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# CENTRAL ADMINISTRATIVE TRIBUNAL
# CUTTACK BENCH, CUTTACK

**O. A. No. 260/00233 OF 2014**
**Cuttack, this the 28th day of August, 2014**

Suryakanta Ojha ..... Applicant

-Versus-

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

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

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

(A.K.PATNAIK)
Member (Judicial)

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**O. A. No. 260/00233 OF 2014**
**Cuttack, this the 28th day of August, 2014**

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

.....

Suryakanta Ojha,
Aged about 43 years,
Son of Sudarshan Ojha,
At/PO- Jagannathpur, District- Khurda, (Odisha),
At present working as Mali in the office of Director,
Institute of Minerals & Materials Technology,
Acharyavihar, Bhubaneswar, Dist- Khurda.

.....Applicant

Advocate(s)... M/s. A.Mishra, M.S.Swarup

**VERSUS**

Union of India represented through

1. Secretary of State for Science & Technology
and Earth Science & Vice-President
CSIR, (Council of Scientific & Industrial Research),
At- Anusandhan Bhawan-2, Rafi Marg,
New Delhi-110001.

2. Director General,
CSIR, (Council of Scientific & Industrial Research),
At- Anusandhan Bhawan-2, Rafi Marg,
New Delhi-110001.

3. Director,
Institute of Minerals & Materials Technology,
Bhubaneswar- 751013.

..... Respondents

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

# ORDER

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

The case of the Applicant, in nut shell, is that the applicant joined as Mali under the Respondent No.2 through a contractor and although he has been continuing as such under the Respondents and as per the extant scheme he is entitled to be conferred with temporary status consequently regularization despite repeated representations his case has not received due consideration thereby he has been continuing at the tenterhook of contractor/Respondents. Hence he has filed this OA praying for direction to the Respondents to regularize his service in the post of Mali and give him all consequential service and financial benefits and/or in the alternative direct the Respondents to consider his case for grant of temporary status on the basis of CSIR casual worker's absorption scheme with temporary status from 1994.

2. Respondents have filed their counter in which it has been stated that the applicant along with 139 others through their Union had raised Industrial dispute which was registered as Tr ID Case No. 148/2001. The said dispute was then referred for adjudication to the CGIT, Bhubaneswar by the Ministry of Labour, Government of India vide order dated 7.11.1997. The schedule of reference was whether the action of the management of Regional Research Laboratory not regularizing the workmen after completion of more than 240 days service till 26.3.1995 is legal and justified? If not what relief the workmen are entitled to. The CGIT vide its order dated 30th July, 2001 held that the Union has failed to establish that the workmen have worked for more than 240 days and the workmen are not entitled to any relief. Therefore, the claim of applicant for regularization absorption and conferment of temporary status has already set at rest which fact has been suppressed by the applicant in this OA. Thereafter, the

applicant along with 08 others have filed a joint representation dated 06.03.2014 before the Assistant Labour Commissioner (Central) (ALC), Bhubaneswar on the same matter. The ALC has issued notice dated 10.03.2014. The management has already filed written reply before the ALC which fact has been suppressed by the applicant. Therefore, when the matter is under consideration before the ALC this OA is not maintainable before this Tribunal. The applicant was engaged through contractor and not directly through the Respondents. Since the engagement of the applicant through contractor and there is no master and servant relationship of the applicant and Respondents, this OA is not maintainable. On the above grounds, Respondents have prayed for dismissal of this OA.

3. Heard Mr.A.Mishra, Learned Counsel for the Applicant and Mr.S.B.Jena, Learned Additional CGSC appearing for the Respondents. We find that except bald statement no substantiating material has been filed in support thereof that the applicant was engaged directly by the employer/Respondents and not through service provider. Possibly because as the applicant was engaged through service provider, ID dispute was raised before the competent forum but the pleadings of the applicant are silent about the fact that the matter is under subjudice. Law is well settled that those who attempts to pollute the stream of justice or who touches the pure function of justice with tainted hand by stating falsehood, misrepresentation and suppression of facts is not entitled to any relief (Ref.**Abhyudya Sanstha Vrs Union of India and others**, 2011 (4) Supreme 148 (para-16)). Be that as it may, since no material has been filed by the applicant that he was engaged directly through the employer and not by the service provider the Tribunal has no jurisdiction more so when the matter is under subjudice before the appropriate forum having jurisdiction. All the more, the Hon'ble

High Court of Orissa in **WP (C) No. 4601 of 2003 (S.Bhaskar Dora-Vrs-Union of India and Others)** disposed of on dated 11.07.2005 after examining the provisions of the A.T. Act, 1985 have been pleased to hold that persons working on casual basis is also not maintainable before this Tribunal. Relevant portion of the order dated 11.07.2005 in **WP (C) No. 4601 of 2003 (S.Bhaskar Dora-Vrs-Union of India and Others)** of the Hon'ble High Court of Orissa is extracted 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:
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> **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 maters 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.

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."

4. In view of the discussions made above and the law laid down by the Hon'ble High Court of Orissa referred to above, we hold that this Tribunal lacks jurisdiction to entertain and decide this matter. Hence, this OA stands dismissed being without jurisdiction. There shall be no order as to costs.

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

(A.K.PATNAIK)
Member (Judicial)