

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.552 & 618 of 2011
Cuttack this the 11th day of January, 2016

IN O.A.No.552/2011

P.K.Behera...Applicant

-VERSUS-

Union of India & Ors...Respondents

In O.A.No.618/2011

Mrutynjay Das...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

O.A.No.552 & 618 of 2011

Cuttack this the 11th day of January, 2016
CORAM:

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

IN O.A.NO.552 / 2011

Prasanna Kumar Behera
S/o Sri Raghunath Behera
aged about 35 years,
Ex MTS Office of the Dy. Chief Labour Commissioner (C),
Bhubaneswar
At present residing in Village - Lakshmipur,
PS Chamakhandi,
Distt. Ganjam.

...Applicant

By the Advocate(s)- Mr.A.K.Mohanty

-VERSUS-

1. Union of India represented through:
The Secretary,
Ministry of Labour and Employment,
Shrama Shakti Bhavan,
New Delhi.
2. The Chief Labour Commissioner,
Ministry of Labour & Employment,
Shrama Shakti Bhavan,
New Delhi.
3. The Dy.Chief Labour Commissioner (C),
Bhubaneswar,
Kendriya Shrama Sadan,
N-7/6&7,
IRC Village,
Bhubaneswar.
4. Sri Mrutunjay Das
aged about 28 years
S/o Sri Surendra Nath Das,
Vill. Baro, Radhangagan,
PO Baro, Vill. Tihidi,
Distt. Bhadrak.



...Respondents

By the Advocate(s)-Mr. D.K.Mallick
Mr. S. Patra

IN O.A.NO.618/ 2011

Mrutynjay Das
Aged about 28 years
S/o. Surendranath Das
Village-Baro Radhanagar
PO-Baro
Via-Tihidi
Dist-Bhadrak

...Applicant

By the Advocate(s)-M/s.S.Patra
A.Panda
P.Ku.Mohapatra
S.J.Mohanty
D.D.Sahu

-VERSUS-

Union of India represented through

1. The Secretary to Government of India
Ministry of Labour & Employment
Shrama ShaktiBhawan
New Delhi-1
2. Chief Labour Commissioner(Central)
Shrama Shakti Bhawan
New Delhi-1
3. Deputy Chief Labour Commissioner(Central)
Kendriya Shrama Sadan
N-6 & 7, IRC Village
Behind Iskon Temple
Bhubaneswar
Dist-Khurda
4. Administrative Officer
O/o.Chief Labour Commissioner(Central)
Shrama Shakti Bhawan
New Delhi-1
5. Sri Prasanna Kumar Behera
S/o.Sri Raghunath Behera
Aged about 35 years
Ex-MTS
O/o. the D.L.C.(Con)





Bhubaneswar
At present residing
At -Laxmipur,
PS-Chamakhandi
Dist-Ganjam-761 003

...Respondents

By the Advocate(s)-Mr.S.Behera

Mr.A.K.Mohanty(res.5)

ORDER

R.C.MISRA, MEMBER(A):

Since the facts of the matters are intertwined, both the Original Applications are being disposed of by this common order. For the sake of convenience, facts in O.A.No.552 of 2011 are being referred to. In this O.A., applicant, Shri P.K.Behera has sought for the following relief.

- i) To quash the orders of the Respondent No.3 dated 31.5.2011 (as per Annexure-A/11 and the orders of the Respondent No.2 dated 29.6.2011(as per Annexure-A/13 for being illegal, irregular, arbitrary and violative of the provision of Art. 14 of the Constitution of India.
- ii) To direct and order that the applicant is deemed to be continuing in service and is entitled to all consequential benefits like pay and allowances etc. from 1.6.2011 onwards.
- iii) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice, equity and fair play.

2. Facts of the matter as revealed from the O.A. are

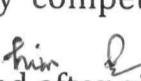
that applicant had been engaged as a part-time Sweeper in the Office of LEO©, Paradip from 2003 to 2004 and had thus completed more than 240 days continuous service. Thereafter, he continued to work as full time Chowkiar in the office of the Deputy Chief Labour Commissioner (res.no.3) from 2006⁵



onwards being engaged through a service provider. On 17.7.2009, a notification vide A/1 was issued by the office of res.no.3 for filling up the vacant post of Group-D, inter alia, prescribing the maximum age limit as 33 years, which was to be relaxed by the competent authority in so far as OBC category is concerned. Applicant belongs to OBC category and in pursuance of the said notification, he made an application with the required documents. Consequently, he appeared in the interview that was held on 9.4.2010. Thereafter, res.no.3 recommended the case of the applicant to res.no.2 vide letter dated 21.4.2010(A/4) for appointment to Group-D post with a request for age relaxation. In response to this, res.no.³ was communicated that he being the appointing authority for Group-D post could take lawful action in the matter of age relaxation. However, applicant having been issued with the appointment letter dated 21.5.2010 submitted his joining report on the same day. In view of DOP&T O.M. dated 30.4.2010, applicant was re-designated as Multi-Tasking Staff(MTS) vide order dated 1.6.2010(A/9). While the matter stood thus, vide order dated 31.5.2011, the service of the applicant was terminated without any reason whatsoever. Being aggrieved, applicant preferred a representation dated 1.6.2011 to res.no.2 vide A/12, which having been turned down vide A/13 dated 29.6.2011, he has moved this Tribunal seeking the aforesaid relief.



3. The case made out by the applicant is twofold. Firstly, he has pleaded that the termination of his service having been issued without asking him to show cause suffers from  non-compliance of the principles of natural justice and therefore, the same is bad in law.

4. Secondly, applicant has urged that res.no.3 being the authority competent to appoint him in Group-D post, has so  appointed after giving him the age relaxation.

5. Respondent-Department have filed a detailed counter opposing the prayer of the applicant. In the counter-reply, it has been submitted that on receipt of various complaints regarding appointment of applicant to the post of Chowkidar cum Safaiwala, the matter was examined by the Chief Labour Commissioner®, New Delhi (res.no.2), who found that the appointment of the applicant was improper, as the same had not been made as per the existing recruitment rules for Group-D. It was also found that the then Deputy Chief Labour Commissioner®, Bhubaneswar had extended undue favour to the applicant by ignoring the clear clarification from CLC® Headquarters in this matter and appointed the applicant as Chowkidar cum Safaiwala, after giving him age relaxation by four years. A wrong entry was also made by then Deputy Chief Labour Commissioner(Central), Bhubaneswar in the Service Book of the applicant that the competent authority had approved the age relaxation by four years, whereas no such



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relaxation was approved by the competent authority, i.e., Chief Labour Commissioner(Central), New Delhi.

6. With these submissions, respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

7. Applicant has filed rejoinder to the counter which contains more or less the same averments as in the O.A.

8. Private Respondent No.4, who is the applicant in O.A.No.618/11 has entered appearance and filed counter.

9. We have heard the learned counsel for the respective parties and perused the records. Before coming to the point in issue, we would like to quote hereunder the relevant part of the order dated 31.5.2011(A/11) whereby appointment of the applicant to the post of Chowkidar-cum-Safaiwala has been cancelled.

"As per the instructions of the Competent Authority the process of recruitment to the post of Chowkidar cum Safaiwala as advertised/notified vide notification No.70(22)/2009-A.I dated 17.07.2009 by this office, is hereby quashed as the same has not been made as per the Recruitment Rules and Govt. of India instructions.

The appointment of Sh.Prasanna Kumar Behera as "Chowkidar-cum-Safaiwala(MTS)" vide this Office Memorandum No.70(22)/2009-A-I, dated 21.05.2009 in response to the employment Notification No.0(22)/2009-A.I, dated 17.07.2009 is hereby cancelled and his services disengaged w.e.f. 31.05.2011(AN).

Sd/-
Dy.Chief Labour Commissioner(Central)
Bhubaneswar"

D
Behera

gg

10. From the above, it is clear that the process of recruitment to the post of Chowkidar-cum-Safaiwala as advertised/notified vide notification No.70(22)/2009-A.I dated 17.07.2009 having been quashed by the competent authority, i.e., Chief Labour Commissioner (Central), New Delhi (res.no.2), in effect, appointment of the applicant made vide Memorandum No.70(22)/2009-A-I, dated 21.05.2009 stood cancelled. This action of the respondents beyond any shade of doubt amounts to stretching of powers. Because, before taking such a step to the prejudice of the applicant, they were duty bound to issue him a notice to show cause against the proposed cancellation of his appointment as Safaiwala-cum-Chowkidar so that applicant could have had an opportunity to effectively put up his grievance before the competent authorities for consideration. Nothing is forthcoming in the counter-reply filed by the respondents that ever such an opportunity had been afforded to the applicant. Prima facie, as we are convinced that the impugned order cancelling appointment of the applicant vide A/11 has been issued without complying with the principles of natural justice, we do not feel it inclined to take into consideration the other aspect of the matter as urged by the respondents, more so, the reasons as indicated in A/11 that the appointment of the applicant to the post in question was not made as per the Recruitment Rules and Govt. of India



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instructions. Therefore, at this stage, we would not like to express any opinion on the legality or otherwise of the action taken by the respondents in quashing the notification pursuant to which selection and appointment of the applicant to the post of Chowkidar-cum-Safaiwala had been made.

11. In view of this, we quash the impugned order dated 31.5.2011(A/11) whereby appointment of the applicant to the post of Chowkidar-cum-Safaiwala(MTS) has been cancelled and direct the respondents to reinstate the applicant in his post forthwith. However, nothing would prevent the respondent-authorities to proceed with the matter as deemed fit and proper, ~~only~~ after affording a reasonable opportunity to the applicant to put up his grievance before taking any action adversary to his interest, which, in our considered view, would meet the ends of justice.

Ordered accordingly.

12. In O.A.No.618 of 2011, applicant, who is respondent No.4 in O.A.No.552/11, has invoked the jurisdiction of this Tribunal under Section 19 of the A.T.Act, 1985, seeking the following relief.

- i) Order under Annexure-A/9 so far as it refuses to give appointment to the applicant be quashed.
- ii) Respondent Nos. 1 to 3 be directed to give appointment to the applicant.



13. Facts of the matter according to applicant are thus: In response to Employment Notice dated 17.07.2009(A/1) issued by res.no.3 inviting applications for filling up Group-D post, applicant was one of the aspirants. Accordingly, he was called for the interview in which he did appear. On 9.4.2010, a tabulation sheet indicating the marks secured by each of the candidates interviewed was prepared which the applicant said to have received on 28.2.2011 under the information through the RTI Act. However, prior to this, one P.K.Behera had been issued with the offer of appointment in the post of Chowkidar cum Safaiwala on 21.5.2010, his name having found place at Sl.nO.5 of the tabulation sheet.

14. It is the case of the applicant that as per Recruitment Rules, the maximum age limit for the post of Chowkidar cum Safaiwala is 25 years whereas in the Employment Notice dated 17.7.2009(A/1), the maximum age limit prescribed was 33 years. Apart from this, the maximum age limit for OBC category should have been 28 instead of 36.

15. It has been submitted that in the tabulation sheet his name found place at Sl.No.7 whereas the names of S/Shri P.K.Behera, K.C.Barik and N.C.Sahu found place at Sl.Nos.5,2, and 27 respectively.

16. Grievance of the applicant is that the date of birth of S/Shri P.K.Behera, K.C.Barik and N.C.Sahu being 5.5.1976, 7.10.1980 and 10.6.1981 respectively, as on the last date of



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receipt of applications in response to Employment Notice dated 17.07.2009, they were above 28 years and therefore, they could not have come within the zone of consideration for the post in question. In the above backdrop, it has been contended that Shri P.K.Behera being over-aged could not have been appointed to the post of Chowkidar cum Safaiwala and in his place, applicant should have been appointed.

17. Aggrieved with the above, applicant went on preferring representations to the respondent-authorities and having received no response, moved this Tribunal in O.A.No.265 of 2011. This Tribunal, vide order dated 10.5.2011 disposed of the said O.A. at the stage of admission with direction to Chief Labour Commissioner(Central), New Delhi (res.no.2) to consider the pending representation and communicate the decision in a reasoned and speaking order within a period of 45 days from the date of receipt of the order. In compliance thereto, respondent-authorities turned down the request of the applicant vide communication dated 28.6.2011(A/9). Hence, this O.A. with the prayer as mentioned above.

18. Respondent-authorities have filed a detailed counter opposing the prayer of the applicant. It has been submitted that based on a notification issued by the Ministry of Railways for recruitment of Group D posts, an erroneous notification was issued by then Dy.CLC©, Bhubaneswar calling for applications from the local Employment Exchange which was not as per the



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provisions of the Recruitment Rules for Group D posts in Regional Offices of Chief Labour Commissioner(Central) Organization. According to respondents, as per the existing Recruitment Rules, the upper age limit for direct recruitment is 25 years. Therefore, as per the existing recruitment rules, it was found that recruitment and appointment to the post of Chowkidar cum Safaiwala made by the Dy.CLC®, Bhubaneswar was not in conformity with the instructions of the Government on the subject and therefore, appointment of Shri P.K.Behera to the post of Chowkidar cum Safaiwala was held illegal and improper. In view of this, the whole process of selection was scrapped and consequently, appointment of Shri P.K.Behera was cancelled with effect from 31.5.2011. It has been pointed out that as per the instructions issued by the Department of Personnel & Training vide O.M.No.AB-14017/6/2009-Estt(RR) dated 30.04.2010 & 12.05.2010, the resultant vacancy in the O/o. Dy.CLC®, Bhubaneswar has been reported to the Staff Selection Commission, Kolkata for filling up the same.

19. With the above submissions, respondent-Department have prayed that the O.A. being devoid of merit is liable to be dismissed.

20. On being noticed, Private Res.No.5(Shri P.K.Behera), who is applicant in O.A.No.552/11 has also filed a detailed counter.

10. We have heard the learned counsel for the parties and perused the materials on record. We have also gone through



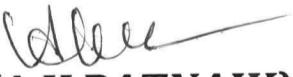
the written notes of submission filed by the official respondents and the applicant.

21. Since in O.A.No.552 of 2011, we have quashed the impugned order dated 31.5.2011(A/11) whereby appointment of the applicant to the post of Chowkidar-cum-Safaiwala(MTS) has been cancelled and directed the respondent-department to reinstate the applicant in his post forthwith with a further direction that nothing would prevent the respondent-authorities to proceed with the matter as deemed fit and proper, only after affording a reasonable opportunity to the applicant to put up his grievance before taking any action adverse to applicant's interest, in our considered opinion, any observation or direction at this juncture by us in the present O.A. would certainly impinge upon our own direction in O.A.No.552/2011. In view of this, we hold that at this stage, it is too premature to adjudicate the dispute ^{which R} centers round the O.A.No.618/2011.

22. In the result, while we allow O.A.No.552/2011 in part, we dismiss O.A.No.618/2011 by consequence. No costs.


(R.C.MISRA)
MEMBER(A)

BKS


(A.K.PATNAIK)
MEMBER(J)