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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION No. 266 OF 2006
CUTTACK, THIS THE ^{21st} DAY OF May, 2009

Dulal Mohanty..... **Applicant**

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 or not ?


(C.R.MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 266 OF 2006
CUTTACK, THIS THE ^{21st} DAY OF May, 2009

CORAM :

**HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)**

**Sri Dulal Mohanty, aged about 39 years, S/o- Dharanidhar Mohanty,
At-Mastaram Math, Mansingpatna, Dist- Cuttck-3.**

.....**Applicant**

Advocate(s) for the Applicants- Mr. B.B.Mohanty.

VERSUS

1. Union of India represented through the Secretary (O.L.) to the Government of India, Ministry of Home Affairs, Department of Official Language, New Delhi.
- 2 Director, Central Hindi Training Institute, M/o- Home Affairs, 7th floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi.
- 3 Deputy director, Hindi Teaching Scheme, East zone, Department of Official Language, Nizam Palace, 18th Floor, 234/4, AJC Bose Road, Kolkata-20.
- 4 Officer in Overall In-Charge, Hindi Teaching Scheme, Deptt. of Official Language, Ministry of Home Affairs, 15 Cantonment Road, Cuttack.

.....**Respondents**

Advocates for the Respondents – Mr. U.B.Mohapatra.

ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J):

Aggrieved by the order dated 06.02.2006 passed by the second Respondent, the Director, Central Hindi Training Institute, Govt. of India, Ministry of Home Affairs, Department of Official Language, the applicant filed this O.A. The applicant prays in the O.A. to quash the said order and to direct the Respondents to consider his appointment to the post of Hindi Pradhyapak.

2. This application has a checkered history. The applicant had approached this Tribunal earlier by filing O.A. Nos. 674/94 and 516/02 for the same relief. The case of the applicant was also considered by the Hon'ble High Court of Orissa in Writ Petition (C) No. 3187/02 as the matter was taken by the Union of India and the Director and Deputy Director of the Department. While considering the earlier application, namely, O.A. 674/94, by the order dated 12.12.2000 this Tribunal, relying on an order of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2234/90 (Smt. Mithlesh Tyagi vs Union of India & Ors) directed the Respondents that "in case Respondents fill up any post of Hindi Pradhyapak through ad hoc appointment anywhere in Orissa,



then they should consider the applicant for such ad hoc appointment in view of his earlier selection by the Department and his period of service as ad hoc Hindi Pradhyapak. The Respondents are also directed to sponsor the name of the applicant to Staff Selection Commission for their next examination in which the applicant should be given age relaxation upto 35 years as applicable to Government servants who apply for the post of Hindi Pradhyapak under direct recruitment quota in accordance with column 6 of the Recruitment Rules at Annexure-R/2. We also direct that in case the applicant is continuing as ad hoc Hindi Pradhyapak, then he should be continued till he is replaced by a regular candidate selected by the Staff Selection Commission.”

3. Thereafter, the Department having not considered his case the applicant again approached this Tribunal by filing O.A. No. 516/02. The above said O.A. was also disposed of by this Tribunal reiterating the order passed by this Tribunal in O.A. No. 674/94 and directed as follows:

“In the aforesaid premises, having heard Shri T.Rath, Advocate for the Applicant and Shri B.Ddas, A.S.C. whom a copy of O.A. has been served, it is directed that in case any vacancy in the post of Hindi Pradhyapak exists anywhere in India, the Respondents should consider appointing the applicant (since he is willing to accept the same) as Hindi Pradhyapak. The Respondents should act promptly in giving

an engagement to the applicant as Hindi Pradhyapak, at any place/in any part of the country, preferably within a period of three months from the date of receipt of copies of this order."

4. The said order of this Tribunal dated 12.06.2002 has been questioned by the Department by filing Writ Petition No. (C)3187/02 and finally the Hon'ble High court of Orissa on confirming the order passed by this Tribunal observed as per judgment dated 8.11.2005 as follows:

"The order of the tribunal now shall be complied with within three months from the date of receipt of a copy of this order b the petitioners, which shall be provided by the learned Additional Standing Counsel (Central) appearing for the petitioners by obtaining the certified copy of the same on making an application within a week.

5. When the matter stood thus, in compliance of the orders passed by this Tribunal as well as the Hon'ble High Court of Orissa, the applicant represented again to the Department and on considering the entire facts and circumstances of the case, the Respondents passed the impugned order on 6.2.2006.

6. The O.A. has been admitted by this Tribunal on 23.3.2006 and while admitting, this Tribunal has directed that "notwithstanding the pendency of this case, Respondents shall

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remain free to re-consider the case of the applicant, and while doing so, they shall remain free to consider the matter in the light of the previous orders of this Tribunal and that of the Hon'ble High Court of Orissa, especially when it is alleged that a clear vacancy is available at Kolkata.

7. On receipt of notice and interim order passed by this Tribunal, a counter affidavit has been filed for and on behalf of the Respondents supporting the impugned order. In the counter affidavit filed on behalf of the Respondents it is stated that on the basis of the direction issued by the Hon'ble High Court of Orissa as well as the orders passed by this Tribunal, the Department considered the appointment of the applicant to the post of Hindi Pradhayapak and since the applicant does not possess Bachelor's Degree in Education, which is an essential qualification prescribed in Recruitment Rules notified in 2001, he could not be appointed even on ad hoc basis as Hindi Pradhayapak in Hindi Training Institute. Further it is stated in the counter affidavit that the Respondents have duly considered the case of the applicant as per the order of this Tribunal as well as the Hon'ble High Court of Orissa passed at different times and as the applicant has not qualified for regularization as he has not passed Staff Selection Commission test held for such post earlier, he is not eligible to



apply for the post now as per the revised Recruitment Rules 2001, which prescribe B.Ed. as the minimum qualification for such post. Therefore it is stated in the counter affidavit that his case has been rightly rejected by the Department. It is further stated in paragraph 21 of the counter affidavit as follows:

"it is submitted that as there was vacancy in the post of Hindi Pradhyapak in the Hindi Teaching Scheme, Cuttack the applicant was given ad hoc appointment for a short term on 2 spells of time but since he could not come out successful in selection process held by the Staff Selection Commission for the post of Hindi Pradhyapak, he could not be regularized. The applicant filed O.A. No. 674/94 and in view of the interim order of the Hon'ble Tribunal passed in the said O.A. in M.A. No. 149/95 and M.A.No. 180/95, the Applicant was allowed to continue in different spells of time till 1998. However in the final order passed in O.A. No. 674/94 the Hon'ble tribunal directed to consider the case of the applicant for ad hoc appointment if the Department choose to fill up any posts through ad hoc basis and for allowing the applicant to appear the tests to be conducted by the Staff Selection Commission by relaxing his age (if he is over aged) upto 35 years. This fact was taken into consideration by the Department. The Recruitment Rules having been revised in 2001, the minimum qualification prescribed for appointment of Hindi Pradhyapak is B.Ed. pass, which the applicant does not possess. Hence, he is not qualified for appointment even on ad hoc basis. This fact has been suppressed in the O.A. and the applicant is trying to misguide the Tribunal by filing number of O.As, with the prayer for the direction of the tribunal only for consideration of his claim to be appointed as Hindi Pradhyapak though he is

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not qualified. In this regard it is submitted that in a number of decisions the Hon'ble tribunal, Hon'ble High Court and Hon'ble Supreme Court have held any appointment dehors the Recruitment Rules is bad and not sustainable in eyes of law. Therefore, such claim of the applicant for appointment without having requisite qualification cannot be accepted by the Department or the Hon'ble court."

8. As per the statement contained in paragraph 34 of the counter affidavit, the Department tried to distinguish the case of the Mithlesh Tyagi decided by the CAT, Principal Bench, New Delhi, by taking a stand that "Smt. Tyagi, who was over aged even at the time of her initial engagement on ad hoc basis in the post of Hindi Pradhyapak. She could not appear for the SSC examination after her appointment and the DOPT also did not agree for granting age relaxation to her. Shri Mohanty (the applicant), however, could have passed in SSC selection process, after his initial appointment in 1993 since he was well within the maximum age limit. This is particularly relevant since the spirit behind orders of CAT issued during 1995 recognized the right of the person selected through SSC to replace Shri Mohanty. Further Smt. Mithilesh Tyagi worked on ad hoc basis at more than one place for a period of over six years (from 1983 to 1989) before her appointment was sought to be terminated by the Department whereas Shri Mohanty

approached CAT after ad hoc appointment of only 6 months seeking his regularization. Further more, she possess B.Ed. Degree, an essential qualification for the post of Hindi Pradhyapak."

9. We have heard the Ld. Counsel appearing for the parties and have perused the documents produced in the O.A. On our anxious consideration of the relevant contentions of the parties and the materials placed on records, the question to be considered is whether the orders passed by this Tribunal and the Hon'ble High Court create a right in favour of the applicant to claim any appointment on the basis of the amended rule of the Recruitment Rules, which came into force w.e.f. 2001, taking into account his age and appointment on ad hoc basis or not.

10. The applicant has been appointed as Hindi Pradhyapak at Cuttack for a short period for two spells, namely, from 4.8.1993 to 30.11.1993 and from 7.8.94 to 30.11.1994 and further extension of his appointment was on the basis of the orders passed by this Tribunal.

11. Facts of the case are not disputed. The fact that the applicant was 25 years old when he was initially appointed and the age of the applicant at present actually covers 38 years or

rather he is over aged. . Although this Tribunal by order dated 12.12.2000 directed the Respondents to consider the case of the applicant in case the Respondents fills up the post of Hindi Pradhyapak through ad hoc appointment anywhere in Orissa, this Tribunal did not give any positive direction to the Respondents to give appointment to the applicant in any existing post of Hindi Pradhyapak to be filled up on ad hoc basis. It is also to be noted that the reason for such direction is that the applicant was selected by the Department. It is an admitted case before us that the appointment to the post of Hindi Pradhyapak is on the basis of the selection being made through SSC. Even if this Tribunal directed to consider the age relaxation of the applicant up to 35 as applicable to the Govt. servants who applied for the post of Hindi Pradhyapak under Direct Recruitment quota, the subsequent events would show that when the case was considered by the Hon'ble High Court of Orissa in the writ petition filed against the order of this Tribunal passed in O.A. No. 516/02, three months' time was allowed by the Hon'ble High Court to consider the case of the applicant for appointment on ad hoc basis if any vacancy existed anywhere in India. It is also to be noted that while order passed by this Tribunal in O.A. No. 516/02, the applicant did not have a case that any post was vacant to be filled up by ad

hoc basis anywhere in India. In the present O.A. also the applicant though averred that a post of Hindi Pradhyapak is to be filled up by ad hoc basis in Kolkata, no material has been placed before this Tribunal to find out that a post is vacant. Hence even if the orders passed by this Tribunal as well as the Hon'ble High Court are in favour of the applicant, as per the counter affidavit filed on behalf of the Respondents it is clear that after the introduction of the new Recruitment Rules in the year 2001 passing of SSC and B.ED (Degree in Education) are necessary and basic qualification for appointment to the post of Hindi Pradhyapak. If so, as the applicant having not possessed the above qualifications prescribed in the Recruitment Rules, he cannot claim an appointment on the basis of direction given by this Tribunal on the grounds that the initial appointment of the applicant was on ad hoc basis and the direction also was for considering the claim of the applicant for ad hoc appointment. It is clear from the counter affidavit filed on behalf of the Respondents that there exists no post of Hindi Pradhyapak to be filled up on ad hoc basis. Rather it is stated in the counter affidavit that though Smt. Mithlesh Tyagi was appointed on ad hoc basis, she had worked for more than six years in different stations and Smt. Tyagi was appointed while she was already overaged.

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12. In the above circumstances, we are of the view that the claim of the applicant for appointment even on the direction issued by this Tribunal is not justifiable. In the light of the stand taken in the counter affidavit, even if we consider the judgment of the Hon'ble Supreme Court relied on by the Ld. Counsel for the applicant that an appointment can be made on the basis of Recruitment Rules as it stood at the time of arising of the vacancy and an amendment to the Recruitment Rule cannot be made retrospectively, as there is no existing vacancy anywhere in India to be filled up on ad hoc basis, we are of the view that the claim of the applicant cannot be considered afresh by this Tribunal.

13. A further question to be answered is that even as per the order of the Hon'ble High Court of Orissa, the age relaxation given by this Tribunal had been already over when orders of this Tribunal have been considered by the Respondents and that apart, sponsoring of candidate by the Department to the SSC is also not possible as per the normal rules of direct recruitment. If a candidate is qualified to be appointed on direct recruitment basis, he has to apply through the procedure prescribed by the SSC. This Tribunal though had stated that the applicant was selected by the Department by a

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process of selection, that by itself will not preclude the procedure of appointment through the SSC.

14. Considering all the above aspects and for the reasons stated above, we are of the view that the impugned order requires no interference by this Tribunal. Accordingly, the O.A. stands dismissed as meritless. No costs.

Chanda
(C.R.MOHAPATRA)
MEMBER (ADMN.)

Kappan
(K.THANKAPPAN)
MEMBER (JUDL.)

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