

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.598 of 2019

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. T. JACOB, MEMBER(A)

Sri Prasanna Kumar Behera, Son of Sri Raghunath Behera, aged about 43 years, at present working as MTS in the Office of the Labour Enforcement Officer (Central), IIR-22, (Group-D), Nua Bazar, Paradip-754142- and permanent resident of Village: Lakshmipur, PS-Chamakhandi, Dist: Ganjam, Pin-761003

.....Applicant

VERSUS

1. Union of India represented by Secretary, Ministry of Labour and Employment, Shrama Shakti Bhawan, New Delhi-110001.
2. The Chief Labour Commissioner, Ministry of Labour & Employment, Shrama shakti Bhavan, New Delhi-110001
3. The Dy. Chief Labour Commissioner(C), Bhubaneswar, Kendriya Sharma Sadan, N-7/6&7, IRC Village, Bhubaneswar-751015.

.....Respondents.

For the applicant : Mr. S.B. Jena

For the respondents: Mr. M.R. Mohanty

M.A. No.472 of 2019

(Arising out of O.A. No.342 of 2018, disposed of on 22.01.2019)

Mrutunjaya DasApplicant

VERSUS

Union of India & Others.....Respondents

Heard & reserved on :16.03.2021 Order on :09.07.2021

For applicant: Mr. S. Patra. For respondent: Mr. B. Swain, Mr. D. K. Mohanty

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

The background of filing cases, one after the other, by both the applicants are that Shri Prasanna Kumar Das filed OA No. 552 of 2011 disposed of on 11/01/2016, inter alia alleging that he was working as a part time

Sweeper in the office of LEO, Paradip from 2003 to 2004 and had thus completed more than 240 days continuous service. Thereafter, he continued to work as full time Chowkidar in the office of Deputy Chief Labour Commissioner (res.no.3) from 2005 onwards being engaged through a service provider. On 17.07.2009, a Notification was issued by the Respondents for filling up of the vacant post of Gr.D prescribing the maximum age limit as 33 years, which has to be relaxed by the competent authority in so far as OBC category candidate is concerned. The Applicant alleged that he belongs to OBC category and in pursuance of the said notification he submitted application with required documents and appeared in the interview held on 9.4.2010. The Deputy Chief Labour Commissioner (C), Bhubaneswar recommended the case to the Labour Commissioner, New Delhi who in return intimated to the Deputy Chief Labour Commissioner that he being the appointing authority for Gr. D could take lawful action in the matter of age relaxation. Thereafter, in pursuance of the offer of appointment dated 21.5.2010 applicant reported to duty on the same day and he was accordingly designate as MTS vide order dated 01/06/2010. While the matter stood thus, vide order dated 31/05/2011 the service of applicant was terminated. He having unsuccessful in his appeal filed OA No. 552 of 2011 before this Bench. One Shri Mrutyunjay Das submitted representation seeking appointment against the said Gr. D post being the next person in the select list which was considered and rejected by the competent authority. Thus, being aggrieved by the said decision he preferred appeal and during the pendency of

the said appeal he had also filed OA No. 618 of 2011 seeking rejection of the refusal for appointment. Both the OAs were heard and disposed of in a common order dated 11/01/2016. Relevant portion of the order is extracted below:

“21. Since in OA No. 552 of 2011, we have quashed the impugned order dated 31.05.2011 (A/11), whereby appointment of the applicant to the post of Chowkidar Cum Safaiwala (MTS) has been cancelled and directed the respondent-department to reinstate the applicant in his post forthwith with a further direction that nothing would prevent the respondent-authorities to proceed with the matter as deemed fit and proper only after affording a reasonable opportunity to the applicant to put up his grievance before taking any action adverse to applicant’s interest, in our considered opinion, any observation or direction at this juncture by us in the present OA would certainly impinge upon our own direction in OA No. 552/2011. In view of this we hold that at this stage it is too premature to adjudicate the dispute which centers round the OA No. 618/2011. “

2. The matter carried in Writ Petition Nos. 8787, 4447, 3473 & 3474 of 2016 before the Hon’ble High Court of Orissa. The Hon’ble High Court of Orissa vide common order dated 19/07/2017 disposed of all these Writ Petitions upholding the order of this Bench, quoted above. Relevant portion of the order reads as under:

“Considering the rival submission of the parties and after going through the impugned order as well as the other records available, we are of the view that the Tribunal has rightly came to a conclusion that natural justice has not been followed pursuant to the appointment letter issued by the competent authority. The applicant has joined as such while continuing in the said post. The order of cancellation was issued without issuing any notice whatsoever and directed to reinstate him with liberty to proceed with the matter as deemed fit and proper only after affording a reasonable opportunity of hearing to put forth his grievance before taking any action adverse to his interest. So

far as OA No. 618 of 2011 is concerned as the authority has not yet taken any decision so far as which his deemed fit and proper, rightly the Tribunal observed that it was premature to adjudicate the dispute which is centers round the appointment of applicant in OA No. 552 of 2011. There is no error apparent on the face of the impugned order. Accordingly, we are not inclined to interfere with the said order in exercising the jurisdiction under Article 227 of the Constitution of India.

In view of the above discussions made in the preceding paragraph the writ petitions are disposed of and we expect that the petitioners will take step as deemed fit and proper as per the liberty granted by the Tribunal in reinstating him in service. The above exercise shall be completed within a period of three months hence.”

3. Thereafter, Shri Mrutunjaya Das filed another OA No. 342 of 2018 , inter alia praying therein for a direction to the Respondents to appoint him as Chwkidasr Safaiwala (Gr. D) after declaring the appointment of Shri Prasanna Kumar Behera as illegal or in alternatively direction be issued to the departmental respondents to conclude the entire issue immediately in terms of the order dated 11.01.2016 in OA No. 552 and 618 of 2011. The said OA No. 342 of 2018 was disposed of on 22/01/2019 with direction to the respondents to complete the disciplinary proceedings initiated against Shri Behera within a period of four months from the date of receipt of copy of the order. On conclusion of the proceedings if a decision is taken to disengage Shri Behera the same shall be in accordance with law.

4. In compliance of the order of this Bench dated 11/01/2016 upheld by the Hon’ble High Court of Orissa vide common order dated 19/07/2017, the Respondent-Department issued Memorandum dated 2nd September, 2019

(Annexure-A/17) giving him an opportunity to make representation on the proposed action of his disengagement from service which Memorandum has been assailed in OA No. 598 of 2019 with the following reliefs:

“(A) to quash the orders of the Respondent No.3 vide Memo No. 71 (6)/19-A.1 dated 2-9-2019 (as per Annexure-A/17) for being illegal, irregular, arbitrary and violative of the provision of Art. 14 & 16 of the Constitution of India and there is no misconduct or misdemeanor committed by the Applicant.

(B) To direct and order that the appointment of the applicant though was based on a notification erroneously issued prescribing the maximum age limit as 33 years instead of 25 years, was not illegal and irregular as the applicant complies with all the eligibility condition of appointment as per law as one the crucial date of the recruitment year as submitted in Para-5, 12 above;

(C) to pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice, equity and fair play;

(D) to order and direct that the cost of litigation be paid to the applicant by the respondents.

5. Similarly, by filing MA No. 472 of 2019 (arising out of O.A.No. 342/2018 disposed of on 22/01/2019), Shri M.Das has inter alia prayed for execution of the order dated 22/01/2019.

6. We have heard both the matters analogously with the consent of learned counsel for both sides. This Tribunal has gone through materials on record and pleadings of learned counsel for both sides.

7. The sum and substance of the arguments of the learned counsel appearing for Shri M.Das is that due to illegality committed by the Respondents- Department the benefit to which Shri Das was entitled, is being enjoyed by Shri Behera though he isnot entitled to same and therefore, direction may be issued to take action in accordance with Rules and law against Shri Behera so that Shri Das can be appointed against the said post.

On the other hand by drawing our attention to the decisions of other Benches enclosed at Annexures-A/18, A/19 A/20 to the OA and order of DOP&T dated 21/12/1998 (A/21) and letter of CPIO dated 12.10.2012 (A/22) and instruction of DoP&T dated 20.04.1998 (A/23), learned Counsel appearing for Shri Behera has made endeavor to establish that his selection and appointment is no way illegal and, therefore the show cause notice is liable to be quashed.

8. We have gone through the Annexures filed on behalf of Shri Behera. We find that the Memorandum impugned in OA No. 598 of 2019 has been issued to the said Applicant, Shri Behera in compliance with the principles of natural justice in terms of the order of this Bench dated 11/01/2016 which was upheld by the Hon'ble High Court of Orissa in Writ Petition Nos. 8787, 4447, 3473 & 3474 of 2016 disposed of vide common order dated 19/07/2017 and that law is well settled in a plethora of judicial pronouncements that a application does not lie against a charge

sheet or show-cause notice for the reason that it does not give rise to any cause of action (Vide **State of U.P. v. Brahm Datt Sharma** [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , **Bihar State Housing Board v. Ramesh Kumar Singh** [(1996) 1 SCC 327] , **Ulagappa v. Commr.** [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , **Special Director v. Mohd. Ghulam Ghouse** [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and **Union of India v. Kunisetty Satyanarayana** [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304]).

9. In view of the facts discussed and law cited above we see no reason to interfere in the show cause notice dated 02/09/2019 especially when the same has been issued in compliance of the order of this Bench dated 11/01/2016 which was upheld by the Hon'ble High Court of Orissa in Writ Petition Nos. 8787, 4447, 3473 & 3474 of 2016 disposed of vide common order dated 19/07/2017. Hence O.A. No. 598 of 2019 stands dismissed and consequently MA No. 472 of 2019 is disposed of with direction to the Respondents to comply with the order of this Bench dated 22/01/2019 in OA No. 342/2018 disposed of on 22/01/2019 within time stipulated therein. No costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)