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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 3260/00150 of 2014
Cuttack this the 22nd day of July, 2014

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

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Baburam Jena, aged about 32 years, S/o. Bharat Chandra Jena permanent resident of At-Sardar Kharada, Po. Badasamantpur, Via-Charbatia, PS-Choudwar, Dist. Cuttack at present working as Mali working under Aviatio Research Centre (in short ARC), At/Po. Charbatia, Dist. Cuttack.

...Applicant

(Advocates: M/s. A.K.Mishra, N.R.Routray, Smt. J. Pradhan, T.K.Choudury, S.K.Mohanty)

VERSUS

Union of India represented through -

1. The Special Secretary, Aviation Research Centre, O/O the Director General of Security, Cabinet Secretariat, Block-V (East), R.K.Puram, New Delhi-110 066.
2. Joint Deputy Director-A, Aviation Research Centre (ARC), Po. Charbatia-754028, Dist. Cuttack, Odisha.
3. Director (A), Aviation Research Centre, At/Po. Charbatia, Dist. Cuttack.

... Respondents

(Advocate: Mr. S. B.Jena)

O R D E R

(Oral)

A.K. PATNAIK, MEMBER (JUDICIAL):

The applicant stating to have been working under the Respondent No.2 on casual basis since 2002 has filed this Original Application U/s. 19 of the A.T. Act, 1985 praying for quashing the order dated 02.11.2011 rejecting his representation for regularization with direction to the Respondents to regularize

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him into service in which notices were issued on 18.3.2014 to file their counter if any. By filing MA No. 397 of 2014, Respondents have prayed for more time to file counter which has been listed today for consideration. While considering the prayer made in the MA I have also heard on the OA especially on the question of maintainability of this OA before this Tribunal in view of the specific order of the Hon'ble High Court of Orissa **dated 11.7.2005 in WP (C) No. 4601 of 2003 (S.Bhaskar Dora-Vrs-Union of India and Others).** Mr.N.R.Routray, Learned Counsel for the Applicant was praying for some time to argue on this aspect but on repeated questions whether in the meantime the aforesaid order of the Hon'ble High Court of Orissa has been modified/reversed and/or set aside by the Hon'ble Apex Court he did not throw any light on the same. On the other hand, Mr.S.B.Jena has submitted that in view of the order of the Hon'ble High Court of Orissa this Tribunal lacks jurisdiction to entertain this OA and has accordingly prayed for dismissal of the same. Had the order of the Hon'ble High Court of Orissa, referred to above, come to the notice on the date when the matter was admitted, the OA could not have been admitted by this Tribunal. The Petitioner before the Hon'ble High Court of Orissa in **WP (C) No. 4601 of 2003 (S.Bhaskar Dora-Vrs-Union of India and Others) had filed OA No. 543 of 2001 before this Tribunal claiming that he was engaged as a casual sweeper under the Opposite Parties in the year 1993 and was disengaged on 01.05.1994 by the Respondents which was heard and dismissed by this Tribunal being grossly time barred. He challenged the said order of this Tribunal before the Hon'ble High Court of Orissa**



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in WP (C) No. 4601 of 2003 which was heard and disposed of on 11.07.2005.

Relevant portion of the order is quoted herein below:

“The question has arisen before this Court as to whether the Tribunal has jurisdiction to entertain the OA against the disengagement of the petitioner a casual Sweeper engaged on daily wage basis. In this regard the provisions of section 14 (1) of the Act are reproduced as under:

Jurisdiction, powers and authority of the Central Administrative Tribunal (1) –Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to -

- (a) Recruitment and matters concerning recruitment, to any All India Service or to any Civil Service of the union or a Civil Post under the Unjoin or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) All service matters concerning -
 - i. A member of any All India Service; or
 - ii. a person [not being a member of an All India Service or a person referred to in clause (C)] appointed to any Civil Service of the union or any Civil post under the union; or
 - iii. a civilian [not being a member of an All India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence; and pertaining to the service of such member, person or civilian, in connection with the affairs of the union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation (or society) owned or controlled by the Government.
- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub clause (ii) or Sub clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any Corporation (or society) or other body, at the disposal of the Central Government for such appointment.

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

2. The Hon'ble High Court of Orissa, after taking note of the provision of the A.T. Act, 1985, quashed the order of this Tribunal holding that **the same was without jurisdiction** and consequently, in exercising the power under Article 226 of the Constitution of India issued mandamus to the Department concerned to consider the reengagement of the petitioner therein, on priority basis, whenever



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service of a casual Sweeper is required in future. The said order of the Hon'ble High Court of Orissa is binding on this Tribunal. It is trite law that where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non-est and void ab initio. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. Since this Tribunal lacks jurisdiction granting time as prayed for by the Respondents to file counter by way of keeping this matter pending will be detrimental to the interest of the Applicant. As the applicant is claiming to have been continuing on casual basis and prays for direction to the Respondents for his regularization, following the order of the Hon'ble High Court of Orissa (supra) I hold that this Tribunal lacks jurisdiction to decide this matter. Hence this OA stands dismissed being without jurisdiction. There shall be no order as to costs.



(A.K.PATNAIK)
Member (Judicial)