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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO . 345 OF 2004
CUTTACK, this the 4th August, 2006.

PRASAN KUMAR DAS APPLICANT
Versus
UNION OF INDIA & ORS. RESPONDENTS

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not ? *yn*
2. Whether it be circulated to all the Benches of the CAT, or not? *yn*

not
(B.B.MISHRA)
MEMBER (ADMN.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 345 of 2004

Cuttack, this the 4th day of August, 2006.

C O R A M:-

THE HON'BLE MR.B.B.MISHRA, MEMBER (ADMN.)

PRASAN KUMAR DAS,
Aged about 36 years,
Son of Sarat Chandra Das,
At: Mahamadabad, Po: Pippal Madhab,
Via: Tiran, Dist. Jagatsinghpur.

.... APPLICANT.

BY legal practitioner: Mrs.U.R.Padhi, & Mr. J.K.Swain,
Advocates.

-VERSUS-

1. Union of India, represented through its
Secretary, Ministry of Information & Broadcasting, Sastri Bhawan,
New Delhi
2. Prasar Bharati, represented through its Director General,
Copernicus Marg, Mandi House, New Delhi-1.
3. Director General, Doordarshan, Copernicus Marg, Mandi House,
New Delhi-110 001.
4. Director, Doordarshan Kendra, Po: Sanik School, Bhubaneswar-5,
Dist. Khurda.

By legal practitioner **Mr.S.B.Jena, ASC.**

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ORDER

MR. B.B.MISHRA, MEMBER(ADMINISTRATIVE):

Facts of this case as alleged by the Applicant, are that he has been working as General Assistant on casual basis under the Respondent No.3 (Director, Doordarshan Kendra, Bhubaneswar) since 1988. When no steps were taken to regularize the services of Applicant and similarly placed casual employees by the Respondents, the Applicants along with others moved this Tribunal in Original Application Nos. 441/92, 562/92 and 8/94 seeking direction to the Respondents to consider their cases for regularization, ignoring their age bar, if any, and preventing the Respondents from making any recruitment from open market till the Applicants, therein, are regularized. This Tribunal disposed of the aforesaid Original Applications by a common order dated 16-11-1993 relevant portion of which are quoted herein below:-

“.....After hearing Mr. G.A.R. Dora, Learned counsel appearing for the Petitioners in OA Nos. 441/1992 and 562/1992 and Mr. J. Patnaik, learned Counsel appearing for the petitioner in OA No. 362 of 1992 and Mr. Ashok Mishra, learned Senior Standing Counsel appearing for the Opposite Parties in all these three

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cases mentioned above, it would suffice to say that the following directions be carried out which is also in consonance with the guidelines laid down by the Central Administrative Tribunal, Principal Bench in the above mentioned cases: (a) a seniority list of all the Casual workers discharging the aforesaid nature of work be prepared KENDRIYA-WISE. A dispute was presented before us that certain petitioners could not complete 120 days work in a calendar-year because sufficient work was not given to them making a discrimination with their colleagues and therefore, this administrative instruction for completing 120 days in a calendar should not be acted upon. We are unable to accept this contention. It is, therefore, directed that those casual workers who have completed more than 120 days in a calendar year shall take precedence over those casual workers who have not completed 120 days during a span of more than a year

2. As it appears from the record, the Respondents carried the matter in appeal to the Hon'ble Supreme Court of India and the Hon'ble Supreme Court, at the first instance, stayed the operation of the order dated 16-11-1993 of this Tribunal passed in the aforesaid cases on 25-11-1994. As it appears from Annexure-3 to this OA that during the pendency of the SLPs, on the submission made before the Hon'ble Supreme Court on 29-02-1996, by the learned Senior

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Counsel appearing on behalf of the Departmental Authorities/Respondents that some of the Applicants before this Tribunal have, in the meantime, been regularized by the Departmental Authorities, the Hon'ble Supreme Court dismissed the SLPs for being in-fructuous as against them. As it also appears from Annexure-A/4, on 13-09-1996 again the SLP came up before the Hon'ble Supreme Court for consideration and it was ordered that "Learned Counsel for some of the Respondents states that learned counsel for the Petitioners had on 29-02-1996 given the names of certain respondents who have been regularized whereupon the SLP as against these respondents was dismissed. Learned Counsel states that in fact these Respondents have not been regularized. The Petitioners are directed to ascertain the position but it is made clear that as against these Respondents the SLP shall not be restored". From the orders under Annexure-A/3 it is seen that the Applicant (Prasan Kumar Das) was **Respondent No.21 in the SLP** filed by the Departmental Authorities/Respondents and it was also disclosed that he has been regularized. In spite of such

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declaration made before the Hon'ble Supreme Court, when the Applicant could not be regularized, and it was intimated to him under Annexure A/6 dated 18th January, 1996 that he is ineligible to be regularized and his name was inadvertently shown as casual lighting assistant, he along with others again moved this Tribunal by filing O.A. No. 195 of 1997 which was heard and disposed of by this Tribunal on 14th January, 1998 relevant portion of which are quoted herein below:-

".....In the instant case, the Department has prepared a Scheme for their regularization and the applicants are entitled to the benefits of the scheme. Their services, therefore, have to be regularized in accordance with the Scheme when their turn comes. The prayer for regularization of their services is, therefore, rejected."

3. In spite of the above directions and commitments before the Hon'ble Supreme Court, when the Applicant was now allowed to perform his duties even on casual basis till regularization, he has approached this Tribunal in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 praying the following relief(s):-

(a) to quash the letter dated 25-03-2004;

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- (b) to regularize the services of the Applicant retrospectively as per the commitment made by the Respondents before the Hon'ble Apex Court;
 - (c) to direct the Respondents to pay the Applicant all his service and financial benefits retrospectively;
 - (d) to allow the Applicant to continue till regularization is made as per the directive of the Hon'ble Apex Court as also of this Tribunal.

4. Respondents have filed their counter stating therein that (i) the Applicant was booked to perform the duties of General Assistant and Copyist on casual basis, as and when required; (ii) the Department has formulated a scheme for regularization of the casual employees of the Doordarshan and as the Applicant did not complete 120 days of service, in a year, he is not eligible to be regularized as per the scheme prepared by the Department in the year 1992 and 1994; (iii) Prasanna Das who has been working as Lighting Assistant on casual basis in the Doordarshan has been declared eligible to be regularized as per the scheme and not this Prasana Kumar Das who has been continuing as Copyist/General Assistant on casual basis and the order under Annexure-A/5 was wrongly issued to the Applicant; and (iv) Doordarshan Kendra, Bhubaneswar assigns works only on the basis of existence of

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work load of the Kendra as and when required. On the above grounds, the Respondents have opposed the prayer for regularization.

5. Applicant has also filed a rejoinder stating therein that he is the Prasana Kumar Das, who has not only been made as Respondent No.21 before the Hon'ble Supreme Court but also Applicant No.10 in OA No. 195/1997. It has also been submitted by him that the name of the Applicant "Prasan Kumar Das, General Assistant" has also been shown in the list of regularization prepared by the Respondents under Annexure-A/1 and only to deprive the Applicant his livelihood to favour some other person, such an after thought pleas have been taken by the Respondents first time in this present Original Application. He has also taken support of the orders passed by this Tribunal on 06-05-2005 rendered in OA No. 413/2004 & on 22-07-2005 in OA No. 346 of 2004.

6. Heard Mr. S.K.Dash, on behalf of Mrs. U.R. Padhi, learned counsel appearing for the Applicant and Mr. S.B. Jena, learned Additional Standing Counsel appearing for the Respondents and perused the records placed before me.



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7. Learned counsel appearing for the Applicant has submitted that once the Respondents have given an undertaking that the Applicant has already been regularized the stand now taken by the Respondents is not sustainable in the eye of law and as there are vacancies available in different Kendras/in different HPTs/LPTs situated in State of Orissa, the case of the Applicant can be considered for regularization against one of those vacancies in compliance of the orders of the Tribunal as also the promises made before the Hon'ble Supreme Court of India. On the other hand, learned Additional Standing Counsel while reiterating the stand taken in the counter, has strongly opposed the prayer of the Applicant stating therein that since the identity of the Applicant is in question, no such direction may be issued.

8. Notwithstanding the above, I am not impressed with the pleas of the Respondents; because although there was opportunity available to the Respondents, they did not take such stand what has been taken now, either before this Tribunal earlier or before the Hon'ble Supreme Court. Therefore, Respondents are under obligation to respect the

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promises/understanding given before the Apex Court. Non-compliance of promises/statements made before the highest court in our country is an inexcusable step and cannot claim immunity against legal liability. No citizen is expected, not to speak of high functionaries, to take liberty with the order of the Court. Every one whether individually or collectively, status apart, is unquestionably abided by Law. Disobedience of the orders/or failure to keep promises made in Court of Law erodes the Rule of Law. That is why it is imperative that Court's orders are to be followed and complied with, not only within specified period or reasonable time and also in letter and spirit.

The Hon'ble Supreme Court in the case of

BANK OF BIHAR vrs. MAHABIR LAL AND OTHERS—

AIR 1964 SC 377 (Page-5) have held as under:

“Where a statement appears in the judgment of a Court that a particular thing happened or did not happen before it, it ought not ordinarily to be permitted to be challenged by a party unless both the parties to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. The remedy of a party aggrieved is by way of review.

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82/ This view has again been reiterated by the Hon'ble Supreme Court in the case of STATE OF MAHARASHTRA AND OTHERS vs. ADMANE ANITA MOTI & OTHERS -AIR 1995 SC 350 relevant portion of which are quoted herein below:-

“The factual recitals or observations made in a judgment or order are taken to be correct unless rebutted. The burden to rebut it is on the person who challenges it. One of the methods to rebut such observation is to file the affidavit of the person who was present in the Court and to produce such material which may satisfy the Court that the recital in the judgment crept in inadvertently or it was erroneous”.

9. In the instant case no such document has been filed by the Respondents showing that the present Applicant is not the said Prasanna Kumar Das who was stated to be regularized before the Hon'ble Supreme Court. Besides, the Apex Court did not agree to accept such statement made by the Respondent-Department. Virtually, now the Respondents want this Tribunal to review the orders of the Hon'ble Apex Court; which is not available to be done.

10. In view of the discussions made above, I have no option but to apprise the Respondents especially

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Respondent No.3 to do well in the matter of regularization of the Applicant, if not at DDK, Bhubaneswar in any other places where vacancy is available, as per the promises/Statement made before the Hon'ble Supreme Court; as quickly as possible. It is clarified that this order is exclusive to the Applicant since the impression, (which the Respondents called erroneously) was given to the Hon'ble Supreme Court basing on which the Respondents are now being forced to regularize the service of the Applicant. Thus, being a peculiar case, this will have no universal applicability.

11. In the result, this OA is disposed of with the observations and directions made above. No costs.

B.B.MISHRA
(B.B.MISHRA)
MEMBER(ADMN.)