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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BRANCH, CUTTACK

ORIGINAL APPLICATION NO. 449 OF 1998
Cuttack this the 8th day of January/2004

Prasanta Kumar Patra...

Applicant(s)

VERSUS

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Y
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not ? Y

Patra
08/01/04
(M.R. MISHRA)
MEMBER (JUDICIAL)

Som
(B.N. SONG)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.449 OF 1998
Cuttack this the 8th day of January/2004

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

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Sri Prasanta Kumar Patra, aged about 23 years,
Son of Bimbashar Patra, At/^{PO}-Nachhinda, Via-Kamardha
Dist-Balasore

...

Applicant

By the Advocates

Mr. T.Rath

VERSUS

1. Union of India represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, At/^{PO}-Bhubaneswar, Dist-Khurda
2. The Superintendent of Post Offices, Balasore Division, At/^{PO}/Dist- Balasore
3. Sri Ajay Kumar Nag, Son of Late Narendra Nag, At/^{PO}-Nachhinda, Via-Kamardha, Dist-Balasore

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Respondents

By the Advocates

Mr. B.Das, ASC
(Res.Nos.1 and 2)

Mr. B.K.Patnaik(Res.3)

ORDER

MR. B.N.SOM, VICE-CHAIRMAN: Applicant (Shri Prasanta Kumar Patra) has filed this Original Application under Section 19 of the A.T. Act, 1985 challenging the validity of appointment made by the Superintendent of Post Offices (Res.No.2) vide his order dated 18.8.1998 in respect of Sri Ajay Kumar Nag (Res.No.3) to the post of Extra Departmental Branch Post Master, (for short EDBPM) Nachhinda Branch Office.

2. The case of the applicant is that one Ajaya Kumar Nag (Res.No.3) in pursuance of notification dated

17.1.1991 issued by the Respondent No.2 had applied for the post of E.D.B.P.M., Nachhinda B.O. and was selected. He was given the letter of appointment dated 3.1.1992 by Respondent No.2, but he could not join the post because of interim order of stay on the retirement of the regular incumbent of the post passed by this Tribunal on 7.1.1992 in O.A.12/92. Later on, the said O.A.(O.A.No.12/92) was allowed and, therefore, the regular incumbent of that post was allowed to retire on 18.6.1994 instead of 9.1.1992. It is the case of the applicant that Respondent No.2 thereupon issued order dated 18.8.1993 cancelling the appointment issued earlier in favour of Respondent No.3. Aggrieved by that order, Respondent No.3 approached this Tribunal in O.A.161/93, which was allowed by this Tribunal in its order dated 23.4.1998, by quashing the order dated 18.8.1993 with direction to Respondents therein to consider the case of the applicant for appointment to the post of E.D.B.P.M., Nachhinda B.O. By filing the present Original Application on 12.8.1998, the applicant has prayed that the selection file be called for from Respondent No. 2, quash the order of appointment issued in favour of Respondent No.3 on 13.10.1998, recall/set aside/review the order under Annexure-3 dated 23.4.1998 passed by this Tribunal in O.A.261/94 and to direct the Respondents-Department to consider the candidature of the applicant along with others, who had applied for the post.

3. The Respondents have submitted a detailed counter opposing the prayer of the applicant in this O.A. They have also submitted additional counter.

4. The issue involved in this Original Application is whether the Tribunal having declared appointment of Respondent No.3 (Shri Ajaya Kumar Nag) to the post of E.D.B.P.M., Nachhinda B.O. in its order dated 23.4.1998 in O.A.261/94 valid and consequently directing the Respondents-Department therein to consider the case of the applicant (Res.No.3) for appointment to the post in question within a period of 30 days from the date of receipt of that order, could at this stage in an application under Section 19 of the A.T.Act, 1985, filed by an applicant, who was not at all a party aggrieved in O.A.261/94, entertain and adjudicate/reopen the decision already taken therein. Our answer to this is in the negative, because, when the selection of Respondent No.3 was made in anticipation of the vacancy, the applicant in the instant O.A. was not a candidate for the post in question. Thus, he cannot call in question any action that had been taken by the Respondents-Department prior to 4.2.1994 when the Employment Exchange in pursuance of fresh requisition made by the Department sponsored his name along with others. So far as the grievance of the applicant in the present O.A. is concerned that his name having been sponsored by the Employment Exchange, he should have been considered, this issue has been already considered by the Tribunal in O.A. No.261/94 filed by the Respondent No.3. The Tribunal vide its order dated 4.5.1994 had stayed that selection process (wherein the applicant was a candidate) with the direction that the E.D.D.A. of Nachhinda B.O. should look after the duties of EDBPM, Nachhinda with effect from 19.6.1994(i.e.,

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the date of retirement of the regular incumbent). Thus, while taking a final view over the matter in O.A.261/94, the Tribunal was quite aware of the fresh selection action that was in process and after taking into consideration the entire facts and circumstances of the matter, allowed O.A.No.261/94 in favour of the applicant, i.e., Respondent No.3 in this O.A. In the circumstances, we are entirely in agreement with the view expressed by the learned counsel for the Respondents that the Tribunal having settled the matter in O.A.261/94, this matter is no longer open to the applicant to approach the Tribunal either in O.A. or in R.A., as the case may be. We are also bound by the "Doctrine of Precedent". Even going by the prayers of the applicant as made in this O.A., the entire thrust of his grievance centres round our order dated 23.4.1998 passed in O.A.261/94, which he wants to be reviewed/set aside by us. Conceding for the sake of argument that the Tribunal has jurisdiction to set aside its own order, the point for consideration does arise whether the applicant has any locus standi to assail the said order passed by this Tribunal. As discussed above, the applicant was not a party aggrieved in O.A.261/94. Therefore, he cannot agitate that any of his vested rights has been abridged. We are conscious that the Tribunal, while upholding the selection of the applicant in OA No.261/94 as legal and valid could have either quashed or declared null and void the fresh selection of candidates sponsored by the Employment Exchange (which was virtually stayed) in order to void any future litigation. In any case when the

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Tribunal held the selection of the applicant in O.A.261/94 as legal, logically it follows that the selection action initiated by the Respondents-Department in pursuance of the fresh notification to the Employment Exchange was liable to be cancelled. Therefore, we are of the opinion that his candidature was not rightly considered, because of the decision of this Tribunal in O.A.261/94 and thus, his O.A. is not maintainable.

5. For the reasons aforesaid, we hold that this Original Application, besides being devoid of merit, is not maintainable and, accordingly, we reject the same, leaving the parties to bear their own costs.

M.R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Sasmal
(B.N. SASMAL)
VICE-CHAIRMAN

BJY