

(2019) 03 CAT CK 0114

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 815 Of 2019 With Original Application No. 785 Of 2018

Shivpal Singh

APPELLANT

Vs

Central Bureau Of Investigation Through Its Director

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 CAT CK 0114

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, Hanu Bhaskar

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr.Ajesh Luthra, counsel for applicant and Mr. Hanu Bhaskar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicants have prayed for the following reliefs:

"a) Hold and declare that the applicant has been wrongly excluded for further consideration for absorption in the respondent organization.

b) Direct the respondent to consider the applicant afresh keeping in view the nature and duties and absorb the applicant accordingly.

c) Accord all consequential benefits

d) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant."

3. The relevant facts of the case are that the applicant was Constable in ITBP. He came on deputation in the respondent-CBI organization w.e.f. 1.1.2003 initially

for three years and thereafter he got two extensions of two years upto 31.12.2018. The last order of extension dated 5.03.2018 is extracted below

"CORRIGENDUM

In continuation of CBI HQ Office order No. 1927/2017 dated 03.11.2017 & Corrigendum dated 27.12.2017, the term of extension granted in respect of S.No. 2(Shri Shivpal Singh, Constable No. 037021294 of ITBP) may be read as "6th year w.e.f. 01.01.2018 to 31.12.2018."

The applicant participated in the absorption process of 2017 but he could not be selected for absorption being lower in the merit list. The counsel for the applicant vehemently and strenuously contended that the case of the applicant is that as per the RRs for the post of Constable (Motor Transport) he fulfills all the requisite qualifications, nevertheless he has not been selected and several candidates who do not possess the requisite qualifications and some of whom are from general duty are absorbed and as such he filed this OA seeking the above stated reliefs.

4. The counsel for the respondents equally vehemently and strenuously contended that the absorption process was held in the year 2009 and thereafter it was held in the year 2017 and in the year 2017, as stated above, he could not be selected as the applicant was lower in the merit list and it is not known when the next absorption process would take place and he has further submitted that the applicant having participated in the absorption process and having not been selected cannot turn round and challenged the absorption process. The relevant portion of the averments made by the respondents is extracted above:

"5. That the application/petition as filed by the applicant is liable to be dismissed as the process for consideration for absorption in the Department was done in October 2017, in which the applicant though considered, could not be selected being lower in the merit list, and when the further consideration would take place is not known to the Department as of today. The earlier absorption was held in 2009 and thereafter in October 2017.

xxx xxx xxx

3. That this bureau ensured that the absorption process is designed in a way which is just & equitable. The names of personnel recommended for absorption in CBI have been selected through valid procedure yardstick and their performance in the criteria prescribed. It is submitted that the Hon'ble Apex Court observed in Civil Appeal Nos. 8345-8346/2009-D Sarojakumari vs.R. Helen Thilakom & Ors that " the main ground urged on behalf of the appellant is that Respondent No. 1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The Law is well settled that once a person takes part in the process of Selection and is not found fit for appointment the said person is estopped from challenging the process of selection." The above observations of Hon'ble Apex Court were in continuation of following observations:

"In Dr. Sarna Vs. University of Lucknow & Ors., the petitioner after appearing in the Interview for the post of professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows:-

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that, the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution. of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not. now open to him to turn round and question the constitution of the Committee.....

In Madan Lal & Ors Vs. State of J & K & Ors., the petitioners laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows:-

"9....Thus, the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not constituted....."

In Manish Kumar Shahi Vs. State of Bihar, this Court held as follows:

"23....Surely, if the petitioner's name had appeared in the merit list, he would not have been dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the Writ Petition."

5. In view of the facts and circumstances narrated above and in view of the law laid down by the Hon'ble Supreme Court referred to by the respondents extracted above, the relief prayed for by the applicant cannot be granted.

6. Accordingly, OA is dismissed. No order as to costs.