

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**MA Nos. 574/2020, 239/2021, 262/2021, 263/2021 and 264/2021
(Arising out of O.A.No. 678 of 2019)**

**A.K.Sahoo Applicant
Versus
Union Public Service Commission and Ors Respondents**

ORDER DATED: 29.06.2021

Before dealing with MAs, it is worthwhile to mention that the Union Public Service Commission published advertisement on 14/08/2011 inviting applications from eligible candidates for appointment to the post of Lecturer in Computer Engineer Department of Dr. B.R.Ambedkar Institute of Technology (BARAIT, Port Blair. It is the case of the Applicant that he belongs to OBC community and in pursuance of the said advertisement he applied for being considered to the post in question. He attended the interview held by the UPSC on 07/05/2012. List of selected candidate for the said post was published by the UPSC vide Annexure-A/3 in which the name of applicant did not find place. Being aggrieved by his non selection, he had sought information under RTI Act, 2005. On receipt of information, he filed Writ Petition in the guise of Public Interest Litigation before the Hon'ble High Court of Orissa which was number as W.P (C) No. 9013 of 2019 and the same was disposed of on 15/07/2019 with observation that "*since the petitioner has an alternative remedy before the Tribunal, this Writ Petition stands disposed of. It*

is open for the petitioner to approach the Tribunal for appropriate remedy, as provided in law.”

2. Thereafter, on 09/10/2019 the Applicant has filed the instant OA No. 678 of 2019 *inter alia* praying the following reliefs:-

- “(i) That this original application may kindly be admitted;
- (ii) Issue notice to Opp. Parties;
- (iii) Connected records may called for perusing the same the illegal appointment made by the Opp. Parties for the post of Lecturer in Computer Engineering Department, Dr. B.R. Ambedkar Institute of Technology (BARAIT), Port Blair ignoring the meritorious successful candidates may be removed/quashed and applicant may allow to join in the above post pursuant to the advertisement by considering as one of the successful candidate in the list.
- (iv) The selection of candidates for the post of lecturer in Computer Engineering in UPSC, New Delhi may be declared illegal and allows the meritorious candidates to join in the said post by conducting proper inquiry;
- (v) Any other or further relief this Hon’ble Tribunal may deems fit and proper may pass in favour of the Applicant.”

3. On 10/10/2019 notice was issued to the Respondents to file reply on the question of admission/maintainability of the OA. Thereafter the matter was listed on 13/11/2019 since copy of OA was not served on Mr.S.B.Jena, Learned Counsel appearing for UPSC, learned counsel for the applicant was directed to serve copy of the OA and opportunity was allowed to the respondents to file counter within four week and rejoinder if any within one week thereafter. On

the prayer of the applicant it was directed to show the name of the applicant to argue his case in place of his counsel and on the request of Mr.Jena, four weeks time is allowed to file counter. The matter was listed on 2.6.2020 when it was submitted by Mr. Jena, learned counsel appearing for the UPSC that counter has already been filed in this case after serving copy thereof on the applicant. Accordingly, on the request of the applicant two weeks time was allowed to him to file rejoinder.

4. Meanwhile Applicant has filed MA No. 284 of 2020 praying for rejection of the counter filed by the UPSC which has been filed beyond the period of time granted by this Bench. The said MA No. 284 of 2020 was listed on 26.6.2020 for consideration. Considering the rival submissions, the prayer made in the MA was rejected. Counter filed by UPSC was taken to record. On the request of the applicant two weeks was allowed him to file rejoinder and on request Respondent No.19 was allowed opportunity to file his submission if any at the time of hearing. The applicant was also allowed opportunity to file application seeking condonation of delay. MA No. 284 of 2020 was accordingly disposed of on 26/06/2020.

5. The matter was again listed on 24.09.2020 when the applicant appeared in person and submitted that he has filed MA No. 574/2020 for condonation of delay and amendment through email after serving copy thereof on the other side. Time was allowed to the Respondents to file objection if any to the said MA. The matter was listed on 14.10.2020 when on request of respondents' counsel, time was allowed to the Respondents to file reply, if any, to the said

MA No. 574/2020 filed by the Applicant. On 09/11/2020 MA No. 574/2020 was listed and it was ordered that “Applicant is to file requisites for issuing notice in the MA No. 574/20 to all private respondents within one week. Registry to issue notice to all the private respondents to file Objection in MA as well as Counter in OA within 4 weeks.”

6. On 18/12/2020 the matter was listed for consideration but none was present for the Applicant. However it was ascertained that rejoinder has been filed by applicant after serving copy thereof on the side. Hence it was ordered that the MA will be taken up on the next date along with OA. The matter was again listed on 5.2.2021 when on the request of applicant the matter was adjourned to 3.5.2021.

7. The Applicant has filed MA No. 239/2021 seeking disposal of the OA within fifteen days of time strictly as pr the order of the Hon’ble High Court of Orissa dated 06.04.2021 in W.P (C) No. 35204 of 2020 and recalling the order dated 09/11/2020 passed in MA No. 574/2020 which was filed by him seeking amendment and condonation of delay as there is no necessity to issue notice to the respondents. The said MA was listed on 27/04/2021 and after considering the rival submission of respective parties the matter was posted to 29.04.2021 for giving further consideration in the matter.

8. Meanwhile, Applicant filed three MAs bearing MA No. 262/2021 seeking recalling orders dated 24.9.2020, 14.10.20 and 09.11.2020, MA No. 263/2021 seeking ignoring the counter filed by Respondents and MA No. 264/2021 seeking dispose of the OA within fifteen days. These MAs were listed on 29/04/2021. Respondents were allowed two weeks time to file objection, if any, to the said MAs.

9. The MA No. 574/2020, MA No. 239/2021, MA No. 262/2021, MA No. 263/2021 and MA No. 264/2021 have been listed on 22.06.2021 for consideration. After hearing both sides through VC the matter was posted to 23/06/2021. We have heard the Applicant in person, Shri S.B.Mohanty, learned Counsel appearing for the Respondent No.3 and Mr. S.B.Jena, Learned Counsel appearing for the Respondent No.4 on MA Nos. 239/2021, 262/2021, 263/2021, 264/2021, 284/2020 and 574/2020 through VC and have perused the records including the order of the Hon'ble High Court of Orissa, referred to above.

10. The Applicant has submitted that since the amendment sought in the MA will not change the nature and character of the OA there is no necessity to issue notice on the same to file objection and, therefore, the order directing notice to the Respondents needs to be recalled and in pursuance of the order of the Hon'ble High Court of Orissa dated 06/04/2021 in W.P (C) No. 35204 of 2020 this OA is required to be disposed of within fifteen days.

This was strongly opposed by learned counsel appearing for the official Respondents stating that as the Applicant has sought to introduce new documents in the OA through the amendment as also through the application or condonation of delay and therefore, the Respondents have a right to file reply thereto. Further as regards the order of the Hon'ble High Court of Orissa it was submitted that there was no specific direction of the Hon'ble High Court that this OA is to be disposed of within fifteen days as submitted by Applicant. Rather the Hon'ble granted liberty to the applicant to move before this Tribunal within a period of fifteen days and the Tribunal is to consider the matter. Accordingly the Respondents' counsel have prayed for dismissal of the MA.

11. Once again perused the MA No. 574/2020 and the order of the Hon'ble High Court of Orissa, referred to above. We find that besides official respondents there are several private respondents in the O.A and notice was issued to them on 11.11.2019 requiring them to file their counter if any. Only Govt. of India and UPSC have filed their counter after serving copy thereof on the applicant who has been allowed to file rejoinder. We find that the official respondents have filed counter and, thereafter the Applicant has filed MA seeking to introduce new documents through amendment and condonation of delay. Natural justice demands that before considering such prayer minimum notice is to be given to the Respondents to have their say on the prayer for amendment and condonation of delay.

12. The full text of the order dated 06/04/2021 of the Hon'ble High Court of Orissa in W.P (C) No. 35204/2020 is extracted below:

“03. 06.04.2021 This matter is taken up through Video conferencing mode. Heard the Petitioner in person and learned Assistant Solicitor General for the Opposite Parties. In this writ application, the Petitioner seeks to quash the order passed by the O.A. on his application for amendment of the Original Application pending before the Tribunal. Such an order passed by the Tribunal is an interim order and not amenable to the writ of certiorari jurisdiction as we do not find that any grave injustice has been perpetuated to the Petitioner and the order impugned is erroneous on the face of the record.

Other prayer of the petitioner is to direct the Central Administrative Tribunal to dispose of his O.A. within a stipulated time by not accepting the counter affidavits filed by the Opposite Party. However, it is seen that Respondent No.4 has filed counter affidavit in the Registry of the Central Administrative Tribunal and copy of the same has been handed over to the Applicant on 02.06.2020.

The writ petition is disposed of **giving liberty to the Petitioner to file an appropriate application for early disposal of the O.A., before the Tribunal within a period of fifteen days along with a downloaded copy of this order and a copy of the brief.** On such event, the Tribunal shall consider the prayer and after taking into consideration the pendency, the urgency of the petitioner's plea, take a decision on it.

The Petitioner undertakes to submit a downloaded copy of this order along with his application before the Tribunal within a period of 15 days.

Accordingly, the writ petition is disposed of.

As restrictions due to COVID-19 are continuing, learned counsel for both the parties may utilize the soft

copy/downloaded copy of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25.03.2020."

13. Law has stood the test of time that no decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. Further the principles of natural justice are grounded in procedural fairness, which ensures taking of correct decision. We are of the considered view that equity requires that prior to considering prayer for an amendment, an opportunity is to be given to the party of this case, who are likely to be affected in case the prayer for amendment is allowed. The Hon'ble High Court has also not interfered with the order in question passed by this Tribunal as seen from the order dated 06.04.2021. In the said premises, we find no justifiable reason to allow the prayer of the Applicant to recall the order directing notice to the Respondents on the MA No. 574 of 2020. Hence MA No. 262/2021 stands dismissed. Similarly we find that the prayer of the applicant to ignore the counter has already been considered and the counter has been taken to record. The Hon'ble High Court has not interfered by the said order passed by this Tribunal by which the counter filed by the official respondents have been accepted. Hence another MA No. 263/2021 filed by Applicant seeking the same relief stands rejected.

14. At one hand the applicant has sought to amend the OA and on the other hand has prayed to dispose of the OA at an early date. In the MA seeking

amendment notice was directed to be issued to the Respondents. But applicant has not filed requisite and on the other by filing MA seeking to recall such order and on the other hand by filing MA he has sought to dispose of the OA at an early date. In case MA for amendment and condonation is allowed the Respondents will have to be allowed opportunity to file counter and on completion of pleading the matter will be taken up for final hearing. That apart there are many urgent and year old matters pending for consideration before this Tribunal. Due to pandemic situation for COVID-19 only urgent and limited cases are being taken up through VC because many advocates so also staff including Deputy Registrar and Member (Judicial) of this Bench were affected by COVID-19. The severity of the pandemic is still in force. Hence taking into consideration the facts narrated above, it is not possible to dispose of this OA within 15 days especially when the Applicant himself is not taking step for issuance of notice on the MA. Thus MA No. 264 of 2021 filed for early disposal also stands dismissed.

15. The Applicant is allowed opportunity to file requisite in MA No. 574 of 2020 for issuance notice to the Respondents as ordered earlier. In case applicant files requisites within seven days hence notice be issued to rest Respondents on MA requiring them to file objection, if any, to the MA within four weeks. If requisite is not filed the amendment and condonation of delay sought by applicant in the MA shall not be taken into consideration and the

matter will be heard on the basis of the pleadings in the OA and counter filed by the officials Respondents.

16. In the result, MA Nos. 239/2021, 262/2021, 263/2021 and 264/2021 stand dismissed. MA No. 574/2020 may lie over.

17. List this matter 07.07.2021 on under the heading of orders.

(C.V.SANKAR)
MEMBER (ADMN.)

(SWARUP KUMAR MISHRA)
MEMBER (JUDICIAL)

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