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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

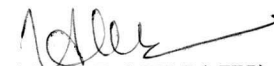
Original Application No. 357 of 2011
Cuttack, this the 22nd day of September, 2014

Kartikeswar Mohanta Applicant
Union of India & Ors. Versus 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 (Judicial)

10 CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 357 OF 2011

Cuttack, this the 22nd day of September, 2014

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

HON'BLE MR. R.C. MISRA, MEMBER (Admn.)

.....

Kartikeswar Mohanta,

Aged about 37 years,

Son of Late Mahendra Mohanta,

Vill- Jalanada, P.O.- Chandanpur, Via- Manitri,

Dist.- Mayurbhanj, Orissa, 757017.

.....Applicant

Advocate(s)... Mr. P.K.Padhi

VERSUS

Union of India represented through

1. Secretary cum Director General of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Orissa Circle, At/PO- Bhubaneswar,
Dist- Khurda, 751001.
3. Superintendent of Post Offices,
Mayurbhanj Division,
At/PO- Baripada, Dist- Mayurbhanj,
Orissa, Pin Code-757001.

..... Respondents

Advocate(s)..... Mr. S. Barik

.....

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The case, in brief, is that the post of GDSBPM, Chandanpur BO in account with Mantri SO fell vacant due to retirement of the permanent incumbent holding the said post on attaining the age of superannuation. In due procedure of Rules, the Applicant was selected and appointed to the post on 09.11.1999. One of the unsuccessful candidates

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namely Shri Pitambar Swain challenged the said appointment of the applicant before this Tribunal in OA No. 608/1999 in which this Tribunal vide order dated 24.1.2001 quashed the selection and appointment with direction for reconsideration of the cases of all candidates including the case of Shri Pitambar Swain afresh. Respondent-Department challenged the said order of this Tribunal before the Hon'ble High Court of Orissa in OJC No. 6362/2001 which was also dismissed on 07.04.2003. On reconsideration, afresh, Shri Pitambar Swain was selected to the post and resultantly the service of the applicant was terminated vide order dated 01.10.2003. By making representation he had prayed before the authority to provide him an alternative appointment as per the Circular dated 30.12.1999 and, thereafter, alleging inaction he filed OA No.1271 of 2004 which was disposed of on 03.07.2006 – the operative part of the order reads as under:

“.....We find that there is no necessity to issue such a direction to the Respondent-authorities. But, however, if the applicant submits a representation to them, it is open to the Respondents to consider the applicant's grievance and dispose of the same in accordance with rules within four months from the date of receipt of such representation.”

2. In the meantime, Respondents issued an order dated 10th November, 2005 dealing with providing alternative appointment. Full text of the said order reads as under:

“I am directed to enclose a copy of each of order dated 25.5.2005 of Hon'ble CAT Patna Bench in OA No. 316/2005 filed by Shri Nand Kishore Prasad Thakur and judgement dated 31.3.2005 of Hon'ble High Court of Judicature at Patna in CWJC No. 2809/2005 and CWJC No. 4071/2005 filed by Ms. Madhu Kumar and Shri Ajit Kumar Mishra respectively.



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2. Hon'ble High Court of Patna vide judgment dated 31.3.2005 in the CWJC No. 2809/2005 and CWJC No. 4071/05 filed by Ms. Madhu Kumari and Sri Ajit Kumar Mishra respectively, had observed as under:

“we may point out that the appointment to the public office is made according to rules and no authority, however powerful or high may be, has power to distribute the appointment in public office on mercy. If an appointment is valid then alright. If appointment is not valid then the person has to get out and no direction can be issued to accommodate another person because that will amount to issuing a direction to commit a wrong in the sense that though the law requires that the appointment is to be made according to rule and the Tribunal having found that the rules were not followed still directs for appointment of such person. Thus this practice of the Tribunal should not continue in future.”

3. Hon'ble CAT Patna Bench vide order dated 25.05.2005 dismissed the OA filed by Shri Nand Kishore Prasad Thakur for providing alternative appointment to a GDS post mentioning that the Hon'ble High Court of Judicature at Patna had made strict observation in CWJC No. 2809/2005 and CWJC No. 4071 of 2005 against such type of order of providing alternate appointment to a person whose appointment as a GDS was found not valid.

4. You are requested to bring the above order and the judgement to the notice of all concerned for their information, guidance and quoting the same where necessary.”

3. Hence, the representation dated 17.04.2007 of the applicant was considered and vide letter dated 23.04.2007 he was intimated as under:

““According to the judgment dated 31.3.2005 passed by Hon'ble High Court Patna in the CWJC No. 2809/2005 filed by Mrs. Madhu Kumari and CWJC No. 4071/05 filed by Sri Ajit Kumar Mishra, “an appointment to a public office is made according to

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rules rather no authority, however powerful or high may be. In a case where appointment is not valid the person has to get out and no direction can be issued to accommodate another person because that will amount to issue a direction to commit a wrong in the sense that though the Law requires that the appointment is to be made according to rules.”

4. But alleging inaction on his representation he filed another OA No. 330 of 2010 which was disposed of on 30.06.2010 with direction to the Respondents to take a view on his pending representation. Hence Respondents vide order dated 19.08.2010 informed the Applicant as under:

“According to the judgment dated 31.3.2005 passed by Hon’ble High Court Patna in the CWJC No. 2809/2005 filed by Mrs. Madhu Kumari and CWJC No. 4071/05 filed by Sri Ajit Kumar Mishra, “The appointment to a public office is made according to rules and no ^{authority} ~~authenticy~~, however powerful or high may be, has power to distribute is not valid, then the person has to get out and no direction can be issued to accommodate another person because that will amount to issuing a direction to commit a wrong in the sense that though the law requires that the appointment is to be made according to rule and the Tribunal having found that the rules were not followed, still directs for appointment of such person. Thus this practice of the Tribunal should not continue in future.”

On the same analogy, it is not feasible a tthis point to accommodate Sri Kartikeswar Mohanta in an alternate GDS post since his appointment as GDS was found not valid by judgment dated 24.1.2001 passed by the Hon’ble CAT Cuttack in OA No. 608/99.

In view of the above observation of the Hon’ble courts, the case of the applicant is considered and rejected.”

5. Being aggrieved, the Applicant has filed the instant OA with prayer to quash the order of rejection dated 19.08.2010 and direct the Respondents to consider his case and provide him an alternative appointment in any GDS post in the nearby locality.

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6. The Respondents in their counter have denied receipt of any such representation dated 15.10.2003, 31.10.2003, 3.12.2003 and 20.12.2003. However, it has been stated that in pursuance of the order of this Tribunal the representation dated 17.4.2007 submitted by the applicant was considered but as per the previous order dated 10th November, 2005 the same was rejected and communicated vide order dated 19.08.2010 by reiterating the reason of rejection earlier communicated to him vide letter dated 23.04.2007. Hence by relying on the order dated 10th November, 2005 which was issued based on the order of the Hon'ble High Court of Patna dated 31.3.2005 in CWJC No. 2809/2005 and CWJC No. 4071 of 2005 (Ms.Madhu Kumari and Shri Ajit Kumar Mishra Vrs. UOI & Ors), the Respondents have prayed for dismissal of this OA.

7. By drawing our attention to the order of this Tribunal dated 11th September, 2008 passed in OA No. 216 of 2007 (Fakir Charan Das Vrs UOI & Ors) and the order of the Hon'ble High Court of Orissa dated 16.07.2011 passed in WP (C) No. 7687 of 201, Mr. P.K.Padhi has contended that the present case being same and similar and in those cases applicants having been provided alternative appointment, the applicant is also entitled to be appointed as by the time his service was terminated he had put in the required number of continuous service in the post. On the other hand, Mr.U.B.Mohapatra, Learned Senior CGSC appearing for the Respondents contended that the decisions relied on by him are of no help as the circular/order dated 10th November, 2005 doing away the provision for providing alternative appointment as per the order of the Hon'ble High Court of Patna dated 31.3.2005 in CWJC No. 2809/2005 and CWJC No.

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4071 of 2005 (Ms.Madhu Kumari and Shri Ajit Kumar Mishra Vrs. UOI & Ors) was never placed either before this Tribunal or before the Hon'ble High Court. The order of rejection dated 19.8.2010 is the reiteration of the earlier order of rejection dated 23.4.2007. The Applicant had neither challenged the order dated 23.4.2007 earlier nor in this OA. He had also not challenged the order dated 10th November, 2005. As such, this OA is liable to be dismissed.


8. We have considered the rival contentions of the parties and perused the records. Fact remains that the termination of the applicant was on the basis of the fresh selection in compliance of the order of this Tribunal which was upheld by the Hon'ble High Court of Orissa. The order of termination is dated 1.10.2003. Applicant's claimed that he has submitted series of representation dated 15.10.2003, 31.10.2003, 3.12.2003 and 20.12.2003 praying for providing alternative appointment receipt of which was denied by the Respondents. At the same time, the applicant has also not produced any materials in support thereof. He has also not challenged the order of rejection dated 23.4.2007 in the earlier OA nor even in this OA presumably because to avoid the law of limitation. He has also not challenged the circular/order dated 10th November, 2005 doing away the provision for providing alternative appointment as per the order of the Hon'ble High Court of Patna dated 31.3.2005 in CWJC No. 2809/2005 and CWJC No. 4071 of 2005 (Ms.Madhu Kumari and Shri Ajit Kumar Mishra Vrs. UOI & Ors). ~~In~~ The orders relied on by the Applicant were without taking note of the aforesaid order dated 10th November, 2005. It is trite law that a person who seeks equity must come with clean hands and that a person who is not entitled to a relief directly cannot be allowed to claim the

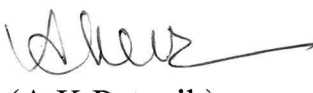
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same in an indirect manner. It is also trite law that when a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the date on which original cause of action arose and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

9. The above being the position of fact and law we do not see any merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.


(R.C. Misra)
Member (Admn.)


(A.K. Patnaik)
Member (Judicial)

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