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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.251 of 2011

Prados Kumar Patra & 14 others Applicants

Versus

Chairman-Cum-Managing Director,
BSNL & Others.

.... Respondents

.....

1. Order dated : 19-05-2011.

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

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THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

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According to the Applicants, their initial appointment was to the post of Junior Engineer/Junior Telecom Officers (JTO). They were subsequently promoted to the post of Sub Divisional Engineer/Sub Divisional Officer (in short SDE/SDO). They belong to the Telecommunications Engineering Service (Group B) and were the employees of the Department of Telecom Services and later on absorbed in the BSNL which came into effect from October, 2000.

2. Respondents No. 4 to 16 who are continuing as Sub Divisional Engineer or Sub Divisional Officer under the BSNL and have been posted in various places located at Cuttack, Bhubaneswar and Berhampur have filed OA No. 38 of 2009 in which they sought direction as under:

“(A) To direct the Respondents to fix the seniority of the Applicants prior to 22-7-1996 along with the JTOs who

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passed the qualifying examination held in November, 2000;

- (B) To direct the Respondents to revise the present seniority list of JTOs as on 22-7-1996 by putting the Applicants' name above the JTOs who were in service as on 22-7-1996 and who had not qualified in the departmental qualifying examination;
- (C) To direct the Respondents to consider the case of the Applicants for promotion as SDE against 2/3rd quota of vacancies in the SDE cadre as on 22-7-1996 as per the 1981 recruitment rules by convening review DPC;
- (D) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice; and
- (E) To order and direct that the cost of litigation be paid to the applicants by the Respondents for their willful inaction in the matter."

3. The Official Respondents contested the case of the Applicants in OA No. 38 of 2009. However, the matter was heard at length and finally this Tribunal disposed of the matter on 10th February, 2011, relevant portion of the order of this Tribunal is reproduced as under:

10. We have carefully examined, the rival submissions of the parties with reference to the materials placed on record including the Rules and various judge made laws. Passing of the qualifying examination for promotion against 66-2/3% quota and LDCE against 33-1/3% quota as provided in the rules is not in dispute. Annexure-A/3 clearly envisages that the notification was for holding the examination for filling up of the vacancies arising prior to 23.7.1996. But the OC category candidates were debarred from applying the examination as it was only meant for SC/ST candidates. Thereafter by judicial intervention in continuation of Annexure-A/3, notification in Annexure-A/5 was issued giving option to OC candidates to apply and appear at the examination with the specific condition that the SC & ST candidates applied and appeared at the examination pursuant to Annexure-A/3 need not apply. As such the plea of the Respondents that the notification Annexure-A/5 was for conducting special examination and has no connection or bearing with the first notification under Annexure-A/3 is unfounded and hence rejected as it is trite law that public orders, publicly made, cannot be construed in the

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light of explanations subsequently given by the officer making the order of what he meant, or of what was in this mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Note placed below the Recruitment Rules, 1981 clearly provides that "the candidates shall have the option to take both the examinations together or to take departmental qualifying examination initially and the LDCE in subsequent years. However for appearing in the LDCE it shall be obligatory to qualify in the Departmental qualifying examination. In other words if a candidate takes both the examination together and falls in the qualifying part he will not be considered for the competitive examination of that year or till he qualify in the qualifying examination." This makes the matter ample clear that the candidate shall have the option to take both the examinations together or to take departmental examination initially and the LDCE in subsequent years. As such the stand of the Respondents that as the applicants failed in competitive examination their passing in the qualifying examination cannot be taken into consideration is contrary to Rules. Hence this contention of the Respondents is also rejected. Coming to the important aspect of the matter about availability of vacancy under 66-2/3% quota we may profitably note that it is settled law that statement made in a particular court and based on which order is passed cannot be altered by any other court on the basis of the basis of the stand of the party subsequently taken before any other court. If such statement is in any manner contrary to law the matter is open to the concerned party to get it corrected from the same court. From the order of the Hon'ble Kerala High Court existence of In view of the existence of 561 vacancies cannot be questioned and as the Applicants came out successful in the qualifying test they have a right to be adjusted as against those vacancies, of course, subject to their other wise found suitable in the manner as has been done in the case of other SC/ST candidates qualified pursuant to the notification under Annexure-A/3 and candidates qualified and adjusted against the 33-1/3% quota of vacancies. Besides the above, we also find some strength on the grievance of the applicants through Annexure-R/6 but for the above reasons we do not want to go deep into the order under Annexure-R/6. In so far as other technical objection raised by the Respondents are concerned we are not oblivious but the said objections are redundant in view of the decision of the Hon'ble High Court of Kerala dated 13th July, 2006 in OP no. 21656 of 2001 (S) in Annexure-R/5. Similarly the illustration in so far as IAS examination is concerned being hypothetical has no bearing or application to the present case as in the IAS examination rule the

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conduct of the examination has specifically provided which is not in the present case.

11. In the light of the discussions made above we have enough reason and sufficient force in the submission of the Learned Counsel for the Applicants that the applicants are entitled to be shown by the Respondents the same treatment as has been granted to others pursuant to the order of the Hon'ble High Court of Orissa at Ernakulam as against the vacancies referred to above and accordingly the Respondents are directed to modify the seniority list showing the name of the Applicants only at the appropriate places. The entire exercise shall be completed within a period of 120 days from the date of receipt of copy of this order and until then there shall be no promotion from the existing gradation list."

4. The Applicants, in the present OA, challenged the above order of this Tribunal dated 10th February, 2011 in OA No. 38 of 2009 before the Hon'ble High Court of Orissa in WP (C) No. 9654 of 2011. The Hon'ble High Court of Orissa disposed of the matter on 15-04-2011 relevant portion of the order is reproduced herein below:

"The petitioners who were not made parties in OA No. 38 of 2009 in the Central Administrative Tribunal, Cuttack Bench, Cuttack have filed the writ application challenging the judgment dated 10th February, 2011 passed by the Tribunal in the said Original Application.

In terms of the judgment of the Hon'ble Supreme Court in the case of Gopabandhu Biswal vs. Krishna Chandra Mohanty, reported in AIR 1998 SC 1872, the petitioners can file a separate Original Application putting forth their own case and at the same time challenging the judgment of the Tribunal impugned in this writ application.

We, therefore, decline to entertain this writ application since the remedy is available to the petitioners by way of filing a separate Original Application before the Tribunal. We accordingly permit the petitioners to file an Original Application before the Tribunal within fifteen days from today and direct the Tribunal to take up the said Original Application for admission within one week from the date of filing of the same. For a period of three weeks from today, the impugned judgment in Annexure-1 shall be kept in abeyance.

The writ application is disposed of."

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5. Hence this OA filed on 29th April, 2011 seeking the following relief:

“(A) To quash the order dated 10.02.2011 passed by this Hon’ble Tribunal in OA No. 38 of 2009 at Annexure-1 as wrong, illegal, and contrary to the provisions of the Recruitment Rules.”

6. The matter came up for consideration on 05-05-2011 when on consideration of the submissions made by the parties, following order was passed by this Tribunal:

“Heard Mr. S.S.Pratap, Ld. Counsel for the Applicant.
MA 409/11 filed for joint prosecution of this case by 15 applicants is allowed.

Subject to removal of defects as pointed out by the Registry, issue notice to the Respondents. Counter, if any, shall be filed within four weeks.

Interim relief will be considered after getting the facts from the Official Respondents.

List the matter after four weeks.”

7. As it appears, the matter was again carried by the Applicants to Hon’ble High Court of Orissa in WP (C) No. 13198 of 2011 in which the Hon’ble High Court of Orissa passed the following orders:

“2. 16.5.2011. Heard Shri Das, Learned Senior Counsel appearing for the petitioners, Learned Counsel for the Department and the learned counsel for the private opposite parties.

The petitioners in this writ application assail the order dated 5.5. 2011 passed by the Central Administrative Tribunal, Cuttack Bench in OA No. 251 of 2011. In the said impugned order, the Tribunal has issued notice to the respondents therein and has directed the Respondents to file counter within four weeks. So far as interim prayer is concerned, the Tribunal directed that the said interim prayer shall be considered after getting the facts from the official Respondents. The dispute was before the Tribunal earlier in OA No. 38 of 2009 and the judgment delivered in the said Original Application is

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the subject matter of dispute in the present Original Application. Counter was filed in OA No. 38 of 2009 by the Department. Therefore, the Tribunal instead of waiting for another counter from the Department would have referred to the counter filed in OA No. 38 of 2009 and takes a decision so far as the interim prayer is concerned. It is fairly submitted by the learned counsel for the Department that no different stand can be taken in OA No. 251 of 2011 than that of the stand taken in the counter affidavit filed in OA No. 38 of 2009.

We, therefore, dispose of this writ application directing the Central Administrative Tribunal, Cuttack Bench to take up OA No. 251 of 2011 on 18.5.2011 so far as the prayer for interim relief is concerned. The Tribunal while deciding the question as to whether the petitioners are entitled to the interim relief or not, shall take into consideration the counter affidavit filed by the Official Respondents in OA No. 38 of 2009 and shall also hear the private Respondents. Accordingly, the Tribunal shall prepone the date of hearing on the question of interim relief to 18.5.2011. Certified copy of this order be produced before the Tribunal for preponing the date."

8. On 18.5.2011, Learned Counsel for the Applicants brought to the notice of this Tribunal a copy of the order of the Hon'ble High Court dated 16.5.2011 and in compliance of the order of the Hon'ble High Court of Orissa, records of the OA No. 251 of 2011 was called for on 18.5.2011 for hearing on the question of interim order but for the request of the Learned Counsel for the Applicants the matter was adjourned to today/19.05.2011.

9. Today/19.05.2011 while giving consideration to the interim prayer of the Applicants, on the request of the Learned Counsel for both sides, we also heard on the merit of the matter and perused the materials placed on record. It was contended by Learned Counsel for the Applicants that the decision of the Hon'ble Kerala High Court has no application to the grievance as

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raised by the Applicants in OA No 38 of 2009 even though based on the said judgment final order was passed by this Tribunal on 10th February, 2011. Further it was contended by him that though the applicants in the present OA were necessary and proper parties to the OA filed by the Respondents 4 to 16, they were not made as parties and had they been made as parties they would have got an opportunity to present the facts of the case and as to how the Hon'ble Kerala High Court order is different and distinct and the same has no application to the case of the applicants and that as per the Recruitment Rules, the applicants are not entitled to the relief claimed by them. Next contention of the Learned Counsel for the Applicants is that in case the order is implemented the interest of the applicants would be seriously jeopardized as it would tantamount to unsettling a settled thing after long lapse of time without granting any opportunity to the persons who would be affected by the implementation of the order of this Tribunal dated 10th February, 2011 in OA No. 38 of 2009. Mr. Kanungo, Learned Counsel appearing for the BSNL more or less supported the stand taken by the Learned Counsel for the Applicants. But Mr. G.Rath, Learned Senior Counsel appearing for the Private Respondents strongly opposed the contentions of the Learned Counsel for the Applicants as also Learned Counsel appearing for

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the BSNL. It was contended by Mr. Rath, Learned Senior Counsel appearing for the private Respondents that the present Applicants were not necessary or proper parties to the earlier OA and that the Hon'ble High Court of Kerala passed the orders after taking note of these aspects of the matter and hence non joinder of party was no more *res integra*. As this Tribunal only directed for extension of the benefit of the decision of the Hon'ble High Court of Kerala and the order of the Hon'ble High Court of Kerala having not been challenged by the Applicants, they are estopped under law to challenge the order of this Tribunal. Further it was contended by him that the applicants have approached this Tribunal without making any representation to the official Respondents stating their grievance as to how they will be affected if the order of this Tribunal is implemented and it was also stated by him that the order of this Tribunal is yet to be implemented. In view of the above, Mr. Rath, Senior Counsel vehemently opposed the very maintainability of this OA.

10. Having considered the rival submission of the parties this Tribunal sought to know from Mr. Kanungo, Learned Counsel appearing for the BSNL as to whether the Respondent-Department filed any writ challenging the order of this Tribunal in OA No. 38 of 2009. Mr. Kanungo, Learned Counsel fairly submitted that the

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matter is still under examination. On the focused question to Mr. Das, Learned Counsel appearing for the Applicants that when the order has not been implemented and the matter is under examination how would they get the cause of action to challenge and if at all they apprehend that their interest due to the order of this Tribunal would be affected, what prompted the applicants to approach this Tribunal without making any representation to their authority. No satisfactory explanation was given by Mr. Das in this respect. He fairly submitted for disposal of this OA with clarification/direction that in the event of implementation of the order of this Tribunal dated 10th February, 2011 in OA No. 38 of 2009, the Respondent- Department shall afford adequate opportunity to the Applicants by way of putting notice to them as they would be affected by such implementation and after considering their show cause reply, any revision of the relevant seniority list should be undertaken. This was not objected to by Mr. Rath, Learned Senior Counsel appearing for the Private Respondents.

11. In view of the above, this OA is disposed of with direction to the Respondents that implementation of the order of this Tribunal dated 10th February, 2011 in OA No. 38 of 2009 may

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be done only after putting notice to the present Applicants and
after considering their reply to such notice. No costs. No costs.



(A.K.PATNAIK)
Member (Judicial)



(C.R.MOHAPATRA)
Member (Admn.)

