

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No.296 of 2013

Cuttack, this the 15th day of May, 2013

CORAM

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

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

.....

Sri Fani Bhusan Tripathy,
Aged about 40 years,
S/o.B.N.Tripathy,
At/Po.Kaduapara,
Dist.Jagatsinghpur,
At Sushama Bhawan,
Gandarpur,
City/Dist.Cuttack.

....Applicant

(Advocate(s)-M/s.N.Sarkar,A.N.Das,P.Mishra)

-Versus-

Union of India represented through –

1. Director General of Posts,
Daktar Bhawan,
New Delhi.
2. Chief Postmaster General,
Orissa Circle,
Bhubaneswar,
Dist.Khurda.
3. Senior Superintendent of RMS 'N' Division,
Cuttack,
At/Po/Dist.Cuttack.

.....Respondents

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

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O R D E R

(Oral)

MR. A.K. PATNAIK, MEMBER (J):

Facts of the case, in nut shell, are that the father of the applicant who was working as Zamadar, in RMS 'N' Division, Cuttack retired from service on medical invalidation with effect from September, 1996. The Applicant applied for appointment on compassionate ground which was considered by the CRC and vide letter dated 8.9.1997 the case of the applicant was approved for appointment on compassionate ground as Sorting Assistant in RMS 'N' Division, Cuttack. Accordingly, theoretical and practical training was imparted to the applicant. Instead of regularly appointing him, the applicant was engaged casually against a leave vacancy in HRO N Division, Cuttack from 1998. By filing OA No. 335/2002, he has sought a direction to the Respondents to absorb him regularly. The said OA was disposed of with some observation/direction; in a common order dated 8.7.2004 which order was challenged by the Respondent- Department before the Hon'ble High Court of Orissa in WP (C) No.11481/2004. During the pendency of the said Writ Petition, on similar issues Civil Appeal No.7773 of 2009 filed by the Union of India & Another -Vrs-M.Nallavan was disposed of on 30.7.2010 by the Hon'ble Supreme Court of India. Relevant portion of the order is quoted herein below:



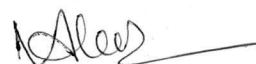
“In the circumstances, the appellants are directed to regularize the services of all the 202 respondents who are working in the Department against short term/leave vacancies with effect from their date of appointment. However, the respondents shall not be entitled for payment of any arrears on account of such regularization. But their pay and pensionary benefits are protected.”

2. Accordingly, the Writ Petition No. 11381 of 2004 was disposed of along with WP (C) Nos.11507, 11508 & 12115 of 2004 in a common order dated 28.9.2010 by the Hon'ble High Court of Orissa. Relevant portion of the order reads as under:

“.....During pendency of these writ petition's, a similar matter came up before the Hon'ble Supreme Court in a batch of Civil Appeals and the principal Civil Appeal Number is 7773 of 2009. On perusal of the judgment of the Madras High Court which was challenged before the Hon'ble Supreme Court as well as the judgment of the Hon'ble Supreme Court in the said SLP,. We find that these petitioners stand on the same footing as that of the respondents before the Hon'ble Supreme Court and prima facie we are of the view that the case of the petitioners is squarely covered by the judgment of the Hon'ble Supreme Court in the aforesaid Civil Appeal.

Accordingly, we set aside the order of the Tribunal impugned before us and direct the opposite parties specially opposite party Nos.2 and 3 to consider the case of the petitioners in the light of the judgment of the Hon'ble Supreme Court in the aforesaid case and pass necessary orders within a period of three months from the date of communication of this order.”

3. It is the case of the Applicant that in compliance of the aforesaid order of the Hon'ble High Court of Orissa his services were regularized only prospectively with effect from 27.7.2011 though as



per the order of the Hon'ble Apex Court and High Court he was entitled to be regularized retrospectively with effect from 9.6.1998. Further case of the Applicant is that by making representations one after the other i.e. on 19.11.2011, 8.10.2012, 7.11.2012 and 15.11.2012 he has prayed for regularization and seniority w.e.f. 9.6.1998 but the Respondents did not pay any heed to such request of the applicant, and therefore, by filing the present OA the applicant has prayed for direction to the Respondents to direct the Respondent Nos.1 & 2 to consider and dispose of the pending representations of the Applicant.

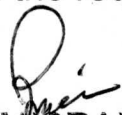
4. We have heard Mr.N.Sarkar, Learned Counsel for the Applicant and Mr.S.B.Jena, Learned Additional CGSC (on whom copy of this OA has been served) appearing for the Respondents and perused the materials placed on record.


5. Mr. S.B.Jena, Learned Additional CGSC expressed his inability to instantly throw light on the fate of the representations and the reason for non-disposal of the same till date. We prima facie, find the regularization of the Applicant prospectively is not in accordance with the order of the Hon'ble Apex Court, as quoted above.

6. As the representations of the applicant are pending, as submitted by Learned Counsel for the Applicant, without going into the nitty-gritty of the law, to avoid delay in dispensation of justice and

without expressing any opinion on the merit of the matter, the instant OA is disposed of, at this admission stage, with direction to the Respondent No.2 to take a decision on the grievance of the Applicant as raised in his representations which are stated to be still pending with him keeping in mind the orders of the Hon'ble Apex Court and Orissas High Court, quoted above, and communicate the same in a well-reasoned order to the Applicant within a period of 30(thirty) days from the date of receipt of copy of this order. If in the meanwhile any decision has already been taken on the grievance of the applicant as raised in his representations but not communicated the same may be communicated without any further delay. There shall be no order as to costs.

7. Copy of this order along with OA be sent to the Respondent No.2 by Speed Post by the Registry at the cost of the Applicant for which Learned Counsel for the Applicant undertakes to furnish the required postal requisite within three days.


(R.C. MISRA)
Member(Admn.)


(A.K. PATNAIK)
Member (Judl.)