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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION .NO.485 OF 2007
Cuttack this the 28th day of November, 2008

Puri Panda Prabhakara Rao Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be sent to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION .NO.485 OF 2007

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CORAM:

**THE HON'BLE SHRI A.K.GAUR, JUDICIAL MEMBER
AND**

THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Puri Panda Prabhakara Rao, aged about 52 years, S/o.late Puripanda Ramesam, presently working as Junior Clerk, Office of the Dy.Chief Engineer (Con), East Coast Railway, Visakhapatnam

... Applicant

By the Advocates: M/s.Sidhartha Misra
Niranjan Singh

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Personal Officer (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Chief Administrative Officer (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar
4. Chief Engineer (Con-1) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar
5. Divisional Railway Manager, East Coast Railway, Visakhapatnam (A.P.)

... Respondents

By the Advocates: Mr.S.K.Ojha

ORDER

MR.A.K.GAUR, JUDICIAL MEMBER:

By means of this Original Application, the applicant has claimed the following relief:

- i) Direction and/or directions be issued to the respondents to decide the correct fitment of the applicant in open line and to protect his last pay in the event of any repatriation; and/or
 - ii) Direction and/or direction be issued to the respondents to allow the application in construction organization to continue till regular promotion is considered.
2. The factual matrix of the applicant's case in short compass is that the applicant, while working as C.P.C. Gangman, was transferred from Open Line to Construction Organization to work under the Deputy Chief Engineer (Construction), Koraput. After joining the Construction Organization, the

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applicant was entrusted with clerical work, although he was posted as Gangman. The applicant, in pursuance of notification dated 2.2.1985 for selection to the post of Junior Clerk was short-listed along with eight others for appearing at the selection test for formation of a panel of Junior Clerk in the Survey & Construction Organization. The applicant was required to appear in the written test followed by viva voce. The applicant was finally selected and accordingly, promotion order was issued vide letter dated 3.11.1987, wherein the name of the applicant finds place at Sl. No.6. Vide order dated 10.8.2001, the Chief Engineer (Construction), Visakhapatnam, directed repatriation of the lien holders including the applicant. The applicant was not released from Construction Organization and is continuing to work in the said organization till date. The grievance of the applicant is that he has been continuing in clerical cadre in the Construction Organization and on repatriation he would be asked to work in the mechanical cadre where he cannot perform well and to the best satisfaction of the authorities because of lack of practice. It has been submitted that unless correct fitment is decided, the applicant would suffer irreparable loss and injury.

3. In the reply filed, the Respondents have raised the plea to the effect that the applicant has suppressed the fact that he had filed Original Application No.1175 of 2001 before Hyderabad Bench of the Tribunal seeking the same relief. Since the O.A. filed before Hyderabad Bench had already attained finality before the present O.A. could be filed before this Tribunal, the O.A. in its present form is clearly barred by the principles of res-judicata /constructive res judicata and therefore, no direction could be issued to the Respondents bypassing the orders passed by Hyderabad Bench in the earlier O.A. So far as the 1st prayer of the applicant is concerned, while deciding O.A.No.1175/01, Hyderabad Bench held the order of repatriation correct and

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the prayer of the applicant in this regard also has been rejected . Similarly, some additional direction to give the applicant correct fitment at par with his juniors has also been issued by Hyderabad Bench of the Tribunal. Therefore, the 2nd prayer of the applicant has also been redressed by Hyderabad Bench of the Tribunal. However, the prayer to allow the applicant to continue in the Construction Organization till regular promotion is considered cannot be accepted as a ground to challenge the order of his repatriation. It has also been submitted by the Respondents that the claim of promotion would be considered by the Respondents as and when the promotional vacancies would arise. They have submitted that the O.A. deserves to be dismissed on account of suppression of material facts, res judicata and being hopelessly barred by time.

4. We have heard Shri S.Mishra, learned counsel for the applicant and Shri S.K.Ojha, learned counsel appearing for the Respondent-Railways.


5. It is seen from the record that the applicant has claimed relief in this O.A., which is directly connected with the order issued on 10.8.2001 or at the most in the year 2003. As the applicant has not filed any petition for condonation of delay supported by an affidavit, in view of the decision rendered by the Hon'ble Supreme Court in Ramesh Chandra Sharma vs. U.K.Kamal (2003 SCC (L&S) 53), the present O.A. is not legally maintainable. We have also carefully perused the decision rendered by Hyderabad Bench of the Tribunal in O.A. 1175/01, filed by the same applicant. We are satisfied that the general principle of res judicata cannot be ignored and the legal plea raised by the Respondents' counsel deserves to be accepted. It is the settled principle of law that general principle of res judicata cannot be ignored and therefore, a subsequent Original Application filed for the same relief is barred though on a different ground not raised and decided in

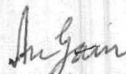
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the previous O.A. In the present O.A. almost similar and identical reliefs were prayed for by the applicant and the Hyderabad Bench of the Tribunal vide its order in February, 2003 had rejected the O.A. with certain observations. The principles of res judicata are quite wide and general in application. They are designed to prevent unending litigations and piecemeal litigations of the same dispute on different grounds before different or same Courts. If the ground now urged was open to the applicant on the earlier occasion before Hyderabad Bench and he had not raised then, he is now precluded from raising it again before this Tribunal, since the decision of Hyderabad Bench clearly operates as res judicata.

6. In view of our aforesaid observations, the O.A. being legally not maintainable is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER