

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 51 of 2011
Cuttack, this the 17th day of May, 2016

Somendra Kumar Das Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/0051 OF 2011
Cuttack, this the 17th day of May, 2016

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

Somendra Kumar Das,
aged about 36 years,
S/o Narayan Das,
At-Kundhaibenta Sahi,
PO-Labanikhia Chhak,
P.S. /Dist- Puri.

.....Applicant

By the Advocate(s) - M/s.Sanatan Das, Alok Panda.

-Versus-

Union of India, represented through

1. General Manager,
East Coast Railway,
Chandrasekhpur,
Bhubaneswar-23, Dist-Khurda.
2. Divisional Railway Manager,
E.Co. Railway,
Khurda Road Division,
At/PO-Jatni, Dist-Khurda.
3. Divisional Railway Manager (P),
E.Co. Railway,
Khurda Road Division,
At/PO-Jatni, Dist-Khurda.
4. Sr. Divisional Personnel Officer,
E.Co. Railway,
Khurda Road Division,
At/Po-Jatni, Dist-Khurda.

.....Respondents

By the Advocate(s)- T. Rath

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ORDER

A.K.PATNAIK, MEMBER (J):

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying therein as under:

- “(a) To issue notice to the respondents.
- (b) To pass an order directing the respondent No.1 to 3 to issue letter of appointment to the applicant for the post of substitutes in terms of notification dated 13.08.1990 under Annexure-1 within a stipulated time by providing age relaxation.
- (c) To direct the respondents to pay compensation to the applicant for not extending the benefits and for harassing them for a long period.
- (d) To pass any other order(s), directions(s) as this Hon’ble Tribunal may deem fit and proper to meet the ends of justice and equity.”

2. It has been contended by the applicant that in response to the notification issued by the Railways dated 13.08.1990, he had applied to be empanelled as substitute for utilization against day-to-day casualties in future requirement of any department other than Civil Engineering under the then South Eastern Railway. In pursuance thereto he had applied and also appeared at the interview in the year 1991-92. It has been contended that similar matter filed by the similarly situated persons before this Tribunal was disposed of on 20.04.2004 with direction to the Railways to consider the case of the applicant therein. As against the order of this Tribunal, the Department filed W.P.(C) No. 8814/2004 before the Hon’ble High Court of Orissa, in which the Hon’ble High Court of Orissa was pleased to stay the order of this Tribunal in O.A. No. 520/2001. The Railway administration vide letter dated 18.11.2005 intimated to one Sri Dharmananda Ray to consider their representations based on the outcome of the Writ Petition No.

W.P. No. 8814/2004

8814/2004, which was pending before the Hon'ble High Court of Orissa. The Writ Petition filed before the Hon'ble High Court of Orissa was disposed of on 17.03.2006 in favour of those Applicants in the O.A. Thereafter, the applicant filed O.A.No. 221/2010 before this Tribunal, which was disposed of on 03.05.2010. Operative part of the order reads as under:

“3. In this background, as requested by the Ld. Counsel for the applicant, liberty is given to the applicant to make representation to Respondent No.3 within a period of 15 days from the date of issue of this order to consider the claim raised in this OA. If the representation is filed within the above period on its receipt the Respondent No.3 is directed to consider and pass a reasoned order within a period of 30 days and the result thereof be communicated to the applicant within 15 days thereafter.

4. In case, the respondents find that the claim made by the applicant is false and he has never appeared at any interview, then it is for the respondents to take appropriate action against the applicant as the same would act as a deterrent against frivolous applications.”

It has been contended that in pursuance of the above direction of this Tribunal, applicant submitted representation on 12.05.2010. The authorities considered but rejected the same vide letter dated 24.06.2010. The order of rejection dated 24.06.2010 is quoted hereunder for ready reference

1. As directed by the Hon'ble Central Administrative Tribunal/ Cuttack by order dated 03.05.10 passed in O.A No. 221/10 no Representation has been received from your end. However, the facts stated by you in the instant OA has been examined and considered.

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2. That in the similarity situated matter in obedience to the Hon'ble Central Administrative/Cuttack's order passed in OA No. 151/10, Dibakar Moharana & Others VS UOI & Others, General Manager/Bhubaneswar has examined the case and after consideration passed a speaking Order on 15.06.2010 and communicated to the Applicants which is as follows:-

“ Your representations dated 15.04.2010 have been received on 16.04.2010. The representations have been considered in detail in compliance to the Hon'ble CAT/Cuttack's Order dated 05.04.2010 in OA No. 154/2010.

This is to inform that the process which was initiated for enrollment of substitute vide notification No. 01/1990 dated 13.8.1990 has been cancelled by the General Manager, South Eastern Railway, Garden Reach vide cancellation notice dated 22.01.1999 after due consideration. Since the selection notification has been cancelled, no appointment to you can be made as substitute in terms of cancelled notification dated 13.08.1990.

Your representations are accordingly disposed of”.

3. Since the Notification dated 13.08.1990 has already been cancelled on 22.01.1999, your case is similar to that of the aforesaid O.A. No. 154/10

In view of the aforesaid decision taken by General Manager/Bhubaneswar on 15.06.2010 you case also falls in the similar footing and deserves no consideration as Notification dated 13.08.1990 has already been cancelled on 22.01.1999.

Receipt to the Letter may be acknowledged please.”

3. Respondents have filed counter contesting the case of the applicant. Sum and substance of the contention of the Respondents is that as the notification dated 13.08.1990 has already been cancelled by the competent authority and the applicant having not challenged the said order of cancellation in this O.A., this O.A. is liable to be dismissed.

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4. Heard Mr. S.Das, Ld. Counsel for the applicant, and Mr. T.Rath, Ld. Standing Counsel for the Railways.

5. In the case of Brijesh Kumar and others vs. State of Haryana and others, (AIR 2014 SC 1612), it has been held by the Hon'ble Apex Court that if some person has taken a relief approaching the Court just or after cause of action had arisen, other persons cannot take the benefit thereof approaching the Court at a belated stage for the reason that they cannot be permitted to take impetus of the order based at the behest of diligent person.

6. Ld. Counsel for the applicant placing reliance on the decision of Hon'ble High Court of Orissa has contended that as similarly placed persons have got the relief and appointed to the post in pursuance of the order of the Hon'ble High Court, the applicant being similarly situated is entitled to be empanelled in pursuance of the notification dated 13.08.1990. On the other hand, Ld. Counsel for the Railways vehemently objected to such argument of the Ld. Counsel for the applicant on the ground that this O.A. is not at all maintainable in the absence of the prayer to quash the impugned order. It has been contended by him that the authorities have power to quash the notification at any point of time before the appointment of the candidate pursuant to that notification. Therefore, this O.A. itself being not maintainable, granting of relief as prayed for by the applicant does not arise.

7. We have considered rival submissions of the parties and perused the pleadings as well as documents appended thereto. Admittedly, the **notification is dated 13.08.1990** and, according to the



applicant, he appeared in the selection in the year 1991-92 and filed O.A. No. 212/10 praying for his selection, i.e. after a lapse of nearly 20 years. However, the Respondents rejected his claim vide letter dated 24.06.2010 wherein it has been specifically stated that as the notification dated 13.08.1990 has already been cancelled on 22.01.1999, the applicant is not entitled to the relief. We find that there is no prayer of the applicant in this O.A. to quash the impugned order dated 24.06.2010 (Annexure-A/8). There is also no prayer to declare the cancellation of the notification dated 22.01.1999 as illegal. We may state that an order even if not made in good faith is still an act capable of legal consequence. It appears a brand of invalidity on its forehead unless the necessary proceedings are taken at law to establish the cause or invalidate and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable order. The truth of the matter is that the Court will invalidate an order only after the right remedy is sought by the right person in the right proceedings and circumstances. It is also equally well settled law that the Court and Tribunal cannot grant the relief unless it is specifically prayed for by the party in the O.A. or else it would be violation of principles of natural justice.

8. As discussed above, in this O.A., there is no specific prayer to quash the impugned order or the order of cancellation of notification dated 22.01.1999. This apart, as discussed above, the applicant had filed the O.A. for the first time only in the year 2010 and applicant himself admits in this O.A. that he submitted representation on 12.05.2010 and in pursuance of the order of the Tribunal, authorities considered the

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representation and disposed of the same vide order dated 26.04.2010. In the above circumstance, the law of limitation also stares as against the applicant. In this connection, it is profitable to state that the decision of the Hon'ble Apex Court in the cases of Chairman, UP Jal Nigam vs Jaswant Singh (AIR 2007 SC 94), Bhupsingh vs UOI and others (AIR 1992 SC 1414) and C.Jacob vs Director, Geology and Mining and another (AIR 2009 SC 539) are relevant.

9. Considering the matter from any angle, we refrain from interfering in the matter. Accordingly, the O.A. is dismissed. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

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