

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00131/2017

DATED THIS THE 12TH DAY OF MARCH, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

M.P.M. SIVKUMAR,
Son of Late Veeraiah,
Aged about 65 years,
Retired Dy. Chief Labour
Commissioner (Central) Bhubaneswar,
Residing at No. 134, 1 Main MLA colony,
R.T. Nagar, Bangalore – 560 032

.....Applicant

(By Advocate M/s Paanchajanya & Associates)

Vs.

1. Union of India,
Represented herein by its Secretary,
Ministry of Labour and Employment,
“Shram Shakti Bhavan”, Rafi Marg,
New Delhi – 110 001.

2. Chief Labour Commissioner (Central),
Ministry of Labour and Employment,
“Shram Shakti Bhavan”, Rafi Marg,
New Delhi – 110 001.

3. Dy. Chief Labour Commissioner (Central),
Plot No. N-7, behind ISKON Temple,
Bhubaneswar-751001

4. Dr. D. Chaudhuri,
Dy. Director General-cum-Inquiry Officer,
Ministry of Labour & Employment,
New Delhi – 110 001.

....Respondents

(By Shri M. V. Rao, Senior Panel Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is in a very small compass. The case in short is that when Annexure-A1 notification for employment was issued in Clause (iv) it was noted that the upper age limit will be relaxed subject to the production of requisite certificate required for respective age relaxation by three years for OBC candidates and some other features. The charge against the applicant is that he had engaged services of one Shri Prasanna Kumar Behera who was actually working with them on a temporary basis on the basis of the service rendered by him. This according to us is also a correct view as the Hon'ble Apex Court time and again held that such service rendered by a temporary employee must be advanced to his credit so that he will not then be affected by the parameters of age and its obstacles.

2. The applicant would say that he had consulted the standing counsel of the department and he had opined that such relaxation can be given. The applicant also says that thereafter he had consulted the superior officer who had also apparently held that such relaxation can be given and in fact such relaxation was given and Shri Prasanna Kumar Behera was appointed.

3. Apparently later on this matter was taken up and Shri Prasanna Kumara Behera was summarily dismissed from service. The applicant was also issued with a memorandum following which he had preferred a reply. The Disciplinary Authority vide No. Adm-II/23(06)/2010 dated 29.06.2011 imposed a punishment of warning on him just previous to his date of retirement.

4. Anyhow Shri Prasanna Kumar Behera had challenged his dismissal in OA No. 552 & 618/2011 and vide order dated 11.01.2016 his dismissal order was set aside by the Tribunal at Cuttack. Thereafter the respondents took up

the matter in WP (C) No. 4447/2016 wherein it was held "*It is directed that the impugned order dated 11.01.2016 passed by the Tribunal in OA No. 552 of 2011 be implemented without prejudice the rights and the contention raised by the petitioner in the present case.*" Therefore Shri Prasanna Kumar Behera was taken back into service and he is still serving.

5. Thereafter on the same ground vide No. C-11021/30/2010-CLS-II(Vig.) dated 10.03.2014 a memorandum of charge was issued on the applicant on the very same charges on which had been punished earlier also. Now the question is that, can there be a double jeopardy?

6. The learned counsel would say that *ab initio* no such charge can lie for the very simple reason that admittedly such age relaxation can be given based on the Hon'ble Apex Court judgment. This was concretized when the standing counsel of the department gave an opinion that such age relaxation can be given. Thereafter the applicant had discussed this matter with the superior officer and following their advice only such age relaxation can be given following which without advertizing to issuance of a notice Shri Prasanna Kumar Behera was summarily dismissed from service holding that such age relaxation cannot be given by the department. When this was challenged, all these matters were available to the respondents to be taken up. If they had not taken it up then the rule of res judicata will apply against them. This entered in failure in the Tribunal thereafter it was taken up in the Hon'ble High Court where also the department failed. Thereafter Shri Prasanna Kumar Behera was taken back into service and even now he is still in service. Whether such an age relaxation can be given or not had not been conclusively answered by the respondents even today other than through a charge sheet issued to the applicant. We queried the learned counsel for the respondents as to whether any charge

sheet of a similar nature on the same issue has been issued to Shri Prasanna Kumar Behera, apparently such a charge sheet has not been issued to him. Therefore we hold that there is no ground on which the charge can be allowed to be sustained. On twin grounds that there cannot be a charge of age relaxation being granted because age relaxation was granted on the basis of Hon'ble Apex Court judgment which held that temporary service period can also be taken into account for deciding age relaxation. This was opined by the standing counsel of the department it was also agreed to by the superior officer therefore no such charge can lie. Even otherwise also, after having punished him with a warning, even though that warning may not be one of the sustainable punishment under rule, still it is a punishment. Therefore there cannot be two punishments for one infraction. Therefore the charge sheet Annexure-A11 is hereby quashed.

7. The OA is allowed. Benefits that follow to be made available to the applicant within two months next. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00131/2017

Annexure-A1: Copy of the Notification bearing No. 70 (22)/2009 A.1 dated 17.07.2009

Annexure-A2: Copy of the OM dated 21.12.1998

Annexure-A3: Copy of the CAT, Bombay Bench judgment printed in Swamys News July, 2011

Annexure-A4: Copy of the letter dated 15.12.2009

Annexure-A5: Copy of the letter dated 21.04.2010

Annexure-A6: Copy of the letter dated 05.05.2010

Annexure-A7: Copy of the letter dated 21.05.2010

Annexure-A8: Copy of the letter dated 06/07.06.2011

Annexure-A9: Copy of the letter dated 09.06.2011

Annexure-A10: Copy of the letter dated 29.06.2011

Annexure-A11: Copy of the charge memo bearing No. C-11021/30/2010-CLS (Vig.) dated 10.03.2014

Annexure-A12: Copy of the reply dated 21.03.2014

Annexure-A13: Copy of the order bearing No. C-11021/30/2010-CLS dated 10.03.2014

Annexure-A14: Copy of the letter dated 20.05.2015

Annexure-A15: Copy of the Daily Order Sheet dated 20.05.2015

Annexure-A16: Copy of the OM dated 27.11.2014

Annexure-A17: Copy of the office order dated 31.05.2011

Annexure-A18: Copy of the order of CAT, Cuttack Bench in OA No. 552/2011

Annexure-A19: Copy of the order of Hon'ble High Court of Orissa in WP No. 4447/2016

Annexures with Reply Statement:

Annexure-R1: Copy of extract of service book of Shri Prasanna Kumar Behera

Annexure-R2: Copy of the letter dated 18.10.2010 along with its enclosures

Annexure-R3: Copy of the letter No. Adm-II/23(06)/2010 dated 31.05.2011

Annexure-R4: Copy of order bearing No. C-11021/30/2010-CLS II(Vig.) dated 10.03.2014

Annexure-R5: Copy of order bearing No. C-11021/30/2010-CLS II(Vig.) dated 28.04.2014

Annexure-R6: Copy of order bearing No. C-11021/30/2010-CLS-II(Vig.) dated 20.06.2017

Annexure-R7: Copy of the letter No. Adm-II/23(06)/2010 dated 22.02.2010

Annexure-R8: Copy of the letter No. Adm-II/23(06)/2010 dated 05.05.2010

Annexure-R9: Copy of the Notification dated 16.12.1983

Annexure-R10: Copy of the OM No. 013/LBR/034/235931 dated 07.01.2014

Annexure-R11: Copy of the letter dated 21.03.2014

Annexure-R12: Copy of the order of CAT, Cuttack Bench in OA No. 552/2011

Annexure-R13: Copy of the order of Hon'ble High Court of Orissa in WP No. 4447/2016

Annexure-R14: Copy of note sheet dated 04.01.2013
