

1
LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.489 of 2013

Reserved on 03.03.2016
pronounced on: 8.03.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....
Dr. (Mrs.) Mallareddy Sudha,
D/o. Mr.M. Mohan Rao,

Present Address:

Dream Tower, Near 206,
Foot Bridge,
Samarpani,
Krishnapur,
Kolkata-700 102,
West Bengal,
Mob. 09433115287,
Ph. No. 033-2591-5985,
e-Mail: agent.drsudha@gmail.com.

Place of Last Employment (Worked as SRF)
Central Institute of Freshwater Aquaculture (CIFA),
Kausalyaganga,
Bhubaneswar-751002,
Odisha,
Phone: 91-674-2465421/446/430
Fax: 91-674-2465407
e-Mail: cifa@ori.nic.in

.....Applicant

For the Applicant: Ms.G.Mukherjee, Counsel

-Versus-

1. The Union of India service through the Secretary (DARE) & Director General (ICAR), Indian Council of Agricultural Research, Krishi Bhavan, New Delhi-110 001.

GW

2. The Secretary (DARE) and Director General (ICAR), Indian Council of Agricultural Research Krishi Bhavan, New Delhi-110 001.
3. The Director, Central Institute of Freshwater Aquaculture (CIFA), Kausalyaganga, Bhubaneswar-751002, Odisha.
4. The Drawing & Disbursing Officer, Central Institute of Freshwater Aquaculture (CIFA), Kausalyaganga, Bhubaneswar-751002, Odisha.

.....Respondents

For the Respondents: Mr.

Counsel

ORDER

JAYA DAS GUPTA, AM:

The Applicant [Dr. (Mrs.) Mallareddy Sudha] has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(i) To quash, recall, rescind and cancel the Office Order No. CIFA/B&C/2012/1197 dated 22nd June, 2012 issued by respondent no.4 denying or declaring 'not applicable' the payment of pending fellowship of last one year of service with effect from April 1, 2000 rendered by the applicant and directing the payment of the said pending fellowship along with compounded interest as per rules with immediate effect.

(ii) To direct the respondents, their men, agents, successors, servants, representatives, assigns and/or each one of them to go on paying the unpaid/pending fellowship to the applicant for the last one year of her service as SRF in the DPPBBA project at CIFA at the consolidated/fixed rate of Rs. 5600/- p.m. aggregating to Rs. 67,200/- along with compounded interest as per rules to her immediately;

(iii) Cost;

(iv) Such order or further order or orders as Your Lordships may deem fit and proper."
(extracted as such)

W.C

2. According to the applicant, she joined as a Senior Research Fellows at the Central Institute of Freshwater Aquaculture (in short 'CIFA'), Kausalyaganga, Bhubaneswar, Odisha in the Department of Biotechnology, New Delhi against a funded research project entitled "Development of Phosphatase Producing Bacterial Biofertilisers for Aquaculture"(in short 'DPPBBA') on 08.08.1997. Her appointment as Senior Research Fellows was on co terminus in the said project which was sanctioned till 31st March, 2000 and she was paid the fellowship till the said date. Later on, the project was extended upto 31.3.2001. However, the applicant was not paid her fellowship for the above period and it has been alleged that repeated representations did not yield any fruitful result; she has approached this Tribunal in the instant OA.

3. The learned counsel for the Respondents, has, however, made serious objection regarding the maintainability of this case on the following grounds:

- (i) The applicant is not a civil post holder nor did she claim appointment to any civil post of the Union Government;
- (ii) The Central Institute of Freshwater Aquaculture, in absence of any specific notification, by the Government does not come within the purview of A.T. Act, 1985;

(iv) As the applicant was all along serving as SRF at Bhubaneswar, Odisha, this Bench lacks jurisdiction to entertain this OA;

(v) This OA is grossly barred by limitation as the cause of action, even according to the applicant, had arisen in the year 2000-2001 whereas she has filed this OA only on 03.06.2013 i.e. after a gap of about twelve years without any application whatsoever, giving reasons for condonation of delay.

4. In view of the above, before deciding the merit of the matter, it is necessary for us to at the first instance decide as to whether this OA is maintainable before this Bench of the Tribunal. In the said premises, it is worthwhile to quote the preamble of the Administrative Tribunals Act 1985 (13 of 1985) which is as under:

"An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of (any corporation or society owned or controlled by the Government of India or of in pursuance of Article 323A of the Constitution) and for matters connected therewith or incidental thereto."

5. Similarly, Section 14 of the Administrative Tribunals Act, 1985 deals with regard to the jurisdiction, powers and authority of the Tribunal in which it has been provided as under:

2w

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or
 (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controller by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation - for the removal of doubts, it is hereby declared that references to "Union" in

mc

this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controller by Government, not being a local or other authority or corporation [or society] controller or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

6. The order of appointment of the Applicant dated 19.7.1991 (Annexure-A/1) would clearly and pellucidly amplify that the appointment of the applicant as SRF was on co terminus basis i.e. till existence of the Project and in no way she can be termed

✓

as a holder of the Civil Post nor has she prayed any direction for her appointment to any civil post of the Union. The relevant portion of the order of appointment dated 19.7.1991 is extracted hereunder for ready reference:

"CENTRAL INSTITUTE OF FRESHWATER AQUACULTURE (ICAR)

PO. KAUSALYAGANGA; VIA: BHUBANESWAR-751002.
No.69/CIFA/Estt./97-2429 dated: 19.07.1997

MEMORANDUM

On the recommendations of the Skeleton Committee, the undersigned is pleased to offer the post of Senior Research Fellow to Ms.Mallareddy Sudha on the following terms and conditions:

1. She will have to work under the Project "Development of Phosphatase Producing Bacterial Biofertilisers for Aquaculture".
2. The duration of the project is for three years or unless the project is terminated earlier or extended further;
3. She will be paid a fixed amount of Rs. 2500/- p.m. for first two years and Rs. 2800/- p.m. for the third year plus allowances as admissible under rules;
4. She will be entitled to 12 days casual leave in a year;
5. **She will not be a regular employee of the Institute and hence shall not be entitled to;**
 - (a) Leave/LTC;
 - (b) Medical reimbursement facilities;
 - (c) Benefits of joining ICAR provident Fund; and
 - (d) All other service benefits available to regular employees.
6. **She will not confer any right to seek absorption in CIFA on termination of the project;**
7. The undersigned reserves the right to terminate his/her services without notice or assigning any reasons whatsoever in case;
 - (a) She is found to be negligent in his/her duties or if she is guilty of an unbecoming conduct; or
 - (b) If her performance is not found upto the mark.
8. In the event of his/her leaving the Institute, he/she will give three months notice for acceptance of his/her resignation otherwise the Director reserves the right to forfeit the payment;
9. At present she will report to Dr. C.S.Purushothaman, Sr. Scientist and Project Investigator, CIFA, Kausalyaganga but is liable to be posted anywhere in India where the project operates, without any additional allowances.

If Ms. Mallareddy, Sudha accepts the offer for the post of Senior Research fellow on the terms and conditions mentioned on the memorandum, she should report herself for duty to Dr. C.S.Purushothaman, Sr. Scientist and Project

Investigator, CIFA, Kausalyaganga as early as possible but not later than If she fails to join the post of SRF under the above project by the stipulated date the offer shall stand automatically cancelled.

Sd/-Administrative Officer"

7. Going by the aforesaid order of appointment, it can safely be concluded that the applicant was not a civil post holder nor has she prayed for her regular appointment in any civil post of the Union. As such, by applying the provisions of the A.T. Act, 1985, the inevitable conclusion is that this OA is not maintainable before this forum. This view is also fortified by the Madras Bench of the Tribunal in the case of **P.Suresh Kumar Vs Postmaster General, Kerala Circle, Trivandrum and Others**, reported in 1987 (4) SLR 303.

8. In so far as the argument advanced by the learned counsel for the respondents that there being no specific notification under Section 14 of the A.T.Act, 1985, the CIFA does not come within the purview and jurisdiction of this Tribunal is concerned, we may observe that in order to get rid of from this point we have specifically asked the learned counsel for the applicant to produce any piece of evidence to substantiate that even though the CIFA has not specifically been stated under Section 14 of the Act, 1985 yet it is maintainable. But the learned counsel for the applicant failed to do so.

9. In so far as the objection raised by the learned counsel for the Respondents that the applicant was all along posted at

✓w

Bhubaneswar, this Bench of the Tribunal has no jurisdiction to entertain this OA is concerned, we would like to place reliance on clause 6 of CAT (Procedure) Rules, 1987. In sub clause (2) of Clause 6 of the aforesaid rules clearly provides that persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. The service of the applicant was terminated with effect from the afternoon of 31st March, 2001. The order of termination is extracted hereunder for ready reference:

“CENTRAL INSTITUTE OF FRESHWATER AQUACULTURE
(ICAR)

PO. KAUSALYAGANGA: VIA: BHUBANESWAR-751002.
No.69/CIFA/Estt./2000-8490(2) dated: 31.03.2001

MEMORANDUM

In terms of Order No. BT/PRO-171/AAQ/03/13/96 dated 14.03.2001 and in continuation of this office Lr. No. 69/CIFA/Estt./2000-3189 dated 22.03.2000 consequent upon the end of the DBT project entitled “Development of Phosphatase Producing Bacterial Biofertilizers for Aquaculture” under operation at CIFA the services of the following SRFs are hereby terminated w.e.f. the AN of 31.03.2001:

1. Ms.Meenakshi Sahu
2. Ms.M.Sudha

This issues with the approval of the Competent Authority.”

10. It is not in dispute that the applicant after being ceased to be an employee of the project, is residing at Kolkata. As such, this plea of the respondents' counsel appears to be not in accordance with the aforesaid provision.

2W

11. In so far as the point of limitation, as pointed out by the Respondents' counsel is concerned, it is noticed that in this case though cause of action arose on or before 31.03.2001, the applicant filed representation for fellowship for the period April, 2000 to March, 2001 only on 06.05.2006. According to her, after the said representation she has made several repeated representations but as she was not paid her dues, she filed this OA on 3.6.2013 admittedly i.e. after a gap of 12 years. Admittedly, she has also not filed any separate application giving the reason of such belated approach and praying for condonation of delay, as required. It is well settled law that repeated representation would not save the limitation and it would suffice to quote one such decisions of the Hon'ble Apex Court in the case of **S.S.Rathor Vs State of UP** reported in 1990 SCC (L&S) 50. Further law on the subject is clear and it would suffice to place the relevant portion of a decision of the Hon'ble Apex Court in the case of **STATE OF UTTARANCHAL AND ANOTHER v. SRI SHIV CHARAN SINGH BHANDARI AND OTHERS** (Civil Appeal Nos.7328-7329 of 2013) AUGUST 23, 2013/[2013] 9 S.C.R. 609 and the relevant portion of it would run thus: -

13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they

2w

had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In *C. Jacob v. Director of Geology and Mining and Another*, a two Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

14. In *Union of India and Others v. M.K. Sarkar*, this Court, after referring to *C. Jacob* (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is

passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and Another, the Court took note of the factual position and laid down that when nearly for two decades the respondent workmen therein had remained silent mere making of representations could not justify a belated approach.

18. In State of T.N. v. Seshachalam,⁸ this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

"....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/ or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

12. Be that as it may, in view of the discussions made above, we find that this Tribunal lacks jurisdiction to entertain this OA in the present forum for the reason that the applicant was

JW

neither holder of a civil post nor has she claimed regularization in any civil post of the Union. This OA is also hopelessly barred by limitation. Accordingly, this OA stands dismissed. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judicial)

km