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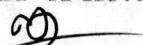
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 340 OF 2007
Cuttack, this the 2nd day of December, 2009

Sri Sukant Mishra 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 CAT or not?


(K. THANKAPPAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 340 OF 2007
Cuttack, this the 2nd day of December, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

.....

Sri Sukant Mishra, aged about 42 years, S/o-Late Laxman Mishra, At-Dimiri, P.O.-Kanas, Dist-Puri.

..... Applicant

By the Advocate M/s. J.M. Patnaik,
S. Misra, A.P. Mishra

-Vrs.-

1. Union of India represented through General Manager, East Coast Railway, At/Po-Chandrasekharpur, Bhubaneswar.
2. The Chief Personnel Officer, S.E. Railway, At-Garden Reach, Kolkata.
3. The Chief Personnel Officer, East Coast Railway, At/Po-Chandrasekharpur, Bhubaneswar.
4. The Divisional Railway Manager, East Coast Railway, At-Khurda Road, P.O-Jatani, Dist-Khurda.
5. The Senior Divisional Personnel Officer, East Coast Railway, At-Khurda Road, P.O.-Jatani, Dist-Khurda.
6. Sri B. Laxmi Narayan, Head Trackman Under Section Engineer (P Way), East Coast Railway, At-Sompeta, P.O.-Kanchili, Dist-Srikakulam (A.P.).

..... Respondents

By the Advocate(s)..... Mr. G. Singh.

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O R D E R
(ORAL)

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

Heard Mr. J.M. Patnaik, Ld. Counsel for the applicant and Mr. G. Singh, Ld. Counsel for the Respondents.

2. Aggrieved by non selection as casual labour due to inhomogeneous distribution of cut off marks of different Units under Khurda Road Division, this Original Application has been filed by the applicant with the following prayer:-

"(a) The respondents be directed to include the name of the applicant in the part panel published on dated 10.10.96 for the post of casual labour by quashing the inhomogeneous distribution of cut mark of different units of Khurda Road Division as revealed in Annexure-A/10 with all consequential benefits at par with respondent No.6.

(b) The respondents be directed to produce the relevant records for kind perusal of this Hon'ble Tribunal.

(c) To pass any other order or orders as this Hon'ble Tribunal deems fit and proper for the interest of justice.

3. This O.A. has been admitted and in pursuance of notice counter has already been filed for and on behalf of the Respondents. The stand taken in the counter is that as the case of the applicant is a belated one and he being not any where in the list prepared on the basis of the selection already made, this

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Tribunal should not interfere with the matter. To substantiate this position in the counter, the Department relies on the judgement of the Hon'ble Apex Court 86 SC in Collector Vs. Karchu

4. Heard Ld. Counsel for the parties and perused the documents placed before this Tribunal.

5. It is to be noted that earlier the present applicant, along with two others had moved this Tribunal in O.A. No. 1426/03 for direction to Respondents -Railways to publish the result of the applicant in remaining part panel to fulfil the total number of vacancies notified as per Annexure-A/2 dated 21.06.1996 to constitute the full panel and to consider the case of the applicants therein, if found suitable. This Tribunal disposed of the said O.A. as per order dated 05.02.2008, the relevant portion of which reads as under:-

“... Taking a holistic view of the matter, it is concluded that the ground on which the part select list was not published is no longer a constraint for the administration. Similar dispensation/relaxation which was made in 1998 can be repeated even at this point of time by publishing the part select list and taking further action thereon in respect of the Applicants, if they are otherwise suitable and medically fit for the job. Ordered accordingly.”

6. The above order of this Tribunal having not been complied with by the Respondents, it gave rise to Contempt Petition No.73/08 before this Tribunal. In response to notice on



C.P., the Respondents by filing show cause brought to the notice that the order of this Tribunal in the aforesaid O.A. is the subject matter of Writ petition in W.P. (C) Nos.13925, 13926 and 13927 of 2008 before the Hon'ble High Court, wherein the Hon'ble High Court as per order dated 09.02.09 has directed status quo to be maintained by the parties till the next date. Having regarded the above facts, this Tribunal as per order dated 20.11.09, dropped the Contempt Proceedings.

7. From a close scrutiny, it reveals that Annexures-A/1, A/2, A/4, A/5 A/8 and A/9 constituting O.A. 1426/03 also constitute the present O.A. with Annexures- A/2, A/3, A/5, A/7, A/8 and A/15 respectively. Since, Annexures A/2,A/3,A/5, A/7, A/8 and A/15 to this O.A. were already considered by this Tribunal in O.A No.1426/03, those annexures are ignored as further consideration of the same is barred by the principles of constructive resjudicata.

8. Coming to the fact of the present O.A., it is to be further noted that applicant along with two others, as per Annexure-A/9 dated 11.08.03 had preferred representation to Respondent No.1 requesting publication of the part panel of the casual labour, though the same had not been annexed to the O.A. No.1426/03 filed before this Tribunal on 29.12.2003. Since the prayer of the applicant at Annexure-A/9 has already been considered by this Tribunal in O.A. No.1426/03, there is no need to deal with Annexure-A/9 any further. However, the



applicnat, on receipt of information as per Annexure-A/10 dated 20.11.2006 under the RTI Act, regarding the marks secured by him in the test preferred a representation dated 04.12.06 (Annexure-A/11) addressed to the Divisional Railway Manager, East Coast Railway, to engage him as casual labour in terms of select list published on 10.10.1996. While the matter stood thus, the applicant preferred another representation dated 02.04.2007 (Annexure-A/14) and simultaneously, approached this Tribunal on 26.07.07 in the present O.A. In this connection, it is profitable to quote hereunder the prayer made by the applicant in Annexure A/14 representation:-

“... That in view of the facts stated above my case may kindly be judiciously considered and I may kindly be included in the published part panel of 611 candidates or the names figuring in the next part panel of 201 candidates may kindly be published for the reason that no court case is at present restricting the publication & for which act of your kindness I shall remain ever grateful to you and ablige.”

9. However, on a reference being made we found that the impugned Annexure-A/10 dated 21.11.2006 herein based on which the applicant has sought relief as referred to earlier, was also taken into consideration by this Tribunal in O.A.1426/03, the same being filed by the applicant before this Tribunal on 21.01.2008 at Annexure-A/A series to written submission.

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10. In consideration of all above, we are of the view that this Tribunal having considered the submissions, pleadings and documents while disposing of O.A. No.1426/03, it is no more open to the applicant to further approach the Tribunal on the very same submissions, pleadings and documents on the pretext of some other relief. Accordingly, we hold that the present O.A. is not only hit on the principles of constructive resjudicata, but also misconceived one. Accordingly, the O.A. is dismissed. No costs.

K. Thankappan
(K. THANKAPPAN)
JUDICIAL MEMBER