

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.949 of 2013  
Cuttack, this the 16<sup>th</sup> day of July, 2014

S.B. Dora ..... Applicant

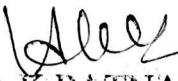
-Versus-

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?

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

  
(A.K.PATNAIK)  
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O. A. No. 949 of 2013

Cuttack this the 6<sup>th</sup> day of July, 2014

CORAM

THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)  
THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

.....

Sri Bhaskar Dora,  
aged about 45 years,  
Son of Sri S. Sanyasi Dora,  
At-Rampa Street, Gate Bazar,  
At/PO-Berhampur,  
P.S-Berhampur Town,  
Dist-Ganjam (Orissa).

...Applicant

(Advocates: M/s. A. Mishra, C.K. Das)

VERSUS

Union of India represented through

1. The Secretary to Government of India,  
Department of Revenue,  
Ministry of Finance,  
Government of India,  
New Delhi-1
2. Chief Commissioner of Income Tax,  
Orissa, Ayakar Bhavan, Central Revenue Building,  
Rajaswa Vihar, PO-Vani Vihar,  
Bhubaneswar.
3. Commissioner of Income Tax,  
15, Forest Park, Bhubaneswar.
4. Director of Income Tax (Investigation),  
Plot No.311, Saheed Nagar, Bhubaneswar.
5. Deputy Director of Income Tax,  
Gajapati Nagar, Berhampur,  
Dist-Ganjam.

... Respondents

(Advocate: Mr. S.B. Jena)

*Alley*

ORDER

**A.K. PATNAIK, MEMBER (JUDICIAL):**

This is the second round of litigation filed by the applicant seeking direction to the Respondents to engage him in any of the post available with the opposite party.

2. Heard Mr. A. Mishra, Ld. Counsel appearing for the applicant and Mr. S.B. Jena, Ld. Addl. CGSC appearing for the Respondents on whom copy of this O.A. has been served.

3. Mr. Mishra's contention is that though, it is a settled position of law that one casual hand cannot be substituted by another casual hand, the Respondents despite the specific order of the Hon'ble High Court of Orissa dated 11.07.2005 in W.P. (C) No.461 of 2003, did not provide him any engagement, even on casual basis, while managing the said work through outsiders. Therefore, this is a fit case in which this Hon'ble Tribunal should entertain the O.A. and issue appropriate direction to the Respondents to engage him in any post available under them.

4. This was stoutly opposed by Mr. Jena by stating that in terms of the direction of Hon'ble High Court dated 11.07.2005 in W.P. (C) No.4601/03 this O.A. is not maintainable and therefore the same is liable to be dismissed.

5. Having heard the parties we have perused the averments made in the O.A. and the materials placed in support there of, including the order of the Hon'ble High Court of Orissa dated 11.07.2005 in W.P. (C) No.4601 of 2003. We find that the present applicant earlier approached this Tribunal in O.A. No.543/2001 alleging ~~highhanded~~ <sup>h</sup> action of the Respondents Department in dis-engaging him from his casual engagement

*Allee*

w.e.f. 01.04.1994 and alleging inaction in giving due consideration to his repeated representations, with prayer as in the aforesaid case. This Tribunal dismissed the said O.A. vide order dated 25.10.2012 which was challenged by the applicant before Hon'ble High Court in W.P. (C) 4601/2003. The Hon'ble High Court of Orissa after taking note of the provisions of Section 14(1) of A.T. Act, 1985 disposed of the matter vide order dated 11.07.2005.

The relevant portion of the order is quoted here in below:-

"Perusal of the above quoted provision shows that the Tribunal has jurisdiction to deal with the matters in relation to the recruitment, and matters concerning recruitment to any all India Service or to any Civil Service of the Union or a Civil Post under the Union and also all service matters concerning number of all India Services or a person not being a member of All India Service but appointed to any Civil Service of Union or Civil Post under the Union. A casual worker can neither be said to be a holder of a Civil post nor can be said to be a member of any service under the Union. The petitioner was engaged only as a casual Sweeper on daily wage basis and hence his disengagement was not liable to be scrutinized by the Tribunal under the Act. Therefore, we have no hesitation to say that the impugned order of the Tribunal entertaining the O.A. and dismissing the same observing that it is time barred is without jurisdiction.

Before this Court, the petitioner has not only challenged the impugned order passed by the Tribunal but also prayed for a writ of mandamus directing the opposite parties to reinstate the petitioner in service from the date of his termination/preventing time to work (27.04.1993), to pay back wages and to regularize the petitioner in service.

The petitioner was disengaged in the year 1994. At this stage neither it can be directed to the opposite parties to reinstate the petitioner or to pay back wages nor any direction to regularize him in service can be issued. At the most the opposite parties may be directed to consider his case for reengagement whenever service of a casual sweeper is required in the Department.

In view of the above facts and circumstance of the case, the writ application is allowed in part. The impugned order passed by the Central Administrative Tribunal in O.A. No.543 of 2001 is quashed as the same is without the jurisdiction. A writ in the nature of mandamus be issued commanding the opposite parties to consider the

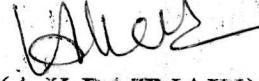


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reengagement of the petitioner on priority basis whenever service of a casual Sweeper is required in future."

6. In view of the observation and direction of the Hon'ble High Court of Orissa this Tribunal lacks jurisdiction to entertain this O.A. so as to decide this matter on merit. Accordingly, this O.A. stands dismissed being without jurisdiction. There shall be no orders as to costs.

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

  
(A.K.PATNAIK)  
Member (Judicial)