

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.374 OF 2011
Cuttack this the 21st day of March, 2014

Bijaya Ketan Mohanty...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? NO
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? NO


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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

Bijaya Ketan Mohanty
Aged about 41 years
S/o.Satyanarayan Mohanty
At-Buhala
PO-Kendupatna
Dist-Cuttack
Presently serving as Investigator
National Sample Survey Organization
(Field Operation Division)
Berhampur

...Applicant

By the Advocate(s)-M/s.J.Sengupta
D.K.Panda
G.Sinha
A.Mishra

-VERSUS-

1. Director General
National Sample Survey Organization(Field Operation Division)
Ministry of Statistics & Programme Implementation
New Delhi, C-Block, 3rd Floor
Puspa Bhawan
New Delhi-62
2. Deputy Director (Administration)
National Sample Survey Organization(Field Operation Division)
Ministry of Statistics & Programme Implementation
New Delhi, East Block, Level 4 to 7
R.K.Puram
New Delhi-62

R.K.Puram

3. Director (Statistics)

National Sample Survey Organization (Field Operation Division)
 Bhubaneswar, Commercial Complex, 1st Floor,
 Acharya Vihar
 Bhubaneswar-13
 Dist-Khurda

4. Director National Sample Survey Organization
 (Field Operation Division)
 Sambalpur

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

R.C.MISRA, MEMBER(A):

Applicant in the present Original Application, who was serving as Investigator, National Sample Survey Organization(in short NSSO) has approached this Tribunal with a prayer that letter dated 10.5.2011 of Respondent No.2, i.e. Deputy Director(Administration), NSSO, Ministry of Statistics & Programme Implementation rejecting his claim for age relaxation be quashed and direction be issued to Respondents to consider his case for the post of Field Investigator by condoning the age in view of the clear direction of the Hon'ble High Court and to appoint him as Field Investigator for the 68th Round of NSS.

2. Facts of the case in brief are that the applicant pursuant to an open advertisement issued by the Respondents for filling up the post of Investigator on contractual basis applied for the said post and on being selected, he was appointed on 30.12.1998 in the Respondent-Organization. He was engaged in the field work in Socio Economic Survey in the 55th and 56th round of National Sample Survey and was being paid a consolidated

R.C. Misra

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amount of Rs.6000/- per month. His services were extended from 31.12.1999 to 31.8.2000. However, he was served with an order of termination with effect from 31.12.2000. Aggrieved with the above order of termination, applicant along with some similarly aggrieved persons approached this Tribunal in O.A.No.634 of 2000, in which a prayer was made for issuing direction to Respondents to regularize his services. However, the said O.A. was dismissed by this Tribunal vide order dated 2.3.2001. Being aggrieved by the order of the Tribunal applicant approached the Hon'ble High Court of Orissa by filing Writ Petition bearing O.J.C.No.3235 of 2001. The Hon'ble High Court did not pass any direction about the regularization of the applicant nor interfered with the order passed by this Tribunal. However, the Hon'ble High Court while disposing of the above Writ Petition vide order dated 23.7.2005 made the following observations.

"However, it is provided that in case in future any Scheme is introduced, the petitioners' suitability shall be considered keeping their experience in view and if it is found that they fulfill the requisite qualification to be engaged on contract basis or stop gap arrangement, priority will be given to them instead of making appointment or selection from open field by the Department".

3. Thereafter, applicants filed Misc.Case No.1020 of 2005 before the Hon'ble High Court of Orissa in which they sought modification of the earlier order of the Hon'ble High Court. The Hon'ble High Court in their



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order dated 13.9.2005 ordered as under in modification of the earlier order.

"Since the petitioners were within the age limit when they were recruited from the open field in the year 1998 after being successful in the written as well as viva voce test and they continued till December, 2000, and it has already been observed by this Court in the order dated 23.07.2005 that the petitioners' suitability shall be considered keeping their experience in view it is always implied that age relaxation has to be considered in their case as it is common knowledge that a person, who was engaged in the year 1998, would not remain within the age limit by 2005.

In view of the above, we clarify our order dated 23.07.2005 to the extent that the said order is to be complied with after considering the age relaxation of the petitioners".

4. Respondents filed a Review Petition before the Hon'ble High Court seeking review of the order dated 23.07.2005 in the O.J.C.No.3235/2005 and this Review Petition was rejected by the Hon'ble High Court vide judgment dated 31.03.2006. Being aggrieved by this order, Respondents preferred SLP before the Hon'ble Supreme Court which was dismissed by the Hon'ble Supreme Court keeping the question of law open for adjudication. Thereafter, the Respondents implemented the order of the Hon'ble High Court and issued a letter to the applicant on 6.12.2007 seeking his consent regarding the terms and conditions of appointment as stipulated in the said letter. It was specified that the Respondents were offering appointment to the applicant as an Investigator on contract basis



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whenever the next survey is taken up in Orissa by the Field Operation Division of NSSO on the same terms and conditions and this offer would be valid only for the next venture. Applicant found those terms and conditions contrary to the directions of the Hon'ble High Court and therefore, filed another Writ Petition before the Hon'ble High Court which was disposed of with liberty being given to the applicant to file a Contempt Petition. Thereafter, applicant filed a petition for initiating contempt proceedings and on receiving notice, the Respondents issued order of appointment on 22.7.2009 in the post of Investigator in NSSO (FOD) on contract basis for a period of 12 months extendable by another terms of six months or more as per requirement on a consolidated salary of Rs.9000/- per month along with other stipulations. Although the appointment was given for a period of 12 months, applicant was issued with an order of termination dated 31.5.2010 and again on 2.6.2010 another order was issued by Res.No.3 appointing applicant as an Investigator on contractual terms for a period of 14 months on a consolidated remuneration of Rs.9000 per month. In the meantime, Respondents issued an advertisement to fill up nearly 1300 posts of Field Investigators on contract basis, in which the upper age limit was fixed as 40 years. By that time, applicant had become over-aged and therefore, he made an application to Res.No.1 to consider his selection by relaxing the upper age limit in view of the directions issued by the Hon'ble High court of Orissa. Respondents did not reply to his representation, but conducted the interview on 19.5.2011. Thereafter, Respondents sent a



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communication to the applicant in which it was stated that his prayer for relaxation of age was turned down because, according to orders of the Hon'ble High Court of Orissa, the offer would be valid for the next venture. Since the order of the Hon'ble High Court had already been implemented, his prayer for age relaxation could not be considered.

5. The case made out by the applicant in the present O.A. is that the order of the Hon'ble High Court was not confined to any particular venture. On the other hand, direction was that in case in future any scheme is introduced, then applicant's suitability shall be considered keeping in mind his experience and also according priority to him instead of making appointment from the open market. It was further directed that relaxation of age of the applicant would also be considered since it is a common knowledge that who was engaged in the year 1998 would not remain within the age limit by 2005. When the whole order of the Hon'ble High Court is read out, it will be found that the intention of the Hon'ble High Court was not confined to next scheme only but was applicable to any future scheme introduced by the Department. Therefore, the decision of the Respondents to confine the application of the direction of the Hon'ble High Court only to the next venture was contrary to the spirit of the said orders. On the basis of the above grounds, applicant has made a prayer that the order of rejection for age relaxation issued by the Respondents on 10.5.2011 vide Annexure-A/11 should be quashed and the case of the

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applicant for the post of Field Investigator by condoning age should be considered in view of the clear directions of the Hon'ble High Court.

6. In the counter affidavit that has been filed on behalf of the Respondents, it has been averred that a scheme under which applicant was given directly engagement as Investigator was no longer in operation. The instance given by the applicant that similarly circumstanced persons have got relief and they have been regularized on the basis of the orders passed by the Principal Bench and Chandigarh Bench of the Tribunal is factually incorrect. It is further contended in the counter affidavit that the Respondents have acted strictly in pursuance of the order passed by the Hon'ble High Court and the order may not be construed to mean that the applicant shall be given contractual appointment on every venture launched by the Respondent-Department. As per the decision of the Hon'ble High Court, Director of NSSO, Sambalpur, who is Respondent No.4 has given offer to the applicant and other similarly circumstanced persons clearly mentioning that the offer will be valid only for the next venture to be taken up by the Respondent-Department and the agreement in this regard was signed by the applicant on 30.7.2009. Further, applicant since 1998 is continuing on contractual basis on one plea or the other and is trying to convert his contractual engagement into regular appointment in the Department. Therefore, the main thrust of the counter is that the Respondents have faithfully complied with the directions of the Hon'ble



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High Court of Orissa in the matter of contractual engagement of the applicant as Field Investigator in the National Sample Survey Organization.

7. Learned counsel for the applicant has filed a written statement in which the issues raised in the O.A. have been reiterated. The main highlight of the contention made by the applicant is that at no point of time, the Hon'ble High Court has observed that their directions are confined only ^{to} ~~the~~ next venture launched by the Respondents. The word "any scheme" cannot be read as "next scheme" since the Respondents did not have the authority to insert or delete any word in the order of the Hon'ble High Court according to their sweet-will. The expression "any scheme" would mean "different schemes introduced by the Respondents" and therefore, according to applicant, the actual meaning of the order of the Hon'ble High Court would be that in future if the Respondents introduced any of the schemes, then the applicant's suitability has to be considered after giving him relaxation of age and the same cannot be confined to only one scheme in which the applicant was earlier given appointment. Thus, the actual meaning of the order of the Hon'ble High Court would be that in future if the Respondents introduced any of the scheme amongst different schemes undertaken by them at different points of time, then the applicant's suitability is to be considered after giving him relaxation of age and the same cannot be confined to only one scheme in which the applicant was earlier given appointment.



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8. Having heard the contentions of the learned counsel for both the sides, we have also perused the records. The facts of this case reveal that after the case of the applicant in O.A.No.634/2000 was dismissed vide order dated 2.3.2001, applicant moved the Hon'ble High Court of Orissa by filing OJC No.3235 of 2001. Respondents have considered the case in pursuance of the judgment of the Hon'ble High Court dated 23.7.2005, further clarificatory order dated 13.9.2005 and the order dated 31.3.2006 on the review petition. Respondents had moved the Hon'ble Supreme Court by filing SLP and that was dismissed vide order dated 7.3.2007.

9. Respondents vide order dated 6.12.2007(Annexure-A/5) implemented the judgment of the Hon'ble High Court in OJC No.3235/2001 (A.K.Biswal & Ors. Vs. UOI) and made their offer of contractual engagement as Investigator to the applicant. Thereafter, vide Office Memorandum dated 22.7.2009(Annexure-A/6) offer of a purely temporary appointment on contract basis for the post of Investigator was made pursuant to direction of Hon'ble High Court in OJC No.3235/2001 vide judgment dated 23.7.2005 and dated 13.9.2005. Again vide Office Memorandum dated 31.5.2010 (Annexure-A/7)services of the applicant were terminated. It is seen that subsequently vide O.M dated 2.6.2010(Annexure-A/8), offer of purely temporary engagement on contract basis in NSSO(FOD) for a period not exceeding 14 months was made to the applicant. Finally, however the applicant was informed vide letter dated 10.5.2011 (Annexure-A/11) of Deputy Director(Admn.) that the

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decision of the Hon'ble High Court was implemented and request of applicant for relaxation of age for engagement as contract Investigator in 68th round of NSSO could not be considered. This is the order challenged in the present O.A.

10. Learned counsel for the applicant pleaded that the actual meaning of the order of the Hon'ble High Court would be that in future if the Respondents introduce any scheme, applicant's suitability is to be considered after granting him relaxation of age; so Respondents cannot take a position that applicant cannot be given age relaxation any further. Learned counsel for the Respondents on the other hand pleaded that the Respondents have strictly acted in pursuance of the orders of the Hon'ble High Court. Moreover, order of the Hon'ble High Court may not be construed to mean that applicant shall be given contractual appointment in every venture launched in future.

11. The factual matrix of the case reveals that in O.A.No.634/2000, the case of applicant was dismissed. Hon'ble High Court did not interfere with the decision of CAT, but gave certain further directions for considering contractual engagement of applicant in future scheme by relaxing the age limit. SLP filed by the Respondents before the Hon'ble Apex Court was dismissed. Thereafter, the Respondents have implemented the judgment and orders of the Hon'ble High Court, but about the meaning of "in case in future any scheme is introduced", the applicant has filed this O.A. and claimed that the direction of the Hon'ble High Court will be tantamount to



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a direction for contractual appointment of the applicant in all future schemes. This claim is stoutly opposed by Respondents who hold the position that they have sincerely carried out the orders of the Hon'ble High Court, but future scheme cannot be construed to mean all future schemes in perpetuity.

12. The matter has been admittedly adjudicated by the Hon'ble High Court. It is, therefore, beyond the competence of this Tribunal to adjudicate the issue, in view of the final orders passed by the Superior Courts.

13. On the above ground, the O.A. stands dismissed, without any order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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