

OA No. 394 of 2006
Cuttack, this the 11th day of November, 2008

Versus

FOR INSTRUCTIONS

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 394 of 2006

Cuttack, this the 11th day of November, 2008

C O R A M:

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....
Hira Turi, Aged about 40 years,
Son of Sukra Turi, At-Gopipur,
PO-Manoharpur,
Dist. Keonjhar (Orissa).

.....Applicant

Legal practitioner: M/s. D.S.Mishra, D.Ray, S.Das, Counsel

- Versus -

1. Union of India represented through the Secretary, Railway Board, Railway Bhavan, New Delhi.
2. General Manager, S.E. Railway, Garden Reach, Calcutta-43, Wet Bengal.
3. Divisional Railway Manager, S.E. Railway, Chakradharpur Division, At/Po-Chakradharpur, Dist. Singhbhum, Jharkhand.
4. Assistant Engineer, S.E. Railway, At/Po-Dongoaposi, Via-Chaibasa, Dist. Singhbhum, Jharkhand.

....Respondents

Legal Practitioner :Mr. S.K.Ojha, Standing Counsel.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

In this Original Application the Applicant seeks the following relief(s):

“....to direct the respondents to reinstate the applicant in service by allowing him to work and further direct that back wages are given with service continuity within a stipulated period.”

2. It is revealed from records that the Applicant was engaged as CPC Gangman on daily rated basis w. e. f. 15.12.1989 in the Engineering Department under PWI, Manoharpur. On completion of

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286 of service and before he being conferred with temporary status in terms of Railway Board's letter dated 22.10.1980, as a pre-requisite condition he was asked to face the medical examination on 06.09.1990. But he was declared unfit vide Sr. DMO, Chakradharpur in his Memo dated 13.09.1990. Being aggrieved by such action, he approached this Tribunal in OA No. 382 of 1995. The aforesaid matter was listed on 06.02.1997 and on considering the fact of the matter this Tribunal held the matter not maintainable. Relevant portion of the order quoted herein below:

"In this Application the relief(s) sought for is to issue a direction to the Respondents to reinstate the applicant in service and pay him back wages with service continuity. This matter came up in Original Application 373/95. The applicant worked as a casual labour in the office of Respondents who are located in Bihar, except Respondent No.2, who is General Manager, S.E. Railway, Garden Reach, Calcutta and Respondent No.1 who is at Delhi. When the learned counsel for the Respondents raised this objection, the applicant's counsel sought time to file additional material throwing light on the subject of jurisdiction. Even after several opportunities additional material has not been furnished. I have decided in OA 373/95 that this Bench does not have the jurisdiction to entertain this Application. This application, therefore, cannot be admitted because it is not maintainable for want of jurisdiction. The application along with the Court fee be returned to the applicant for being presented by him before another appropriate Bench of the Tribunal having jurisdiction."

3. It is the contention of the Applicant that one Ghanashyam Giri, a casual gangman approached this Tribunal with the prayer sought for by applicant and this Tribunal rejected the said OA. Challenging the said order of this Tribunal the said Ghanashyam

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approached the Hon'ble High Court of Orissa in OJC No. 4993/91. The above writ petition was disposed of on 5th February, 2003 by holding that if the Petitioner (Ghanashyam Giri) was declared medically unfit for B-1 he should have been engaged in any other category namely B-2. In compliance of the said order, Ghanashyam Giri was given employment. Although the case of Applicant stood in similar footing, he was not given employment in spite of repeated representation. By relying on the decision of the Hon'ble Apex Court of India reported in (1997) 6 SCC 721 it has been stated by the Applicant that non-conferment of the benefit given to Ghanashyam is completely discriminatory and is opposed to the rulings of the Apex Court cited above. Accordingly, he prayed for grant of the relief claimed above.

4. Respondents have opposed the claim by filing the counter. It is their contention that the applicant derived the strength of conferment of temporary status and regularization from the order of the Hon'ble High Court referred to above. They have raised the issue of jurisdiction which has already been decided in the earlier OA No. 382 of 1995 and also non-application of the order of Hon'ble High Court as also limitation. Having heard the Counsel on either side, perused the materials on record.

It is necessary to quote the relevant observation of the Hon'ble High Court of Orissa rendered in the case of Ghanshyam Giriin (Giri) and the same runs thus:

"5. Accordingly, we hereby direct the opposite parties to consider his representation, vide Annexure-3 and take an appropriate decision by giving him employment in any other category in case he is found

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(4)

suitable within four months. This order shall not be cited as precedent in future cases. Accordingly, the Tribunal's order is hereby set aside in the light of the discussions made in this case."


5. Fact remains that the order dated 06.02.1997 dismissing the Original Application No. 382 of 1995 earlier filed by applicant with the same prayer has not been challenged before any other court or through review. The Hon'ble High Court while interfering with the order of this Tribunal in the case of Ghanashyam (Supra) and directing to provide him alternative employment has categorically observed that the said order should not be cited as precedent in future cases. Therefore, the Applicant cannot get any strength to seek similar relief at this belated stage nor can compel the Respondents to provide him engagement/employment as per the decision of the Hon'ble High Court.

6. According to Applicant he was declared medically unfit on 26.09.1990. This Tribunal dismissed the earlier Original Application filed by the Applicant on 06.02.1997 whereas he is reiterating the same prayer in this Original Application filed on 20.12.2005 that too based on the order of the Hon'ble High Court in which it has specifically been ordered that the said order shall not be treated as precedent. Law is well settled that when a person is not vigilant of his rights and acquiesces with the situation, he has no right to claim any benefit merely because the same relief has been granted to a person similarly situated who was vigilant about his rights vide **U.P. JALNIGAM AND ANOTHER vs. JASWANT SINGH AND ANOTHER**, (2007) 1 SCC (L&S) 500. No

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rule or instruction has been produced by the Applicant substantiating his contention that in case he is declared unfit for B-I the authority should have adjusted him in any other suitable job. Besides the above, with the similar relief when this Tribunal already rejected the OA filed by the Applicant, approaching this Tribunal once again in the present OA hits the provision of constructive *resjudicata*.

7. In view of the above, this OA stands dismissed. No costs.


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

Knm/ps