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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00055 OF 2016
Cuttack, this the 28th day of March, 2016

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

.....
Govinda Charan Moharana, aged about 61 years, S/o Late Charan Moharana, at present working as Carpenter Grade-I under Office of Executive Engineer, Eastern River Division, Central Water Commission, Bhubaneswar.

.....Applicant

(Advocates: M/s. N.R.Routray, S.Sarkar, U.K.Bhatt, Smt. J.Pradhan,
T.K.Choudhury, S.K.Mohanty)

-Versus-

Union of India represented through

1. The Secretary, Ministry of Water Resources, Shrama Shakti Bhawan, Rafi Marg, New Delhi.
2. Chairman, Central Water Commission, Seva Bhawan, R.K. Puram Road, New Delhi-110066.
3. Superintendent Engineer, Eastern River Circle & H.O. Circle, Plot No.13 & 14, Bhoi Nagar, Bani Vihar, Bhubaneswar, Dist.-Khurda.
4. Executive Engineer, Central Water Commission, Mahanadi Division, At.-Doctor Colony, P.O.-Burla, Dist.-Sambalpur, Odisha.

.....Respondents.

By the Advocate(s)-Mr. A.C. Deo

O R D E R(Oral)

A.K.PATNAIK, MEMBER (J):

Heard Mr. N.R. Routray, Ld. Counsel appearing for the applicant and Mr. A.C. Deo, Ld. ACGSC appearing for the Respondents in extenso and perused the materials placed on record.

2. The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash the order dated 06.10.2014 and to direct the Respondents to fix his pay in the scale of Rs. 380-560/- w.e.f. 01.01.1986 and corresponding scales from time to time and payment of all consequential financial benefits.

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3. Before going to the merit of the issue, it is worthwhile to quote the order dated 06.10.2014, which has been challenged by the applicant in this O.A. and it runs thus:

"I am directed to refer your representation dt. 11.03.2013 on the above subject bringing out inter-alia that as per information supplied (vide this Commission's letter No. DIR(A)/CWC/CPIO/2011-12/14 dt. 12.05.2011) to your Counsel against your RTI application dt. 06.04.2011, the posts of Carpenter Grade. I and senior Carpenter were clubbed together and were re-designated as Carpenter Grade-I in the pays scale of Rs. 1320-2040. You have also stated that as per information provided vide this Commission's letter dt. 13.09.2011 with reference to your RTI application dt. 01.09.2011, it was clear that posts of Carpenter Grade-II and Carpenter having 3rd Pay Commission Scale of Pay of RS. 260-350 were grouped together and designated as Carpenter Grade-II in the 4th Pay Commission pay Scale of Rs. 950-1500. In the light of these information provided to you against you RTI requests, you have pointed out that the Department took a false plea in the counter Affidavit to the WP(C) No. 10393 of 2007 filed by you before Hon'ble High Court of Orissa that Carpenter Grade-I and Carpenter Grade-II were clubbed together and a new post of Carpenter was created. You have contended that dismissal of your Writ Petition by the Hon'ble Court due to false facts produced by the Department does not have legal validity and is not a bar for reconsideration of you case. Thus, you have again raised your demand for revision of your pay Scale from 950-1500 to Rs. 1320-2040 w.e.f. 01.01.1986 on ground that pay scale of Carpenter Grade-I and Senior Carpenter were clubbed together.

2. The issued raised in your representation has been examined. It is pointed out that besides the facts mentioned in the Counter Affidavit of the Department, the Government Counsel had also drawn kind attention of the Hon'ble Court to the fact that you were erroneously given promotion to the Carpenter Grade-I as you did not fulfil laid down criteria for such promotion and you continued in the pay scale of Rs. 210-290 meant for Carpenter Grade-II and after implementation of 4th Pay Commission's recommendations, were fitted in the pay scale of Rs. 950-1500 corresponding to Rs. 210-290. The Hon'ble Court fully examined all the documentary evidences placed before it and took cognizance of the fact that till 1986 the Petitioner (Shri Moharana) did not raise any objection or approached the Tribunal for fixation of his pay admissible to Grade-I post and only after the 4th Pay Commission recommendation was implemented., he claimed the scale of pay of Rs. 1320-

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2040. The Hon'ble Court continued that even though the scale of pay was revised in terms of the 4th Pay Commission recommendation w.e.f. 01.01.1986, the Petitioner did not approach the Tribunal till 1993. Thus, the Hon'ble Court stated that the Petitioner himself caused the delay in raising a claim and also in approaching the Court and on this ground alone, the CAT, Cuttack Bench could have dismissed his Original Application. In view of the facts mentioned in the records produced, the Hon'ble Court did not find any reason to interfere with the order of the Tribunal dated 06.07.1994 on grounds of limitation and wrong interpretation of the order dated 22.04.1988 and dismissed your WP(C).

3. Therefore, the WP filed by Shri Moharana was considered on merit by the Hon'ble High Court of Orissa which heard counsels of both the parties and was dismissed. Further, the fact that Shri Moharana continued in the pay scale of Rs. 210-290 despite his claim that he had got promotion to Carpenter Grade.I, indicates that he had accepted the fact of his not fulfilling the criteria of promotion to Carpenter Grade-I and also the error occurred in his promotion to Carpenter Grade-I. As such, the grievance raised through his representation dt. 11.03.2013 is not tenable and does not merit reconsideration."

4. Mr. Routray, Ld. Counsel for the applicant, placing reliance on the averments made in the O.A. and on the materials placed in support thereof submitted that as per the recommendation of the 4th Pay Commission, the post of Sr. Carpenter and Carpenter Grade -I were merged together and a new post of Carpenter Gr.-I in the scale of Rs. 380-560/- to Rs. 1320-2040/- was re-designated. Applicant earlier had filed O.A. No. 373/1993 before this Tribunal which was dismissed on 06.07.1994. The said order of this Tribunal was upheld by the Hon'ble High Court of Orissa in W.P.(C) No. 10393/2007 on 26.03.2010. It is the grievance of the applicant that after the dismissal of Writ Petition, he sought certain information under the RTI Act, 2005 and the department in letter dated 12.05.2011 intimated the applicant that the post of Carpenter Grade-I and Sr. Carpenter were clubbed together and re-designated

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as Carpenter Grade-I in the scale of Rs. 1320-2040/-. Therefore, the applicant filed a review application No. 75/2010 before the Hon'ble High Court of Orissa, which was also dismissed on 29.02.2012. Thereafter, he submitted representation dated 11.03.2013 to the Respondent No.3 praying for fixation of his pay in the scale of Rs. 1320-2040/- w.e.f. 01.01.1986 and payment of all the consequential benefits in view of the revision of his pay as aforesaid. It is alleged that the Respondents rejected his representation (cited supra).

5. Respondents' Counsel objected to the maintainability of the O.A. on the ground that this O.A. is hit by the law of constructive res judicata. By drawing our attention to the earlier order of this Tribunal, order of the Hon'ble High Court of Orissa vis-à-vis the facts reflected by the applicant in this O.A., Ld. Counsel for the Respondents submitted that according to the applicant he has got information under the RTI Act on 12.05.2011. Thereafter, taking the cue of the information obtained by him under RTI Act, the applicant filed review application No.75/2010 before the Hon'ble High Court of Orissa and after taking into account all those records, the Hon'ble High Court of Orissa was pleased to dismiss the review application. Therefore, this Tribunal is precluded ^{from} ~~for~~ entertaining this O.A. on the self same cause of action thereby giving a life to the matter which was already set at rest long since. Hence, on the aforesaid grounds, Ld. Counsel for the Respondents has sincerely prayed for dismissal of this O.A. in limine with cost.

6. On perusal of the record, we find that the case of the applicant in the earlier O.A. was that he, while working as Carpenter Grade-II in the scale of Rs. 210-290/- (pre revised) in the Central Water Commission, was promoted to Grade-I in September, 1978 but he was not given the scale attached to the post of Grade-I. 4th Pay Commission recommended revision of pay scale and the

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scale of Rs. 260-350/- was revised to Rs. 950-1500/- and the scale of Rs. 380-560/- was revised to Rs. 1320-2040/-. The recommendation of the 4th Pay Commission became effective from 01.01.1986. It was the claim of the applicant before this Tribunal that after promotion to Grade-I, he ought to have been given the scale of pay of Rs. 380-560/- and, accordingly, after the 4th Pay Commission was effected he ought to have been fitted in the scale of Rs. 1320-2040/-. On examination of the fact before this Tribunal in earlier O.A. with reference to the pleadings and materials placed in support thereof, we have no hesitation to come to the conclusion that the present case is hit by the law of constructive res judicata. The order of rejection, which has been challenged in the O.A., cannot give rise ^{to} a fresh cause of action to maintain this O.A. more so when the review application filed by the applicant before the Hon'ble High Court of Orissa on the strength of information obtained under RTI Act, 2005 was rejected by the Hon'ble High Court of Orissa.

7. In the aforesaid circumstances, we do not find any justifiable reason to invite the reply of the Respondents, especially when on the face of the records no case is made out by the applicant to wriggle out from the law of constructive res judicata. Hence, this O.A. deserves to be dismissed and is, accordingly, dismissed. No costs.

(R.C.MISRA)
MEMBER (A)

(A.K.PATNAIK)
MEMBER(J)