

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 639 OF 2013
Cuttack, this the 23rd day of September, 2013

CORAM

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

.....

N. Ranjan Kumar,
aged about 44 years,
Son of Late Basudev Nayak,
At- Khandipal, PO- Pritipur,
P.S.- Binjharpur, Dist- Jajpur.

.....Applicant

Advocate(s) M/s. A.Swain, S.C.Mohanty, P.K.Mishra, N.C.Moharana.

VERSUS

Union of India represented through

1. The Secretary,
Ministry of Human Resources Department,
Shastri Bhawan,
New Delhi;
2. Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Institutional Area, Sector-62,
Dist. Gautam Budh Nagar,
Noida- 201307 (UP);
3. Deputy Commissioner,
Navodaya Vidyalaya Samiti,
House No. 1-1-10/3, Sardar Patel Road,
Sikandarabad-500003.
4. Principal,
Jawahar Navodaya Vidyalaya,
At/PO- Hotpeth, Dist- Yadgiri (Karnatak).

..... Respondents

Advocate(s).....

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ORDER (ORAL)

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

In this O.A. filed under Section 19 of the A.T. Act, 1985 on 06.09.2013, the applicant has prayed to quash the orders dated 01.02.1993 (under Annexure-A/7) and 27.09.2012 (under Annexure-A/13) and to direct Respondent No.2 to reinstate him in service as a Store Keeper with all consequential service benefits.

2. We have heard Mr. A. Swain, Ld. Counsel for the applicant, and perused the materials placed on record.

3. From the pleadings and in course of argument, it came to the notice of this Tribunal that earlier the applicant had approached this Tribunal in O.A. No. 668/06, which was disposed of on 04.12.2008. As the copy of the order of this Tribunal dated 04.12.2008 passed in O.A.No. 668/06 is not enclosed to this O.A., we have called for the records of the said O.A. and perused along with the materials placed in this O.A. It was seen that by filing O.A. No. 668/06 on 04.09.2006, the applicant has challenged the order dated 01.02.1993 withdrawing his appointment as Store Keeper in Jawahar Navodaya Vidyalaya as well as and the letter dated 29.10.2004 communicating the applicant regarding the rejection of his representation dated 10.03.1993 for his reinstatement to the post of Store Keeper with all consequential service benefits retrospectively. The Respondents filed their counter stoutly opposing the prayer made in that O.A. After in-depth hearing of the case, this Bench disposed of the said O.A. on 04.12.2008 with the following observation:

“ 6.The applicant has filed this Original Application seeking the aforesaid prayer by suppressing the fact of dismissal of his prayer

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earlier by the Hon'ble High Court of Delhi. Rather he has given certificate in column 7 of this OA that he has only approached the Hon'ble High Court of Orissa which has been disposed of with direction to take a decision on the appeal of the Applicant. By his conduct of suppression of fact before the Hon'ble High Court as also in this Tribunal, the Applicant is not entitled to any of the reliefs, rather this being a serious lapse he is liable to be prosecuted for committing Contempt of Court but we refrain from doing so by observing that equity helps those who approach the Court in clean hand but not the contrary and he having approached in un-clean hands is not entitled to any relief claimed in this OA which was rightly rejected by the Hon'ble High Court of Delhi. That apart it is the consistent stand of the Respondents that the appointment of the Applicant was not in accordance with Rules. As such, the Applicant is not entitled to any relief by applying the ratio of the decision of the Hon'ble Apex Court in the case of Ghaziabad Development Authority and another v Ashok Kumar and Another (2008) 1 SCC (L&S) 1016 that any appointment in violation of the Constitutional scheme as also the statutory recruitment rules, if any, is void.

7. Besides the above, Law is well settled that when a person is not vigilant of his rights and acquiesces with the situation, he has no right to claim any benefit U.P.JALNIGAM AND ANOTHER VS. JASWANT SIGNH AND ANOTHER, (2007) 1 SCC (L&S) 500. The case of the Applicant is squarely covered under this judgment.

8. In view of the above, we find no merit in this OA which stands dismissed by leaving the parties to bear their own costs."

4. It is also the case of the applicant that he has challenged the said order passed on 04.12.2008 in O.A.No. 668/06 before the Hon'ble High Court of Orissa in W.P.(C) No. 1781/09 but it has been stated that writ petition bears no appropriate relief (copy enclosed). Thereafter, he has filed RVWPET No. 74 of 2010, in which the Hon'ble High Court of Orissa vide order dated 24.02.2012 passed the following orders:



“We, therefore, dispose of this Misc. Case directing the Commissioner, Navodaya Vidyalaya Samiti- opposite party No. 2 to take such action as permissible under the rules considering the observation made by this Court in the order dated 27.08.2010, within a period of three months from the date of communication of this order. The petitioner, if so wants may produce a certified copy of this order before opposite party no. 2 for compliance.”

5. Respondents, in compliance of the aforesaid order of the Hon'ble High Court of Orissa, issued an office order dated 27.09.2012 after which the applicant filed CONTC No. 1960 of 2012 alleging non-compliance of the order of the Hon'ble High Court but the same was dropped vide order dated 05.03.2013. Again, the applicant moved a Misc. Application No. 78/13 (arising out of order dated 05.03.2013 in CONTC No. 1960/12) which was also disposed of on 17.04.2013. Relevant portion of the order is extracted below:

“We do not find any reason to modify/clarify the said order dated 05.03.2013. If the petitioner is prejudiced by the order rejecting his representation, it gives a fresh cause of action to the petitioner and it is open for the petitioner to take such recourse as available to him under law.”

Thereafter, the applicant has approached this Tribunal in the present O.A. We find that this Tribunal has earlier rejected the prayer for quashing the order dated 01.02.1993 in a well reasoned order dated 04.12.2008 (emphasis supplied), which has not been set aside or reviewed. Law is well settled that successive representation will not save the

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limitation, even if the order issued on representation by the order of the Court cannot save the limitation (**C. Jacob vrs Director of Geology & Mining & Another- AIR 2009 SC 264; Rabindra Nath Bose & Others vrs Union of India & Ors.**, AIR 1970 SC 470). Further, going through the prayer made in O.A.No. 668/06, which was rejected by this Bench vide order dated 04.12.2008, and the prayer made in the instant O.A., we have no hesitation but to hold that this O.A. besides merit is also hit by the law of constructive res judicata.

6. In the aforesaid circumstances, we find no reason to entertain this O.A. and hence this O.A. stands dismissed.

MEMBER (Admn.) 


MEMBER (Judl.)