cited by the respondents to reject the case, were not sustainable.

3. The matter was reconsidered by the respondents and vide order dated 2.3.2006 (Annexure-A/3), the applicant's case was rejected. The said order was challenged by the applicant by filing the OA No. 485/2006 which was allowed by the Tribunal vide order dated 17.1.2007 (Annexure-A/4) directing the respondents to consider the applicant's case keeping in mind the decision of Hon'ble High Court in the case of Union of India & Ors. vs. Purna Chandra Swain in W.P. (C) No. 13377/2003. The matter was considered by the respondents and was rejected again vide order dated 9.4.2007 (Annexure-A/5). The applicant challenged the said order in OA No. 196/2007 which was disposed of vide order 20.11.2007 (Annexure-A/6) with direction to consider the case again.

4. The matter was considered by the authorities as per the order dated 20.11.2007 and it was again rejected vide order dated 12.4.2008 (Annexure-A/7), which was challenged by the applicant in OA No. 352/2008. This Tribunal dismissed the aforesaid OA No. 352/2008 vide order dated 18.8.2009 (Annexure-A/8). The applicant challenged the said order of the Tribunal before Hon'ble High Court in W.P. (C) No. 19281/2009. Vide order dated 21.8.2018 (Annexure-A/9) of Hon'ble High Court, the aforesaid writ petition was disposed of.

5. The applicant avers in para 4.11 of the OA as under:-

“That in the above order of The Hon'ble High Court while adjudicating the issue involved had agreed upon the order of the Tribunal in O.A. No. 458 of 2006 and has again directed the respondent to reconsider the case of the applicant. But unfortunately the respondents have been sleeping over the matter till date.”

6. When the OA was considered for admission on 13.1.2020, notice was issued to respondents to file short reply before considering the OA for

admission. On next dated i.e. on 27.2.2020, learned counsel for the respondents filed Counter giving a copy to applicant's counsel who was allowed to file Rejoinder, if any. On 6.3.2020, on request of the applicant's counsel three week time was allowed for Rejoinder. When the OA was taken up for admission on 18.8.2020, no one was present on behalf of the applicant and learned counsel for the respondents submitted that the respondents have filed I.A. before Hon'ble High Court regarding order dated 21.8.2018 (Annexure-A/9). The applicant's counsel was allowed last opportunity to file Rejoinder and the OA was posted to 17.9.2020. On that day, since no one appeared on behalf of the applicant, as per the observation in order dated 18.8.2020, we proceeded with the case under the rule 15 of the CAT (Procedure) Rules, 1987 and after hearing learned counsel for the respondents the order was reserved.

7. Learned counsel for the respondents submitted that as explained in the Counter, after dismissal of the OA No. 352/2008 by the Tribunal vide order dated 18.8.2009 (Annexure-A/8), the applicant challenged the order dated 18.8.2009 in W.P. (C) No. 19281/2009 which was disposed of by Hon'ble High Court vide order dated 21.8.2018 (Annexure-A/9). It was further submitted that the respondents have filed the I.A. No. 7708/2019 before hon'ble High Court for modification of the order dated 21.8.2018 since the reference to the OA No. 458/2006, when the writ petition was filed challenging the order in OA No. 352/2008, appears to be a typographical error. It was also pointed out that in the order dated 21.8.2018, it was observed by Hon'ble High Court that no case is made out by the petitioner.

8. It is noticed that vide order dated 18.8.2009 (Annexure-A/8) passed in OA No.352/2008, the claim of the applicant for ACG was dismissed by the Tribunal. Being aggrieved, the applicant challenged the order dated 18.8.2009 of the Tribunal as mentioned in order dated 21.8.2018 of Hon'ble High Court (Annexure-A/9). The applicant claims in para 4.11 of the OA that as per the order dated 21.8.2018 (A/9), the respondents have been directed to consider the applicant's case for ACG and in spite of such direction, the respondents are not considering his case.

9. Assuming that the contentions of the applicant in para 4.11 of the OA are correct and the respondents are not complying the order dated 21.8.2018 (A/9) of Hon'ble High Court, then his grievance cannot be addressed by filing this OA with the same prayer for ACG, which was already adjudicated and rejected by this Tribunal in OA No. 352/2008. It is clear that the present OA is barred by the principle of resjudicata. This Tribunal, having adjudicated the claim of the applicant for compassionate appointment in OA No. 352/2008 vide order dated 18.8.2009 cannot adjudicate the present OA again with the same relief.

10. In the factual circumstances as discussed above, we are of the opinion that this OA is not maintainable and it is barred by the principle of resjudicata. Therefore, the OA is liable to be dismissed and hence, it is dismissed at the admission stage itself. However, if the applicant is aggrieved by any action or inaction of the respondents in complying the order dated 21.8.2018 (Annexure-A/9 of the OA) of Hon'ble High Court as alleged in this OA, he will have the liberty to pursue the appropriate remedy in accordance with law. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(CSK)