

(2016) 03 TP CK 0020
In the Tripura High Court
Case No : W.P.(C)(CAT) 2 of 2012

Samarendra Das

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21(3)

Citation : (2016) 03 TP CK 0020

Hon'ble Judges : Deepak Gupta, C.J. and S. Talapatra, J.

Bench : Division Bench

Advocate : S. Deb, Sr. Advocate and S.C., for the Appellant; B. Majumder, C.G.C., P.K. Biswas, Sr. Advocate, S. Chakraborty, Addl. G.A. and P. Majumder, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Deepak Gupta, C.J.

1. By means of this writ petition, the petitioner has challenged the order dated 22.03.2012, passed by the Central Administrative Tribunal, Guwahati Bench in Miscellaneous Application No. 138 of 2009 in Original Application No. 215 of 2009, whereby the miscellaneous application for condonation of delay has been dismissed and consequently, the original application has also been dismissed.

2. Briefly stated the facts of the case are that the petitioner was a member of the Tripura Forest Service. On 08.10.1997, one Shri Prasenjit Biswas (IFS), the member of the Tripura Forest Service was inducted into the Indian Forest Service. Thereafter vide another notification dated 12.11.2002, Shri Subhendu Kumar Paul of the Tripura Forest Service was inducted into the Indian Forest Service. The claim of the petitioner was that he was entitled to be inducted into the Indian Forest Service before these two gentlemen on the ground that the petitioner belonged to the Scheduled Caste. The petitioner, therefore, filed a writ petition in the Agartala Bench of the Guwahati High Court which then exercised

power over the State of Tripura. This writ petition was numbered as WP(C) No. 35 of 2003. On 08.06.2009, learned counsel for the petitioner prayed for withdrawing the writ petition with liberty to approach the competent authority, which reads as follows:

"Mr. S.M. Chakraborty, learned senior counsel, assisted by Ms. P. Chakraborty appearing for the petitioner prays for allowing him to withdraw the writ petition with liberty to approach the competent authority/forum for redressing the petitioner's grievance.

The prayer is granted.

This case is disposed of on withdrawal with liberty to approach the competent authority/forum, is so advised."

3. It would be pertinent to mention that an objection was raised that the High Court had no jurisdiction to entertain the writ petition since the matter was squarely covered by the provisions of the Administrative Tribunal Act and therefore, the jurisdiction to hear any dispute was exclusively within the domain of the Central Administrative Tribunal.

4. Thereafter on 21.10.2009 i.e. within four months of the order being passed, the petitioner filed OA No. 215 of 2009 before the Central Administrative Tribunal, Guwahati Bench and also filed a Miscellaneous Application No. 138 of 2009 praying for condonation of delay in terms of Section 21(3) of The Administrative Tribunal Act, which reads as follows:

"(3) Notwithstanding anything contained in sub-section(1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfied the Tribunal that he had sufficient cause for not making the application within such period."

The Administrative Tribunal rejected the petition for condonation of delay on the ground that ignorance of law is of no excuse and therefore, not only the application for condonation was dismissed, consequently the original application was also dismissed. This order is under challenge before us.

5. We have heard Sri. Sankar Deb, learned senior counsel for the petitioner as well as Mr. P.K. Biswas, learned senior counsel, Mr. Mr. B. Majumder, C.G.C and Mr. S. Chakraborty, Addl. G.A. for the respondents.

6. The short issue is whether the Administrative Tribunal was justified in rejecting the application for condonation of delay. We may divide the writ petition into two parts. Two distinct relief's have been claimed in the writ petition. One related to the challenge to the appointment of respondent No. 7, Sri Prasenjit Biswas who was inducted to the Indian Forest Service(IFS) in the year 1997 and the second relating to the induction of respondent No. 8, Shri Subhendu Kumar Paul into the Indian Forest Service in the year 2002.

7. As far as the challenge to the induction of Sri Prasenjit Biswas is concerned, by the time the petitioner approached this court, six years had already elapsed. He, in the writ petition or even in the Original Application, has given no other explanation for condonation of delay except to say that he was pursuing the writ petition from the year 2003 to the year 2009. There is no explanation why he did not challenge the induction of Sri Prasenjit Biswas from 1997 to 2003 and therefore, we find that there is no ground to condone the delay as far as the challenge to the induction of Sri Prasenjit Biswas is concerned.

8. However, with regard to Sri Subhendu Kumar Paul, he was inducted into the Indian Forest Service(IFS) only in the year 2002. The petitioner approached a leading senior advocate of this court, who advised him to file a writ petition. What a party can do best is to approach a counsel and normally a party abides by the advice given by a counsel. It was only after the objection was raised that the petition is not maintainable that the same was withdrawn in the year 2009. Therefore the petitioner cannot be said to be negligent for the period up to the time of withdrawal of the writ petition. The original application was fled within four months thereafter and therefore we are of the opinion that as far as the challenge to the appointment of Sri Subhendu Kumar Paul is concerned that should have been considered and decided on merits by the Central Administrative Tribunal.

9. In view of the above discussion, the writ petition is partly allowed and the original application is remanded to the Central Administrative Tribunal, Guwahati Bench which shall entertain and decide the Original Application No. 215 of 2009 on merits in so far as the challenge relates to the induction of Sri Subhendu Kumar Paul in the Indian Forest Service (IFS). It is made clear that we have not expressed any opinion on the merits of the case and we have only decided the question with regard to limitation and therefore, the parties will be free to raise all grounds before the Central Administrative Tribunal.

No costs.