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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.628/96

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 8th day of April, 1996

Shri B.L.Dhanvi
s/o late Shri Ram Dulare
Junior Central Government Advocate
Litigation Section, 4th Floor
High Court Advocates Chamber Complex
High Court of Delhi
Purana Quilla Road
New Delhi - 110 001.

... Applicant

(By Shri R.V.Nair, Advocate)

Versus

Union of India through
Secretary to the Govt. of India
Ministry of Law, Justice and Company
Affairs,
Department of Legal Affairs
Shastri Bhawan
New Delhi - 110 001.

... Respondent

O R D E R(Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

Heard, learned counsel for the applicant. The prayer in this application are as follows:

"A) To pass order/orders, direction/directions in the nature of writ of Mandamus in favour of the applicant and against the respondent for issue of appointment order to the post of Central Government Advocate, in view of recommendation made by the Union Public Service Commission vide letter dated 30.8.1991 referred to Annexure A-II or else issue of an endorsement either in the affirmative or in the negative.

B) That the applicant further prays that inaction of the respondent, further delay and laches sustained by the respondent in considering and issuing order of appointment to the post of Central Government Advocate in respect of the applicant is violative of Article 14, 21, 38, 46, 335, 338 and 311 of the Indian Constitution.

C) That the applicant further prays that the applicant is due for retirement by 31.10.1996, as such this Hon'ble Tribunal is pleased to issue appropriate order/orders, direction/directions in favour of the applicant and against the respondent for which act of kindness the petitioner as in duty bound shall ever prays."

2. The applicant presently working as a Junior Central Government Advocate was selected by the UPSC for being appointed as Central Government Advocate and he was informed by UPSC of the selection by letter dated 30.8.1994. Finding that the offer of appointment was not given to the applicant, he submitted a representation to the National Commission for Scheduled Castes and Scheduled Tribes on 1.2.1995 in reply to which he received a letter informing him that the commission has been informed by the Department of Legal Affairs that the necessary formalities are being completed for making his appointment as Central Government Advocate. Finding that his appointment has not yet been materialised, the applicant made a further representation on 26.10.1995 requesting that he may be appointed as Central Government Advocate at the earliest as he has to retire on superannuation on 31.10.1996, and further finding no reply to this representation, the applicant has filed this application seeking the reliefs as foreshadowed. On a perusal of the application and the material annexed thereto, and after hearing the learned counsel for the applicant, we find little for judicial intervention in the matter and therefore, we find that this application has now to be disposed of at the admission stage itself. The mere fact is that the applicant was selected for appointment to the post, does not clothe him with a right to be appointed with retrospective effect from the date on which the vacancy arose. His grievance would arise only if the administrative authority fills that vacancy by appointing somebody else without considering his case. Though he has been specifically selected to be appointed to the post, there is no allegation that the respondents have attempted to fill up the vacancy, by appointing some other personnel.

3. Learned counsel for the applicant relied on the decision of the Supreme Court in State of Himachal Pradesh and Another Vs. Umed Ram Sharma and others. (AIR 1986 SC 847) wherein it was held that where there is an executive inaction or slow action it is permissible within the limits for the High Court to issue directions. But in the aforesaid judgment at paragraph 40 their lordships have taken care to mention that Court cannot usurp or abdicate, powers and the parameters of judicial review must be clearly defined and never exceeded. The learned counsel referred to the decision of the Hon'ble Supreme Court in State of Maharashtra Vs. Manubhai Pragaji Vashi and Others reported in AIR 1996 SC 1 wherein it was observed that the High Court referred to the dictum laid down in the aforesaid decision to the effect (a) the Court can in a fit case direct the executive to carry out the directive principles of the Constitution, and (b) when there is inaction or slow action by the executive judiciary must intervene.

4. Seeking support from the above observation, learned counsel argued that right to employment is one of the Directive Principles of State Policy enshrined in the constitution and wherever there is an inordinate delay by the executive in making appointment, it is permissible for the Tribunal to intervene and grant relief, because the Government though bound to follow the Directive Principles of State Policy is following. We are not able to agree to this argument. As stated earlier, the applicant who is presently employed as a Junior Central Government Advocate has only been selected for appointment to the post of Central Government Advocate; it is for the Competent Authority of the Government to make appointment to suit the public interest. As the applicant is already in service there is no denial of right to employment to the higher post to be given him for better prospects.

5. In the light of what has been discussed above finding no merit in this case which deserves further consideration, we ~~reject~~ ~~dismiss~~ this application in limine under Section 19(3) of the Administrative Tribunals Act, 1985.

R.K. Ahuja

(R.K. AHOOJA)
MEMBER(A)

A.V. Haridasan

(A.V. HARIDASAN)
VICE-CHAIRMAN(J)

/RAO/