CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOs. O.A. NOs. 93, 105, 106,107, 108, 184, 398, 439 and 490 of 2006

CUTTACK, THIS THE 6th DAY OF February, 2008

Ms. Pravati Singh and others ..... Applicants

Vs

Union of India & Others .....Respondents

FOR INSTRUCTIONS

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

(C.R.Mohapatra)
MEMBER (A)

(K.B.S.Rajan)
MEMBER (J)

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CORAM :

HON'BLE Dr.K.B.S.RAJAN, MEMBER (J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....

Ms. Pravati Singh, aged about 24 years, D/o. –Shankar Charan Singh, Vill./P.O.-Balichhatara, P.S.-Udala, Dist. Mayurbhanj
At present working as Technician, Office of the AE LPT Paradeep, Dist. Jagatsinghpur

.....Applicant (In O.A. No. 93/06)

Sri Ghanshyam Naik, aged about 22 years, S/o. –Radheshyam Naik, resident of At- Karamtoli, P.O./P.S.-Aainthapali, , Dist. Sambalpur

.....Applicant (In O.A. No. 105/06)

Sri Debarchan Kanhar, aged about 23 years, S/o. –Kaileswar Kanhar, Vill./P.O.-Sudrukumpa, P.S.-Phulbani Sadar, Dist. Kandhamal
At present working as Technician, Office of the AE LPT Athamalik, Dist. Angul.

.....Applicant (In O.A. No. 106/06)

Sri Sambhunath Behera, aged about 26 years, S/o. –Sachindananda Behera, At-Ranihat, Sikarisahi, P.O.-Buxi Bazar, P.S.-Mangalabag, Town/Dist. Cuttack.
At present working as Technician, Office of the AE LPT Narsinghpur, Dist. Cuttack.

.....Applicant (In O.A. No. 107/06)

Sri Chittaranjan Behera, aged about 21 years, S/o. –Harihar Behera, At-Prem Nagar 6th lane, P.O.-Berhampur, Dist. Ganjam.
At present working as Technician, Office of the AE LPT Baliguda Dist. Kandhamal

.....Applicant (In O.A. No. 108/06)

Sri Sarada Prasad Behera, aged about 22 years, S/o. –Rabindra nath Behera, At- New Colony,P.O./P.S. - Bariniput, Dist. Koraput
At present working as Technician, Office of the AE LPT Dhurudukot, (Hindol), Dist. Angul

.....Applicant (In O.A. No. 184/06)

Ms. Kalu Mallik, aged about 33 years, S/o. –Narana Mallik, At-Bamundi, P.O.- Ambapada, P.S.-Puri Sadar, Dist. Puri.
At present working as Helper, Office of the AE LPT Baliguda, Dist. Phulbani **.....Applicant (In O.A. No. 398/06)**

Sri Susanta Pradhan, aged about 26 years, S/o. –Benupani Pradhan, At-Kushapalli, P.O.- Mahendragoda, P.S.- R.Udaygiri, Dist. Gajapati
At present working as Helper, Office of the AE LPT Bhuban, Dist. Dhenkanal **.....Applicant (In O.A. No. 439/06)**

Sri Faguram Murmu, aged about 27 years, S/o. –Baidyanath Murmu, At-Dandbose, P.O.- Purunapani, via-Rairangapur, Dist.Mayurbhanj.

.....Applicant (In O.A. No. 490/06)

Advocate(s) for the Applicant- Mr. B.Mohanty(in O.A. 93,105,106,107, 108,184,398 of 06),
Mr. B.B.Mohanty (in O.A. 439/06)
M/s.T.K.Mishra, B.K.Raj (in 490/06)

VERSUS

1. Union of India represented through the Secretary to Govt. of India, In the Department of Information and Broad Casting, New Delhi.
2. Director General, Door Darshan, Door Darshan Bhawan, Copernicus Marg, New Delhi-110001.
3. Director, Prasar Bharati, Broad Casting Corporation of India, Door Darshan Kendra, Chandrasekharpur, Bhubaneswar-5, Dist-Khurda.
4. Asstt. Station Engineer, Door Darshan Maintenance Centre, Dhenkanal Camp At-High Power Transmitter (TV), Tulasipur, Town/Dist-Cuttack..

..... Respondents

Advocates for the Respondents – Mr. B.Dash (ASC), M/s. S.Pattnaik, D.K.Mohanty(in O.A.93/06, Mr. B.Dash,Ms.S.Mohapatra (in O.A.105/06) Mr. B.Dash (In O.A. 106,107,108,184,490 of 06), Mr. U.B.Mohapatra (In O.A. 398, 439/06),

ORDER

Hon'ble Dr. K.B.S.Rajan, Member(J)

All the above cases had been taken up separately and arguments from the side of the applicants and the respondents heard. However, as the legal issue is one and the same, this common order would govern all the O.As.

1. In fact, in an earlier O.A. No. 675/2005 an identical situation had arisen and when the applicant therein moved the Tribunal, there having been a disagreement between the Hon'ble Vice Chairman and the Administrative Member, the matter was referred to a Third member. The decision of the third member is as given below:-

> *"1. The following sequence of events would be not only useful, but essential too to have the exact picture of the entire case:*
>
> *(a) 19-08-2005: The Original application, filed by 24 applicants on 18-08-2005, accompanied with an application u/r 4(5) of the CAT (Procedure) Rules, 1987 was considered. M.A. was all allowed and in respect of the OA, the same was disposed of with the following order:-*
>
> *Having heard Mr. Samarendra Patnaik, Learned Counsel appearing for the Applicants and Mr. Bimbisar Dash Learned Additional Standing Counsel for the Union of India (on whom a copy of this Original Application has already been served), and on perusal of the materials placed on record, in all fairness, this Original Application is disposed of with direction to the Respondents to consider the grievances of the Applicants (as raised in Annexure A/19 series and in in this OA; pertaining to regularization of their services as against the vacancies available in different HPTs/LPTs in the state of Orissa as also against the vacancies of Khalasi available in the DDK at Bhu baneswar according to their position in the seniority list prepared by the Department) within a period of 120 days from the date of receipt of copies of this order."*
>
> *(b) 13-10-2005: In O.A. No. 806 of 2005, which was stated to be similar to the above O.A. No. 675/05, the Tribunal passed an order that like OA No. 675/05, the case of the applicants in OA No. 806/05 are to be considered for regularization. (This order was passed at the admission stage of the said OA and without calling for reply from the respondents)*
>
> *(c) 02-12-2005 : M.A. 772/2005 filed by the applicants has been considered and the following order was passed:-*

".... By filing present M.A. No. 772/05, the applicants have pointed out that while their regularization matter is at correspondence stage, intra departmental steps have been taken to fill up 9 posts of Technician/helper from open market. It has, virtually, been alleged that the vacancies notified to be filled up from open market are available to be manned by the applicants and without considering the applicants to be regularized against the said vacancies, open market candidates have been asked to compete for the said post. ..... In the said premises, the applicants have sought direction to restrain the Respondents from taking into consideration the open market/fresh candidates for the vacancies (9 in number) notified.

While asking Mr. B. Dash, Ld. Counsel appearing for the respondents to have instructions in the matter, notices are hereby asked to be issued to the Respondents in order to given them an opportunity to have their say in the matter within a period of six weeks, ... In the meantime, special recruitment drive for recruitment of SC and ST candidates for 7 posts of Technician and 2 posts for Helper shall remain stayed until further orders. While passing this ad interim order, liberty is hereby granted to the respondents to file their objection expeditiously."

(d) 15-12-2005: On M.A. No. 825/05 having been filed by the applicants, the Tribunal has passed the following order:-

"By filing the present Misc. Application No. 825/05, the Applicants have pointed out (in para 5 thereof) that the Respondent Department have already regularized seven (7) casual employees at LPT/Dhenkanal and other places and, instead of regularizing the applicants, they are taking steps to recruit Scheduled Caste ("SC" in short) and Scheduled Tribe ("ST" in short) candidates (as Helper under Station Engineer of Doordarshan Maintenance Centre at Jeypore in the State of Orissa) Directly. ..... In the Misc. Application No. 825/05, it has been disclosed that 12 of the applicants belong to SC and one of them belongs to ST Community. It is the case of the applicants that since some of the SC and ST Applicants are already discharging duties of Helper (on casual basis) in the Electrical/Mechanical Wing of the Respondent Department, they should have been given first opportunity to be regularized against the said regular post of Helper under the Station Engineer of Doordarshan Maintenance Centre at Jeypore, and in no circumstances, they should be called to compete with open market candidates. It has been disclosed by the Applicants that unless special recruitment drive for SC and ST helper under Station Engineer Doordarshan Maintenance Centre at Jeypore (as enclosed under Annexure C to the Misc. Application No. 825/05) is stayed, their interest for regularization shall be greatly jeopardized.

3. Heard Mr. S. Pattnaik Ld. Counsel appearing for the Applicant and Mr. B. Dash, Ld. Additional Standing Counsel representing the Respondent Department on whom a copy of the M.A. No. 825/05 has already been served. ... .

6. In the aforesaid premises, this M.A. No. 825/05 is hereby disposed of by asking such of the SC and ST Applicants, who intend to be regularized as Helper (in Electrical/Mechanical operation matter) under Station Engineer of Doordarshan Maintenance Centre at Jeypore, to represent (within 22-12-2005) with all details for their regularization, and the Respondents , on receipt of such representations, should not proceed with the open market recruitment noticed under Annexure C to the M.A.; but should consider the case of SC and ST Applicants/Casual Workers for their regularization by condoning upper age limit and without insisting for the Employment Exchange Certificate."

(e) 23-01-2006: Applicants having filed CP(C) No. 8/06, notice to respondents issued.

(f) 12-04-2006: M.A. No. 772/05 (in which notice was ordered vide order dated 02-12-2005) and a fresh M.A. No. 177/06 filed by the applicants were considered and the following order passed:-

"Upon hearing Shri D.K. Mohanty, learned counsel appearing for the applicants, and Shri B. Dash, learned Addl. Standing Counsel, appearing for the Respondents and after perusal of the Orders in W.P. © No. 1790/06, it appears that the third party appointees in Group C posts have been allowed to continue until further orders by the Hon'ble Court or till disposal of this O.A. In view of this let the same status quo continue till the writ petition pending before the Hon'ble High Court or till the disposal of this OA whichever is earlier. This order shall hold good in respect of other appointees who have filed writ petitions before Hon'ble High Court

With the above observation and direction, both the M.As are disposed of"

(g) 08-06-2006: M.A. No. 341/06 in OA No. 675/05 filed, praying for tagging of the aforesaid two O.As as also another OA 97/06 filed by them.

(h) 14-07-2006: Two individuals, Kalu Mallik and Susanta Pradhan filed Misc. Application No. 397/06 wherein they have stated that in pursuance of the advertisements for the post of Helper they were selected and appointed in end 2005 but their appointments were cancelled by fourth week of January, 2006 and this cancellation being as a result of certain orders (interim order dated 02-12-2005) passed in OA No. 675/05, they have prayed for being impleaded as intervenors.

(i) 14-07-2006: MA No. 398 of 2006 has been filed by the aforesaid intervenors, stating that continuance of stay order dated 02-12-2005 in MA No. 772/2005 in the already disposed OA No. 675/05 unduly affects their career and accordingly prayer was made for revocation of the stay order dated 02-12-2005.

(j) 26-07-2006: MA No. 438/06 has been filed on behalf of the official respondents praying for modification of the status quo order passed in MA No. 772/05 and 825/05 (vide (f) above) as the applicants who were to file representations did not file such representations and that the claim of the applicants were restricted only in respect of Group D posts.

(j) 28-06-2007: Order of the Vice Chairman on the pending M.As and the C P passed to the following extent:-

"12. As the order dated 19-08-2005 being violative of the principles of natural justice is bad, the orders dated 2-12-2005 and 15-12-2005 passed by the learned Single Member Bench in MA Nos 772 and 825/2005 as a sequel thereto are not sustainable and liable to be vacated and we so order

13. In the result, we recall/review and set aside the order dated 19-08-2005 passed in OA Nos 675/2005 and 703 to 725/2005 and direct the O.As to be posted on 18-07-2007 for admission.

14. MA Nos 397, 398 and 438 of 2006 are allowed and the intervenors are directed to be impleaded as party Respondents to the OA No. 675 and 703/2005 and are allowed to enter appearance in the said O.As by 18-07-2007. "

In view of the recalling and setting aside of orders dated 19-08-2005, 15-12-2005, the Hon'ble Vice Chairman had dropped the contempt proceedings and CP No. 8 of 2006 was dismissed, vide order dated 28-06-2007.

(k) Respectfully differing from the order passed by the Hon'ble Vice Chairman, the Administrative Member has passed inter alia the following orders the following order:-

"47. In compliance of the direction of this Tribunal dated 19-08-2005, the Respondents have already prepared and sent the revised scheme to the Ministry of I & B for approval. Therefore, in absence of any prayer of the Respondents or in absence of any petition seeking review, recalling the main order dated 19-08-2005 and restoring the OA for consideration cannot be said to be logical.

51. In the light of the discussion made above, in my opinion that the interveners have no locus standi to maintain the MAs in this disposed of matter and both the M.As stand dismissed.

52. Similarly, I find no reason to entertain MA No. 438 of 2006 seeking modification of an order which is no more in existence. Accordingly, this MA No. 438 of 2006 needs to be dismissed. At the same time, I would like to observe that when according to the Department, the matter of regularization of the Applicants against the vacancies of Helper is under active consideration of the Ministry of I & B and the

Assistant Engineer, DDMC, Dhenaknal has been called upon to explain for the acts of omissions and commissions, it is astonishing as to how the Administrative Officer of Doordarshan Kendra, Bhubaneswar by filing MA has sought for modification of the stay order which is no more in existence. I hope the DG Doordarshan New Delhi would certainly look into the above aspect of the matter.

... ...

57. In view of the discussion made in MA Nos 397, 398 and 438/2006, I do not see any reason to drop the CP No. 8 of 2006 especially when serious allegation of taking bribe in the matter of selection and the show cause notice for disciplinary proceedings issued by the respondents. Hence, the CP to be posted before the next available Division Bench for taking a decision. "

(I) 28-06-2007: Consequent to the above stated difference of opinion, as per the provisions made in Sec 26 of the A.T. Act, 1985, the matter was referred to the Hon'ble Chairman for taking a decision on the following points:-

i. *As to whether in disposed of matter, a third party has any locus standi to file MA for intervention.*
ii. *As to whether MA filed by Respondents seeking modification of an order passed in MA filed by Applicant is disposed of;*
iii. *As to whether along with the disposal of the main matter, CP violation of the interim order passed therein filed by the applicant needs to be disposed of as it is.*

2. It was in the above backdrop that the case has been listed for resolving the difference of opinion.

3. Counsel for the applicant argued that a third party has no locus standi to intervene in a disposed of matter. He has also stated at the same time that when there are certain violations of the orders, notwithstanding the fact that the OA would have been disposed of, for violating the interim order, contempt proceedings are maintainable. Thus, one part of the Order of the Hon'ble Vice Chairman (as to locus standi) and one part of the order of the Hon'ble Administrative Member (contempt proceedings to continue) have been emphasized by the counsel for the applicant. The counsel further argued that there is no provision in the Act or the Rules for suo motu review of the order passed and to have it set aside, much less giving an opportunity to the parties concerned. Hence, the order passed in OA No. 675/2005 and MA No. 772/2005 cannot be set aside.

4. Counsel for the intervenors has argued that if MA after disposing of the OA could be entertained and an order in that had been passed, which acts detrimental to the interest of any third party, the third party has locus standi to get impleaded as intervenors.

5. Counsel for the official respondents submitted that entertaining the earlier MA filed on behalf of the applicants after the disposal of the OA itself was not in accordance with any law. As such, it was essential for the respondents to move the application for modification of the orders passed on the said Misc. Applications filed after the disposal of the OA. In this regard, he has relied upon the decision of the Hon'ble Supreme Court in the case of ***State of U.P. v. Brahm Datt Sharma, (1987) 2 SCC 179****, in which the Apex Court has held as under:-*

10. *The High Courts order is not sustainable for yet another reason. Respondents writ petition challenging the order of dismissal had been finally disposed of on August 10, 1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated January 29 , 1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning.*

6. Vide order dated 20-09-2006 in the above OA, the following order had been passed:-

To sum up, I am in endorsement with the views expressed by the Hon'ble Vice Chairman in so far as the maintainability of MAs are concerned with a slight modification that instead of OA being posted for hearing, it shall be such M.As that may be posted for hearing. As regards contempt matter, I am in endorsement with the Hon'ble Administrative Member and accordingly let M.A. Nos 397/2006, 398/2006, 438/2006 and CP No. 8/06 be posted for hearing on 27th September, 2007.

7. Heard the counsel for the parties. Brief facts leading to the filing of various MAs and CP may now be reflected.

MA No. 397/2006

8. This MA has been filed by two individuals as intervenors in the M.A. No. 772/05. By an order dated 02-12-2005 in the said M.A. No. 772/2005, the Tribunal had stayed the recruitment process of two posts of Helpers, on the ground that earlier, as per the order in OA No. 675/05 the Tribunal had given certain directions relating to the regularization of the services of the applicants therein, and instead of complying with the said order, the respondents had resorted to make direct recruitment, which would act detrimentally to the interest of the applicants in the said O.A. As the two intervenors have already been appointed, after the issue of the above order dated 2-12-2005, official respondents had chosen to cancel the selection order of these two helpers. It is thus, that the intervenors had to file this M.A. However, by an order of the Hon'ble High Court, Cuttack, the intervenors could successfully stall the cancellation order of their appointment.

MA 398/06

9. Through this MA, the aforesaid intervenors have prayed for stay of operation of order dated 2-12-2005.

MA 438/06:

10. This MA has been filed by the official respondents, seeking modification of the order dated 2-12-2005 whereby selection process was directed to be stayed.

CP No. 8/06:

11. This has been filed by the applicants in OA No. 675/05 on the alleged non compliance of the order dated 19-08-2005, whereby the respondents were directed to consider the grievances of the applicants pertaining to regularization of their services as against the vacancies available in different HPTs/LPTs in the State of Orissa as also against the vacancies of Khalasi available in the DDK at Bhubaneswar according to their position in the seniority list prepared by the department, within 120 days.

12. In so far as the action taken to comply with the CP, respondents have stated that they have been making earnest attempt in getting the regularization of the applicants in accordance with the Rules and since all these could not be accommodated in the same office where they were engaged, the case has been referred to the DOPT for their concurrence to have these accommodated in other related office coming under the same Department of Information and Broadcasting. Taking judicial note of the same, the CP is dismissed and notices discharged. Respondents shall earnestly make attempt to ensure that due concurrence of the DOPT are obtained and action for regularization taken as expeditiously as possible.

13. In so far as MA 438/06 is concerned, it is seen that the order dated 12-04-2006, of this Tribunal while disposing earlier MA No. 772/06 stated that status quo be maintained in regard to the third party appointees in Group C posts. Indeed, the applicant's counsel fairly stated that the applicants have no grievance in respect of appointments made in Group C. In so far as the remaining two group D officials engaged by the respondents, their continuance has to be affirmed since they have come up in their Direct Recruitment Quota and not in the quota in which the applicants could figure in. Thus, the orders so far passed by this Tribunal in OA 675/05 and attendant MAs, would be so construed that there is no impediment in the persons appointed in the wake of the notification for direct recruitment to continue in their job. Thus MA 438/06 is disposed of on the above terms.

14. MA No. 397 and 398/06: In view of the above, there is no threat to the continuance of the applicants in their position as Helpers. As such, these two MAs are rendered infructuous.

15. No cost."

3. Counsel for the applicant in the Memo had submitted that the very order of revocation passed by the D.D.M.C. Dhenkanal in pursuance of an order dated 23-01-2006 passed by the D.G. Of Doordarshan was under challenge. Since the aforesaid orders were passed as a consequence of an interim order passed by this Hon'ble Tribunal in OA No. 675/2005 which stood clarified subsequently after thread bare hearing by one division Bench of this Hon'ble Tribunal, this case may kindly be disposed of in the light of the clarification issued in the other case referred to supra. More over, in this case, irrespective of the order of reversion passed, the applicant has been continuing on the basis of the interim protection granted by the Hon'ble High Court till the matter is finally disposed by this Hon'ble Tribunal. Hence the matter being covered may kindly be taken up and considered for disposal on any day of this week.

4. Counsel for the parties agree that the case is analogous to the above especially the observations/findings as held in paras 13 and 14 squarely apply. As such, all the **O.As are allowed**. Orders passed by the respondents revoking the appointment of the applicants impugned in the respective judgments are hereby quashed and set aside. The applicants

are entitled to continue in service with all the service and financial benefits w.e.f. the date they have joined their respective posts.

No cost.

(C.R.MOHAPATRA)
MEMBER (A)

(K.B.S.RAJAN)
MEMBER (J)