

Sudam Biswal .... Applicant  
Versus  
UIO & Ors. .... Respondents

1. Order dated 11<sup>th</sup> September, 2009.

C O R A M

THE HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER (J)  
AND  
THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (A)

.....  
Applicant is an Accountant serving in the office of the Head Post Office, Cuttack. This is the second round of litigation filed by the Applicant challenging the order under Annexure-A/6 dated 24<sup>th</sup> November, 2008 rejecting his prayer for promotion to the rank of JAO by adding 5 additional marks in aggregate. It is revealed from the record that this rejection order under Annexure-A/6 was passed pursuant to the order dated 18.11.2008 of this Tribunal passed in the earlier Original Application No.383 of 2008 filed by the Applicant directing the Respondents to consider and dispose of the representation with a reasoned order to be communicated to the Applicant.

2. Having heard Learned Counsel for the Applicant and Mr.P.R.J.Dash, Learned Additional Standing Counsel for the Union of India appearing on notice for the Respondents perused the materials placed on record.

3. It reveals from the record that the applicant while working as an Accountant appeared in the Junior Accounts Officer Part-I examination conducted in the year 1992 and qualified the same. Thereafter he appeared the Junior Accounts

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Officer Part II 1993 (Postal Wing) Examination held during 04.07.1994 to 06.07.1994. The result of the JAO Part II examination 1993 (Postal Wing) was announced on 08.12.1994 in which the name of the Applicant did not find place. Applicant filed his representation on 19.12.1994 which was forwarded to the DG Posts New Delhi on 20.02.1995. It appears that the Applicant kept quiet in the matter till 2008 when by filing OA No. 383 of 2008 he sought to unsettle the settled thing which was set at rest in the year 1994 by directing the Respondents to promote him to the post of JAO by adding 5 additional marks in the aggregate mark secured by him.

From the above, it reveals that the Applicant seeks to reopen a cause of action <sup>arose</sup> in the year 1994 which is neither permissible in the A.T. Act, 1985 nor as per the various judge made laws of the Hon'ble Apex Court. The order of rejection under Annexure-A/6 would also not revive the cause of action <sup>that</sup> arose and set at rest long ago. Hence the present OA is hit by the law of limitation in view of the decision laid down by the Hon'ble Apex Court in the case of **C.Jacob v Director of Geology and Mining and Another**, AIR 2009 SC 264. Relevant portion of the aforesaid decision is quoted herein below:

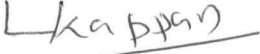
"When a direction is issued by a Court/Tribunal to consider or deal with the representation, unusually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of


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acknowledge of a jural relationship to give rise to a fresh cause of action. (paragraph 8)

If the representation made to Authority is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing consideration of such claims." (paragraph 10)

4. It further appears, virtually in this Original Application applicant seeks direction of unsettling a settled thing after long lapse of time. Hon'ble Apex Court in a catena of cases have held that the Tribunal should desist from passing any such declaratory relief which will have the effect of altering certain thing set at rest long ago.

5. For the discussions made above, we find no reason even to entertain this OA. Hence, this OA stands dismissed at this admission stage,

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)