

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 260/000029/2014
CUTTACK, THIS THE 30th DAY OF JANUARY, 2014

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

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Maheswar Maharana,
Aged about 58 years,
S/o Late Jadab Maharana,
At/PO- Similiguda, Dist – Koraput,
Presently working as P.A. (on leave),
Nandapur S.O., Dist- Koraput.

.....Applicant

(Advocate(s) : M/s. D.P.Dhalsamant, N.M.Rout)

VERSUS

Union of India Represented through

1. Director General of Posts,
Govt. of India, Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist.- Khurda-751001.
3. Director Postal Services,
O/o- Post Master General,
Berhampur Region, At/PO-Berhampur,
Dist- Ganjam.
4. Senior Superintendent of Post Offices,
Koraput Division, At/PO-Jeypore
Dist.- Koraput- 764001.

... Respondents

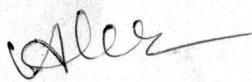
Advocate(s)..... Mr. S. B. Jena.

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ORDER (ORAL)

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

Heard Mr.D.P.Dhalsamant, Ld. Counsel for the applicant. Copy of this OA has been served on Mr.S.B.Jena, Learned Additional CGSC for the Union of India who accepts notice for the Respondents. Registry is directed to serve notice, in terms of sub rule 4 of Rule 11 of the CAT (Procedure) Rules, 1987 for onward transmission.



2. The applicant, challenging his order of transfer dated 28.03.2013, to Mathili earlier approached this Tribunal in OA No. 510 of 2013 which was disposed of on 30th July, 2013 with the following order/direction:

“5. In view of the above, without expressing any opinion on the merit of the matter, we quash the order under Annexure-A/7 dated 3.6.2013 and remit the matter to the Respondent No.3 to give a fresh look to the grievance raised by the Applicant in his representation dated 8.4.2013 in Annexure-A/4 and communicate the decision to the applicant in a well reasoned order within a period of sixty days from the date of receipt of copy of this order.”

3. It is the case of the applicant that he has submitted representation on 8.4.2013 to Respondent No.3 i.e. Director Postal Service Office of the PMG, Berhampur Region, Dist. Ganjam and accordingly direction was to Respondent No.3 to dispose of the representation, Director Postal Services, Sambalpur Region, Sambalpur (who is not a party in this OA also) in gross violation of the direction of this Tribunal considered and rejected the representation in letter dated 2nd January, 2014 which is highly illegal, arbitrary and contrary to the order of this Tribunal. Hence by filing this O.A. for the second time the applicant has prayed to quash his order of transfer of transfer dated 28.03.2013 and the order of rejection dated 02.01.2014 and to direct the Respondents to allow him to work at his option places or any nearby station.

On the other hand Mr.Jena submitted that he has no instruction under what circumstances the Director Postal Services, Sambalpur Region, Sambalpur considered and rejected the representation when the direction of this Tribunal was to the Director Postal Services, Berhampur Ganjam. However, he has submitted that he apprehends that the Director of Postal



Services, Sambapur might have been kept in charge of the Berhampur, Ganjam when the said order was passed.

4. On perusal of records we find that in the said order of transfer dated 28.3.2013 one Shri P.C.Majhi was posted in place of the applicant at Nandapur but he has not been made as party in this OA although the applicant has sought to quash his transfer to Mithali SO. Be that as it may the order of rejection dated 2nd January, 2014 does not ex facie show that the Director Postal Services, Sambalpur was in charge of the Director Postal Services, Berhampur Ganjam also.

5. The Hon'ble Apex Court in **Satyadhyan Ghosal & Ors Vrs Smt. Deorajin Debi & Anr**, AIR 1960 SC 941 explained the scope of principle of res judicata observing as under:

“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. **When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again.** This principle of res judicata is embodied in relation to suits in S.11 of the Code of Civil Procedure; but even where S.11 does not apply; the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. **The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.**”

Similar view has been reiterated by the Hon'ble Apex Court in the case of **Bhanu Kumar Jain Vrs Archana Kumar & Anr**, AIR 2005 SC 626.

Allee

In Hope Plantations Ltd. Vrs Taluk Land Board, Peermade

& Anr, (1999) 5 SCC 590 the Hon'ble Apex Court has explained the scope of finality of the judgment observing as under:

“One important consideration of public policy is that the decision pronounced by Courts of competent jurisdiction should be final, unless they are modified or reversed by the appellate authority and other principle that no one should be made to face the same kind of litigation twice ever because such a procedure should be contrary to consideration of fair play and justice. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. **When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it.**”

In Union of India Vrs K.M.Shankarappa (2001) 1 SCC

582, the Hon'ble Apex Court deprecated the practice of interfering by the executives without challenging the court order before the superior forum observed as under:

“The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structure of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. The executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.”

6. In view of the facts and law stated above, we do not appreciate the enthusiasm shown by the Director of Postal Service, Sambalpur to consider and reject the representation of the applicant when the direction of this Tribunal in the earlier OA was to the Director of Postal Service,

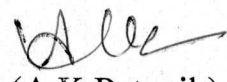
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Berhampur to consider the representation of the applicant. In the above circumstances, we quash the order dated 2nd January, 2014 and direct the Respondent No.3 i.e. Director Postal Services, Office of the Postmaster General Berhampur Region, Ganjam to consider, the representation of the applicant dated 8.4.2013 of the applicant in compliance of the earlier order of this Tribunal and communicate the result thereof in a well reasoned order to the applicant within a period of thirty days from the date of receipt of copy of this order and until such consideration and communication, as directed above, no coercive action shall be taken against the applicant.

7. With the aforesaid observation and direction this OA stands disposed of. No costs.

8. If applicant furnishes postal requisite, copy of this order be sent to Respondent Nos. 2 to 4 for compliance by the Registry.

(R.C.Misra) 
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)