

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 280 of 2008
Cuttack, this the 1st day of July 2009

Prasan Kumar Das

.....

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., CAT, or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.280 OF 2008

Cuttack this the 1st day of July 2009
CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

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

...

Prasan Kumar Das, aged about 40 years, Son of Sarat Chandra Das, At:
Mahamadabad, PO-Pippal Madhab, Via-Tiran, Dist-Jagatsinghpur

...Applicant

By the Advocates:M/s.S.K.Das & S.Soren

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Information & Broadcasting, Sastri Bhawan, New Delhi-110 001
2. Prasar Bharati Broadcasting Corporation represented through its Director General, Copernicus Marg, Mandi House, New Delhi-110 001
3. Director General, Doordarshan Kendra, Copernicus Marg, Mandi House, New Delhi-110 001
4. Director, Doordarshan Kendra, PO-Sainik Schoo, Chandrasekharpur, Bhubaneswar, Dist-Khurda, PIN – 751005
5. Smt.Kiranbala Mishra, aged about 40 years, W/o.Sri Ruchir Kumar Mohapatra, At-Bidanasi (Jyoti Vihar), PO/PS-Bidanasi, Dist/Town-Cuttack-14
6. Rashmi Kanta Nayak, aged about 40 years, S/o.Laxmidhar Nayak, At/PO-Sanara, Via-Nalibar, Dist-Jagatsinghpur
7. Paresh Chandra Mohapatra, S/o.Late Durga Charan Mohapatra, At/PO/PS-Tritol, Dist-Jagatsinghpur

...Respondents

By the Advocates:Mr.S.B.Jena, A.S.C.

M/s.S.K.Ojha, S.K.Das & S.K.Nayak

(Respondent- Intervenor No.5)

M/s.S.Patnaik & T.Pradhan

(Respondent-Intervenor Nos.6 & 7)

...

2A

ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

1. The facts leading to filing of this Original Application are that the applicant while working as General Assistant in Doordarshan Kendra, Bhubaneswar, on casual basis since 1988, his services having not been regularized, he along with others had approached this Tribunal in O.A.Nos.441, 562 and 362 of 1992 and 8 of 1994, praying for regularization of his service by ignoring age bar, etc. This Tribunal disposed of O.A.Nos.441, 562 and 362 of 1992 through a common order dated 16.11.1993 and O.A.No.8/94 as per order dated 26.5.1994 with certain directions. This order of the Tribunal having been appealed against by the Respondent-Department in S.L.P.(Civil) Nos.20224-20226/1994, the Hon'ble Supreme Court stayed the operation of the order dated 16.11.1993 on 25.11.1994. The applicant, as it reveals from the records, was before the Hon'ble Supreme Court as Respondent No.21 in S.L.P.(Civil) No. 12052/95 arising out of order dated 26.5.1994 of this Tribunal in O.A.No.8/94 and thus, governed under the stay order issued by the Hon'ble Supreme Court. However, as per the undertaking given in writing by the Department that services of some of the applicants including the applicant herein had been regularized, the Hon'ble Supreme Court in order dated 29.2.1996 dismissed the SLP as against



3

those Respondents as infructuous. According to applicant, based on the above undertaking before the Hon'ble Supreme Court by the Department, he moved this Tribunal in O.A.No.195/97 which was disposed of by this Tribunal in order dated 14.1.1998 in the following term.

“...In the instant case, the Department has prepared Scheme for their regularization and the applicants are entitled to the benefit of the scheme. Their services therefore, have to be regularized in accordance with the Scheme when their turn comes. The prayer for regularization of their services, is, therefore, rejected”.

2. Since the above direction of the Tribunal was not complied with nor the applicant was provided with some work as was being provided, on the representation preferred, he received a letter dated 25.3.2004, wherein it was indicated that he was not found eligible in 1992 and 1994 (Liberalized Scheme). Being aggrieved by this, he again moved this Tribunal in O.A.No.345/2004 seeking the following relief:

“To quash the letter dated 25.3.2004 under Annexure-A/9.
To regularize the services of the applicant retrospectively as per the commitment made by the Respondents before the Hon'ble Apex Court.
To pay the applicant all his service and financial benefits retrospectively.
To direct that the applicant shall be allowed to continue till regularization is made as per the directives of the Hon'ble Apex Court as also of this Hon'ble Court”.

3. This Tribunal in order dated 4.8.2006 disposed of the said O.A. as

(A)

under:

"In view of the discussions made above, I have no option but to apprise the Respondents especially Respondent No.3 to do well in the matter of regularization of the applicant, if not at DDK, Bhubaneswar in any other places where vacancy is available, as per the promises/Statement made before the Hon'ble Supreme Court, as quickly as possible. It is clarified that this order is exclusive to the Applicant since the impression, (which the Respondents called erroneously) was given to the Hon'ble Supreme Court basing on which the Respondents are now being forced to regularize the service of the Applicant. Thus, being a peculiar case, this will have no universal applicability".

4. Since the above direction of this Tribunal was not carried out by the Respondents, the applicant has moved this Tribunal in Contempt Petition No.4/07 for initiating contempt proceedings against the alleged contemnors, to which show cause has also been filed.

5. In the above backdrop, the applicant by filing the present O.A. has sought for the following relief.

- i) To direct the Respondents not to regularize any junior casual employees of the Applicant before regularization of the Applicant pursuant to the directions of this Hon'ble Tribunal and with due respect to the undertaking/understanding given before the Hon'ble Supreme Court.
- ii) To direct the Respondents to regularize the applicant retrospectively when other nine similarly situated employees were regularized with all consequential service and financial benefits.
- iii) To pass any other order/orders as deemed fit and proper in the case.



6. The sole ground urged by the respondents in their counter is that the applicant is not eligible as per the Regularization Schemes 1992 and 1994 and therefore, the O.A. being devoid of merit, is liable to be dismissed.

7. No rejoinder has been filed by the applicant to the counter.

8. This matter came up on 5.8.2008, when the learned counsel for the applicant did not press the relief No.1 in the O.A. In order dated 15.9.2008, while admitting and directing notice to Respondents in this O.A., the Tribunal directed that "in the meantime no appointment or regularization shall take effect for a period of one month ignoring the right of the applicant". The Tribunal, as per order dated 22.9.2008 while allowing the prayer for intervention in M.A.No.533/08 and 649/08, having reconsidered the matter, modified the interim order dated 15.9.2008 as under:

"During pendency of the O.A. and the matter before this Tribunal, the Department may continue with the regularization or appointment to the post of General Assistant on the condition that a post of General Assistant shall be kept vacant at Bhubaneswar until further orders".

9. We have heard Shri S.K.Das, learned counsel for the applicant, Shri S.B.Jena, learned Addl. Standing Counsel and Shri S.K.Ojha and Shri S.Patnaik, learned counsel for the intervenors respectively and perused the documents annexed to the Original Application.



10. It reveals from the record that this is the 3rd round of litigation by the applicant before this Tribunal, besides O.A.No.8/94 on the same cause of action and with the self-same prayer. The record further reveals that the applicant had approached this Tribunal in O.A.No.195/97 seeking regularization of his service on the sole ground that the Department before the Hon'ble Supreme Court had given undertaking in writing that the service of the applicant had been regularized and thus, this point was the subject matter of deliberation in the said O.A., which was rejected by this Tribunal in order dated 14.1.1998 as indicated above. Be that as it may, since the applicant has not pressed the prayer No.1, the said prayer is dismissed at the risk of the applicant.

11. In O.A.No.345/2004, although the applicant had moved this Tribunal for quashing the impugned letter dated 25.3.2004(Annexure-A-9) declaring him ineligible for regularization with further prayer for regularization of his services(supra), but the Tribunal without quashing the impugned order and without having regard to the deliberation and discussion of the Tribunal in O.A.No.195/97, laying emphasis on the statement made by the Department before the Hon'ble Supreme Court issued direction as indicated above, which direction, in our considered view is inoperative and inexecutable by the reasons, firstly, that as long as impugned letter dated 25.3.2004 (Annexure-A/9) declaring the



applicant ineligible for regularization holds good, it would stand as a stumbling block for regularizing his service, and secondly, that the direction to regularize his service if not at DDK, Bhubaneswar, in any other places where vacancy is available stands contrary to the provision of the Scheme for Regularization dated 17.3.1994 wherein it is stipulated that "the persons who are in the eligibility panel of one Kendra will have no right for claiming regularization in another Kendra as these are generally Group C posts and selection is made Kendra-wise". In the instant case, since the applicant is ineligible, it is quite inconceivable that such a direction should be implemented by the Respondents at all by opening floodgate to umpteen number of candidates who are ineligible for regularization. Apart from the above, the same point having been decided by this Tribunal in O.A.No.195/97, O.A.No.345/04 was hit by the principles of constructive res judi cata. Therefore, the Contempt Petition No.4/2007 arising out of the order dated 4.8.2006 of this Tribunal in O.A.No.345/2004 does not hold any water and accordingly, the same is liable to be dismissed.

12 As regards the prayer of the applicant in the present O.A., having regard to the discussions held above, we are of the view that the impugned letter dated 25.3.2004 declaring the applicant ineligible still holds good and in the circumstances, as earlier indicated, it would be

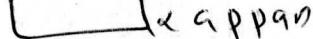


irrational to accede to the prayer of the applicant and accordingly, the O.A. is sans merit. Last but not the least, we would observe that since the applicant was before this Tribunal in O.A.No.8/94 and the order therein having not been interfered with by the Hon'ble Supreme Court as per judgment dated 21.1.2009 in Civil No.6424 of 2002 the Respondent-Department will be well advised to examine and determine the eligibility of the applicant in the light of the order passed by this Tribunal in O.A.8/94 and take a view regarding sustainability or otherwise of the letter dated 25.3.2004 and communicate to the applicant the decision thereon within a period of 45(forty five) days from the date of receipt of this order.

13. With the above observation and direction, this O.A. is dismissed.

No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER