

Central Administrative Tribunal
Patna Bench, Patna.
[Circuit Bench at Ranchi]
OA/051/00447/2018

Date of CAV :- 18.09.2019
Date of Order :- 20.09.2019

C O R A M

HON'BLE SHRI JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Dr. Ramesh Narayan Dutta, Son of Late Jagdish Narayan Dutta Scientist-D (Retired), Central Silk Board (Govt. of India), House No. 225, Basant Bihar, Road No. 2, Harmu- Ranchi- 834002.

.... Applicant.

By Advocate: Mr. Sanjay Kumar

Vs.

1. The Union of India, through the Secretary, Ministry of Textiles, Govt. of India Udyog Bhawan, New Delhi-110001.
2. Member Secretary, Central Silk Board, BTM Layout, Madivala, Bangalore- 560068.
3. Director, Central Tsar Research and Training Institute, Piska Nagri, Ranchi- 835303.

..... Respondents.

By Advocate : Mr. Rajendra Krishna, Sr. SC
Mr. M.A. Khan

O R D E R

Per Mr. Dinesh Sharma, A.M.:- In the instant OA, the applicant has prayed for quashing of letter No. 5877 dated 05.09.2013 of Central Tsar Research and Training Institute, Ranchi and letter of Central Silk Board No. CSB 40(1) 2012 dated 08.01.2013 by which the application form of the applicant for the post of Head, ICAR- RC-ER Regional Research Centre,

Darbhanga, Bihar was not forwarded because of a ban imposed by the parent department CSB, as being violative of Article 14 and 16 of Constitution of India. The applicant has also prayed for directing the respondents to pay an estimated loss of Rs. 2.2 crores caused to the applicant due to the aforementioned wrong decision. The applicant has quoted the decisions of the Hon'ble Apex Court in **Municipal Corporation of Delhi Vs. Association of Victims of Uphar Tragedy** [AIR (SC) 0 2012 100] and also that of **Rudal Sah Vs. State of Bihar** reported in 1983 AIR (SC) 0 1086.

2. The respondents have denied the claim of the applicant. They have stated that a permanent Government servant cannot complain of hardship if his application for any other post or employment is withheld and there is no infringement of any fundamental constitutional right. The respondents have also enclosed the guidelines of the DoP&T with respect to forwarding of applications wherein it is specifically provided that application of a government servant can be withheld if it is justified in public interest. The respondents have also stated that the application is barred by period of limitation since he is challenging an order dated 05.09.2013. Even the Writ Petition in the Hon'ble High Court challenging this order was filed in the year 2016 and was withdrawn in 2018 and there is no observation about condonation of delay by the Hon'ble High Court.

2. The applicant has filed a rejoinder in which he has stated that it is a case of infringement of his fundamental right and therefore there is no limitation period on matters related to fundamental right. Since the respondents did not raise the issue of limitation in their counter affidavit

filed before the Hon'ble High Court, they cannot raise this issue now. The applicant has also raised issues like not granting of scientific pay scale FCS since 1983 to 2006 and other issues (which are apparently unconnected with the relief sought in this OA). The applicant has also pointed out Item No. 6 of the DoP&T letter dated 23.12.2013 (Annexure-2 of the WS) where it is specifically provided that an application of a Government servant should not be forwarded if he is under any suspension/disciplinary proceedings/prosecution sanction/undergoing a penalty etc.

3. The applicant has filed a supplementary rejoinder quoting a judgment by the Bangalore Bench of CAT in OA No. 170/01442-1445/2018 dated 21.03.2019 wherein this Tribunal has found fault with the actions of the Ministry and the CSB in relation to the implementation of Flexible Complementing Scheme.

4. We have gone through the pleadings and heard the arguments of learned counsels of both the sides. During the course of the argument, the learned counsel for the applicant produced "brief written arguments" and enclosed a copy of a number of judgments, viz. **Bimlesh Tanwar Vs. State of Haryana** [2003-AIR(SC)-0-2000], **Banarsidas Vs. State of Uttar Pradesh** [1956-AIR(SC)-0-520], **Pitta Naveen Kumar Vs. Raja Narasaiah Zangiti** [2006-SCT-4-320] and **Peoples Union for Civil Liberties Vs. Union of India** [2004-CALLT(SC)-2-39] to support his contention that this Tribunal should intervene in a matter where there is a violation of Fundamental Rights under Article 14 and 16 of the Constitution in an arbitrary manner.

5. After going through the pleadings and hearing the arguments,

it is clear that the applicant's grievance is about for not forwarding of his application for a post under ICAR in the year 2013. The applicant claims that this is a violation of his fundamental right. The respondents have claimed that there was a general ban against forwarding of any applications except SC and ST employees, Persons with Disabilities and Probationers. This ban was imposed by an order dated 08.01.2013 in public interest until further orders. Since the order of banning forwarding of applications was universally applied to all the employees of the Central Silk Board, there is apparently no arbitrariness in its application to the applicant. Hence, there is apparently no violation of the constitutional provisions regarding equality. We have perused all the judgments cited by the applicant in support of his claim and do not find even one of them directly applicable or even analogous to the facts of this case. It is true that the guidelines of the DoP&T (Anenxure-2) mention in para 2(a) that forwarding of applications should be the rule rather than an exception, this is subject to public interest. In the case before us, the Central Silk Board decided not to forward any applications in public interest and hence, this rule regarding forwarding of applications would not apply. The only thing which can be argued here is whether the decision to ban was actually in the public interest or not. To us it seems infructuous to go into that issue now. If the applicant had real strong doubts about this being not in public interest, he should have challenged the decision at that time and sought intervention from appropriate judicial forum to stop the Central Silk Board from implementing such ban. The applicant has, by not agitating the issue at the time when, if

raised and found correct by an appropriate judicial forum would have helped him in getting his application forwarded, lost the right to raise it before any forum, years after the event, and claim for hypothetical losses alleged to have occurred to him. His claim for loss of a few crores of rupees because of not forwarding of his application is apparently hypothetical and very speculative. Since there is prima facie no violation of any constitutional or statutory right and since there is no direct relation between what the applicant claims to be his consequential loss and the alleged denial of opportunity, we find no merit in this OA and therefore it is dismissed. No order as to costs.

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

Srk.