

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/4/2012

Date of Reserve:25.02.2019

Date of Order: 28.03.2019

CORAM:

HON'BLE MR.GOKULA CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Ramakanta Naik, aged about 39 years, S/o.late Subal Naik, At-Badagada, Nuasahi, PO/FS-Badagada, Bhubaneswar-18, District-Khurda.

...Applicant

By the Advocate(s)-M/s.S.Palit

A.K.Mahana

A.Mishra

A.Kejriwal

-VERSUS-

Union of India represented through:

1. The Principal Accountant General, Orissa, Bhubaneswar, District-Khurda.
2. Deputy Accountant General (Admn.), Office of the Principal Accountant General, Orissa, Bhubaneswar, District-Khurda.
3. Senior Accounts Officer (Admn.-1), Office of the Principal Accountant General, Civil Audit, Odisha, Bhubaneswar, District-Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section, 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To direct the Respondents to appoint the applicant in the post of Sweeper-cum-Safaiwala as per the earlier orders of the Hon'ble Courts.
- ii) To direct the Respondents to appoint the present applicant in the post of Sweeper-cum-Safaiwala or in a similar post as a Multi – Tasking Staff.
- iii) To declare the letter dated 04.05.2010 as illegal, bad in the eye of law and that the same is not applicable so far as the present applicant's case is concerned as per the earlier

direction of this Hon'ble Court and the Hon'ble High Court, as mentioned in Annexures-A/1, A/2 and A/3.

iv) Quashing of the Advertisement under Annexure-A/5 and the list of the short-listed candidates under Annexure-A/7, declaring the same as illegal and bad.

v) Any other orders.

2. The genesis of the grievance of the applicant is that his father was working as Sweeper-cum-Safaiwala under the Accountant General, Orissa, Bhubaneswar. While working as such, he got the reduced vision and hearing trouble, as a result of which, he had applied for invalidation retirement in the year 1991. However, in the process, it took some time and on completion of the necessary formalities, the father of the applicant retired from service on invalidation ground with effect from 14.01.1993 having left around two years of service till the date of retirement on superannuation. Thereafter, he made an application seeking compassionate appointment in favour of his son, the applicant in the present O.A. and since it did not yield any fruitful result, he approached this Tribunal in O.A.No.25 of 1996. This Tribunal, vide order dated 25.01.1999 disposed of the said O.A. in the following terms:

“...In consideration of all the above and especially because of the delay in accepting his retirement on invalidation, we direct the respondents that the case of the son of the petitioner, Ramakanta Naik should be considered for a post of Sweeper in the office of Respondent No.1. This will not be a case of compassionate appointment, but in the next vacancy coming up in the post of Sweeper the case of the petitioner's son Ramakanta Naik should be considered along with other candidates taking into account the facts in his favour as have been mentioned in this order”.

3. Since the aforesaid direction was not carried out, this gave rise to C.P.No.63 of 1999 which was disposed of by this Tribunal vide order dated 1.11.2000 which reads as follows:

"7....We however, take note of the fact that the alleged contemnors have stated that as and when they fill up the post of Sweeper-cum-Safaiwala the case of the petitioner's son will be taken into consideration by them in the light of our order dated 25.1.1999. In consideration of this, we are not inclined to issue any further direction to the alleged contemnors.

8.The Contempt Petition is accordingly disposed of".

4. The respondents, challenging the orders of this Tribunal dated 25.1.1999 in O.A.No.25/1996 as well as the order dated 1.11.2000 in C.P.No.63 of 2000 approached the Hon'ble High Court of Orissa in O.J.C.No.3686 of 2001. The Hon'ble High Court of Orissa, vide order dated 13.04.2009 disposed of the said OJC, which reads thus:

"We have heard the matter. It is as simple as it looks. Here is the question of compassionate employment of an employee who retires because of invalidation.

Learned Tribunal issued certain directions in favour of the petitioner and we do not see that opposite parties have not given effect to the same. Moreover, in case the son of the petitioner has not been given appointment till date it is only because the order was like that whenever vacancy will occur his case shall be considered at par with other candidates in consonance of the direction of the learned Tribunal.

However, we are not inclined to interfere with the decision of the learned Tribunal.

The writ petition dismissed accordingly".

5. While the matter stood thus, an advertisement for recruitment to the posts in PB-1 (Grade Pay Rs.1800) was made by the Respondent-Department in the Employment News dated 24 – 30th July, 2010 and it was indicated therein that the number of vacancies including reserved vacancies are tentative only and may increase or decreased which also include 09 posts of Safaiwala(Sweeper). Having come to know about the aforesaid advertisement,

the applicant submitted a representation dated 20.8.2010 to the authorities concerned with a prayer for consider him against the vacant post of Safaiwala(Sweeper) as per the orders of this Tribunal as well as the Hon'ble High Court of Orissa. According to applicant, a list of short listed candidates was published in which his name did not figure. Being aggrieved, he has approached this Tribunal in the instant O.A. praying for the reliefs as mentioned above.

6. The ground mainly on which the applicant has sought for relief is that in the previous litigations before this Tribunal and the Hon'ble High Court, it was all along the stand point of the respondents that there was no vacancy in the post of Sweeper and since the direction of this Tribunal was to consider him for a post of Sweeper in the office of Respondent No.1 in the next vacancy coming up, as and when they fill up the post of Sweeper-cum-Safaiwala the case of the applicant will be taken into consideration by them in the light of our order dated 25.1.1999 in O.A.No.25/1996. Therefore, the applicant has pleaded that since the vacancy in the post of Safaiwalla(Sweeper) as per advertisement vide A/5 is sought to be filled up by the respondents, his case ought to have been considered by them in obedience to the orders of this Tribunal and the Hon'ble High Court of Orissa and as such keeping his name away from the short listed candidates is illegal, arbitrary and show a complete disobedience to the orders passed by the judicial fora.

7. Per contra, respondents have filed a detailed counter. The main thrust of the counter is that as per Headquarters letter No.496-NGE(APP)/30-209 dated 04.05.2010 (R/1), it has been decided to keep the direct recruitment to the post of Sweeper out of the purview of the current recruitment. According to respondents, despite this specific instructions from the Headquarters office,

it was unfortunate that the same could not be paid due attention even it had been issued prior to the advertisement made in the Employment News vide A/5. Hence, it is the case of the respondents that there being no existence of the post of Sweeper/Suffaiwala, the question of consideration of the request of the applicant in pursuance of the direction of this Tribunal does not arise.

8. Applicant has filed rejoinder to the counter, inter alia, bringing to the notice of this Tribunal if at all it is true that a decision had been taken by the Headquarters office to keep the post of Sweeper out of the purview of the current recruitment, it was incumbent on their part to issue a corrigendum to the advertisement made vide A/5 eliminating post of Sweeper from the purview of direct recruitment and having not done so, it cannot be said that there does not exist the post of Sweeper/Safaiwala. In other words, it is the contention of the applicant that the aforesaid instructions stated to have been issued by the Headquarters Office vide R/1 in the absence of any corrigendum to the advertisement being issued, cannot be taken note of by this Tribunal or read into the advertisement in place of corrigendum, as the same may have the dual implications. In other words, what the applicant wants to canvass is that in the garb of headquarters office letter at R/1, the respondents deliberately and intentionally want to frustrate the orders of this Tribunal as upheld by the Hon'ble High Court.

9. We have heard the learned counsels for both the sides and perused the records.

10. At the outset, we would like to note that it is quite inconceivable to agree with the contentions of the respondents that there does not exist any vacancy in the post of Sweeper since 25.1.1991 when this Tribunal disposed of O.A.No.25 of 1996. Secondly, in the face of there being apparent error in the

advertisement made vide A/5 for filling up of post of Safaiwalla(Sweeper) which according to them ought to have been kept out of the purview of direct recruitment on the basis of decision taken by the Headquarters office, it is not known as to why the respondents on being confronted with the said instructions, did not issue a corrigendum eliminating the post of Safaiwalla(Sweeper) from the purview of direct recruitment. Since the recruitment to the post of Safaiwalla (Sweeper) on direct recruitment basis as per the advertisement made vide A/5 holds good, it was unjust and improper on the part of the respondents not to consider him for the said post in pursuance of the direction of this Tribunal as referred to above. In view of this, we direct the respondents to consider the case of the applicant against one of the post of Safaiwala(Sweeper) as per advertisement made vide A/5 as directed by this Tribunal in O.A.No.25 of 1996, which has not yet been filled up in pursuance of the interim direction of this Tribunal dated 04.01.2012 and pass an appropriate orders within a period of three months from the date of receipt of this order.

11. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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