

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00496/2017

Reserved on: 14.01.2020

Pronounced on: 16.01.2020

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Dr. Janardan Sharma, son of Sri Krishna Sharma, Youth Coordinator, Nehru Yuva Kendra, Bhojpur, Ara (Bihar), Resident of Flat No. M-1/3, Road No.- 11, P.O.- Rajendra Nagar, P.S.- Kadamkuan, District- Patna- 800016 (Bihar).



.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Youth Affairs & Sports, Shastri Bhawan, New Delhi- 110001.
2. The Director General, Nehru Yuva Kendra Sangathan, 2nd Floor, Core-IV Scope Minar, Lakshmi Nagar, District Centre, Vikash Marg, Delhi- 110092.
3. The Director (Personnel), Nehru Yuva Kendra Sangathan, 2nd Floor, Core-IV, Scope Minar, Lakshmi Nagar, District Centre, Vikash Marg, Delhi-110092.
4. The Executive Director, Nehru Yuva Kendra Sangathan, 2nd Floor, Core-IV, Scope Minar, Lakshmi Nagar, District Centre, Vikash Marg, Delhi- 110092.

.... Respondents.

By Advocate: - Shri Bindhyachal Rai

ORDER

Dinesh Sharma, A.M:- This is the fourth round of litigation by the applicant. He has prayed for quashing the order dated 07.09.2015 which was passed in compliance of the order dated 16.07.2015 passed in CCPA 132/2013 of OA 257/2011. In this impugned order, the Director



(Personnel) of Nehru Yuva Kendra Sangathan has allowed the applicant to cross the EB (EB) w.e.f. 01.04.1994 instead of 01.01.1996 with all consequential benefits as admissible in law. The case has a long history. The applicant had approached this Tribunal by OA 456/2008 praying for directing the respondents to allow crossing of EB w.e.f. 01.07.1987 instead of 01.01.1996. The Tribunal directed the respondents therein to consider and pass appropriate order in respect of EB from a date in accordance with the rules taking into consideration the report of District Magistrate, Patna. The respondents (NYKS) passed an order on 23.02.2011 by which the applicant was informed that the DPC had considered the report of District Magistrate, Patna and all other relevant materials on record and found the applicant unfit for EB crossing. Following this, another OA (OA 256/2011) was filed before this Tribunal again seeking relief to allow EB crossing to the applicant w.e.f. 01.07.1987 instead of 01.01.1996. This Tribunal again directed the respondents to adhere strictly to the earlier direction given in OA 456/2008 and pass a reasoned and speaking order. Following this, a meeting of the DPC was held on 26th and 27th November, 2013 where the applicant was again found unfit for EB crossing w.e.f. 01.07.1987 and in subsequent years till 01.01.1996 when the requirement for EB was abolished and he drew his normal increments. The applicant filed contempt petition (CCPA 132/2013 in OA 256/2011) and during the pendency of the CP the respondents have passed the impugned order by which his EB has been modified to 01.04.1994 instead of 01.04.1996.

Following this, the Tribunal dropped the contempt action while giving liberty to the applicant to challenge the order of the respondents in an independent litigation and hence, this OA.

2. A written statement has been filed in which the respondents have denied the claim made by the applicant. It is stated that the respondents have passed orders in compliance of this Tribunal's directions as the ACRs of the relevant period (for the years 1982-83 to 1986-87) were not available, the personal file and the service books of the applicant were looked into in addition to the report of the District Magistrate. Perusal of personal file indicates that a number of complaints were received against the applicant in the Ministry and the DPC was of the view that at the relevant period applicant was lacking in his official duty and he was not fit for crossing EB on 01.07.1987. There was an order passed by this Tribunal on 16.07.2015 in the contempt petition (CCPA 132/2013) as follows: -

“If validity of the period of DM's report was taken as the period under reference before the Tribunal, the respondents ought to have, in good faith, given effect w.e.f. 01.04.1994, the date from which the applicant demanding.”

In compliance of the aforesaid direction, a competent authority has passed the impugned order allowing the applicant to cross the EB w.e.f. 01.04.1994. Following this, the CCPA No. 132 of 2013 was dropped by the Tribunal. The applicant is now demanding to grant EB from 01.07.1987 whereas he himself demanded it from 01.04.1994 as has



been recorded by this Tribunal in its order dated 16.07.2015. Hence, this OA is hit by the principle of res-judicata.

3. A rejoinder has been filed by the applicant restating his earlier position and specifically citing the liberty given to the applicant in this Tribunal's order dated 24.07.2017 passed in CCPA No. 132/2013.



4. I have gone through the pleadings and heard the arguments of the learned counsels for the parties. It is clear that after prolonged litigation and following a suggestion made by this Tribunal during a contempt proceeding the respondents have at least partly granted the request made by the applicant by allowing him to cross the EB from 01.04.1994 instead of 01.04.1996 from which it was originally given. It is true that the applicant has always been seeking to get the benefit of increments by getting his EB crossed from 01.07.1987. The respondents have consistently denied him despite the matter having been sent to them by this Tribunal for re-consideration more than once. This Tribunal has not passed even a single order specifically accepting the claim of the applicant but has sent the matter for consideration by the respondents after looking into relevant facts. It is also not disputed that this Tribunal had observed in its order dated 16.07.2015 that "If validity of the period of DM's report was taken as the period under reference before the Tribunal, the respondents ought to have, in good faith, given effect w.e.f. 01.04.1994, the date from which the applicant demanding.". Though the applicant now says that he has been demanding the crossing of EB w.e.f. 01.07.1987 the above observation of this Tribunal cannot be ignored.

The operative portion of the order of the Tribunal in CP 132/2013 is reproduced below:-

“ Since the speaking order has already been passed in response to the order of this Tribunal in the OA, no contempt is made out. If the applicant is still aggrieved by the said order, he is at liberty to challenge the same in an independent litigation as the same cannot be adjudicated under the umbrella of contempt proceedings, as the scope of contempt is very-very limited and confined to the original order.



5. Further to conclude the controversy, since the respondents have passed the favourable order as per the prayer of the applicant and have granted the relief from 1994, which the applicant himself had prayed on 21.03.1998, the matter may be treated as closed as there has been substantial compliance, and we did not notice anything irrational for taking a stringent view. Rather the department has taken a most liberal view, and has extended the relief from 1994 as claimed by the applicants himself.”

While the applicant is harping on the first paragraph, the respondents wants to stress on the second paragraph. A reading of both these paragraphs together leaves no doubt about the intention of this Tribunal to conclude the controversy calling it as a “most liberal view” and therefore the liberty given to challenge the impugned order cannot be read as liberty to challenge the specific finding mentioned in the second paragraph quoted above.

In the light of above, the OA is dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk.

