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O.A.NO. 726 OF 1996.

ORDER DATED 16-04-2001.

Heard Shri Baparesh Bhoi, the applicant in person and Shri B. Pal, learned Senior Counsel for the Respondents. It is submitted by the applicant that further proceedings of this Original Application before this Tribunal has been stayed by the Honourable High Court and on that ground, the applicant wanted that the matter should be adjourned. The applicant has filed the order of the Hon'ble High Court and we have perused the same. We find that in Misc. Case No. 11707 of 2000 arising out of OJC No. 11505 of 2000, Their Lordships of the Hon'ble High Court, on 20.11.2000 have passed the following orders;

There shall be interim stay of further proceedings in O.A. No. 563 of 1996 pending before the Orissa Administrative Tribunal, Cuttack Bench.

This order was modified by Their Lordships of the Hon'ble High Court in order dated 27.11.2000 in Misc. Case No. 12486 of 2000 and the relevant portion of the order is quoted below;

*The expression *Orissa Administrative Tribunal* appearing in our order no. 3 dated 20. 11. 2000 may be read as *Central Administrative Tribunal. The order dated 20.11.2000 accordingly stands modified to the extent indicated above*.

From the above order of Their Lordships of the Hon'ble High Court, it is absolutely clear that the proceedings in OA No. 563/1996 have been stayed by the Hon'ble High Court. As OA No. 563 of 1996 was posted today for peremptory hearing but in view of the above order of the Hon'ble High Court that OA has been adjourned.

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It is further submitted by the petitioner Shri Aparesh Bhoi that in the Writ petition filed before the Hon'ble High Court, in which M.A. No.11707/2000 was filed, prayer was made for staying proceedings before this Tribunal ^{or} on a large number of other Original Applications, pending before this Tribunal. If that be the case, then it is clear that such a prayer has impliedly been rejected by the Hon'ble High Court because in their order dated 20.11.2000, they have only stayed the proceedings in O.A. No.563/96. In view of the above, there is no legal ground for adjourning this OA No.726/96 and we have, therefore, heard the petitioner in person and Shri B.Pal, learned Sr. counsel appearing for the Respondents and perused the records. Learned Sr. Counsel has filed along with a Memo two decisions of the Hon'ble Supreme Court and decision of the Tribunal in earlier O.A.No.560/96 disposed of by this Bench on 16.11.1998. In this O.A., the applicant has made the following prayer which is quoted below:

After hearing the parties and perusal of the records the Respondents be directed for enforcement of official Memorandum dated 2.3.1965, 25.12.71, 8.1.78, 25.6.80 and 5.10.1981 and direction of Hon'ble Supreme Court by identifying a suitable job for the applicant in terms of the principle laid down in para 394 of the judgment dated 16.11.1992 in the Mandal Commission case in WP(C) Nos.1081/90 and 111/92 of the Hon'ble Supreme Court as well as in terms of order dated 17.3.1987 and 24.7.89 in CA No.1749/87 and order dated 12.3.1991 in WP(C) Nos.536, 734, of 1990, 237 of 1991 as a rehabilitation assistance to cured Leprosy persons and pass such further and other order/orders as to this Hon'ble Tribunal deem fit and proper with cost of the application.

2. The Respondents are (1) Secretary, Ministry of welfare, (2) Chief Personnel Officer (Administration) SE Railway, Garden Reach, Calcutta and (3) Chairman, Railway Recruitment Board, Bhubaneswar. Respondents have filed their counter opposing the prayer of the applicant and applicant has filed rejoinder. We have perused the same.

3. For the purpose of considering this Original Application, it is not necessary to refer to all the averments made by the parties in their voluminous pleadings. It is only necessary to state that the applicant claims to be a cured Leprosy patient and he wants his case to be considered for appointment by way of rehabilitation assistance in terms of Circular dated 2-3-1965 at Annexure-1 and certain other orders referred to in the prayer portion of the petition. Learned Senior Counsel for the Respondents has brought to our notice that an identical matter in O.A. No. 560/1996 ^{which} has been disposed of by this Bench in their order dated 16-11-1998. We have, therefore, called for the records of O.A. No. 560/1996 and gone through the same, and we find that the prayer in Original Application No. 560/96 is identical to the prayer made in this Original Application and the Respondents in Original Application No. 560 of 1996 are the very same authorities who have been arraigned as Respondents in this Original Application. The grounds urged in support of the prayer in this Original Application are the same grounds urged in Original Application No. 560/1996 and the Respondents have also opposed the prayer on the same grounds. In our order dated 16-11-1998, we have held that the purported circular dated 2-3-1965 at Annexure-1 to that O.A. ^{which} is also at Annexure-1 in this O.A. is not in existence and on other grounds elaborately discussed in our order dated 16-11-1998, we had held that O.A. No. 560/96 is

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without any merit and the same was rejected.

4. In the present case, the applicant has come up with the same prayer and with the same grounds and therefore, we see no reason to differ from our findings arrived at in O.A. No.560/96. In view of this, we hold that this Original Application is without any merit and the same is rejected.

5. There is also one more ground which was not raised in Original Application No.560/96 on which the Original Application has to be rejected. The applicant wants a direction to be issued to the Respondents to give him appointment by way of rehabilitation assistance on the ground of his being a cured Leprosy patient. Respondent No.1 is stationed at Delhi and Respondent No.2 is stationed at Calcutta. Therefore, with regard to Res. Nos.1 and 2 cause of action must be deemed to have been arisen outside the territorial jurisdiction of this Bench of the Tribunal. The applicant, is no doubt a resident of Orissa but in terms of Rule-6 of CAT(Procedure) Rules, 1987, he has to file the case where the cause of action either wholly or in part has arisen. Sub rule (2) of Rule-6 which bears an exception to the ^{above} general Rule does not also cover the case of applicant so far as these two Respondents are concerned. Therefore, this Original Application is also rejected on the ground of not being maintainable against Respondents 1 and 2.

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6. AS regards Respondent No.3, he is the chairman, Railway Recruitment Board, Bhubaneswar. In a separate counter filed by the Respondent No.3, it has been submitted by him that he is not a proper or necessary party in this O.A. and the scope of the activity of Respondent No.3 has nothing to do with the prayer made by the Applicant in this O.A. It is submitted and to our mind, rightly by the Respondent No.3 that he can take up Recruitment procedure only when a matter is referred to him by the Competent Authority/proposed employer in the Railway Administration. Applicant has not made any averment that Respondent No.3 has while dealing with the cases of appointment to any post, declined to consider the prayer of applicant or that the applicant did make a prayer to the Respondent No.3 to consider him as preferential category. In view of this, we hold that Respondent No.3 is also not a proper and necessary party to this O.A. and the O.A. is also accordingly held to be not maintainable against the Respondent No.3.

7. In view of our discussions made above, we hold that the application is without any merit besides not being maintainable and the same is accordingly rejected but without any order as to costs.

8. We have also heard the learned Senior Counsel appearing for the Respondents Mr.B.Pal on the application filed by him u/s.340 CRPC to initiate proceedings against the applicant for sanction of prosecution u/s.193 IPC. In view

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of the fact that we have rejected the Original Application, we do not think this is a fit case for taking further action on the Misc. Application filed for this purpose by the learned Senior Counsel for the Respondents. In view of this M.A. filed for this purpose is rejected.

16.4.2001.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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SOMNATH SOM
VICE-CHAIRMAN
16.4.2001

KNM/CM.

Free copy of
the order dt 16-4-01
given to the
applicant & to
Mr B-Pal, R17, counsel.

Satish
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