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2023

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 80 of 2023

Sri Birinchi Pada Patra
Vs.

State of West Bengal and others.

Mr. Kamalesh Bhattacharya,
Mr. Syed Julfikar Ali.

... for the petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mrs. Saheli Mukherjee.

... for the State.

The order dated 19th December 2019 passed by the West Bengal Administrative Tribunal in OA 988 of 2019 is sought to be challenged in the instant writ petition filed on 4th May 2023.

At the very outset we must record that there is no explanation offered for such delay in filing the instant writ petition assailing the said order passed 3½ years prior to the institution of the instant writ petition.

Challenging an order of transfer and release dated 11th May 2011 and 12th May 2011, the Tribunal was approached with OA 622 of 2011. By an order dated 13th June 2011 the Tribunal observed that the transfer is an incident to service and the Government is to run administration and, therefore, is in the better position to decide when and where an employee is to be posted. However, the said application was disposed of directing the appropriate authority to dispose of the representation of the petitioner after affording an opportunity of hearing within sixteen weeks from the date of communication of the order and decision shall be communicated to the

petitioner within four weeks thereafter. Pursuant to the same, the decision was taken and the representation was disposed of on 21st July 2011.

After a gap of more than eight years, the Tribunal was further approached with OA 988 of 2019 challenging the selfsame order of transfer and/or release. The Tribunal by the impugned order dismissed the said application as the petitioner sought to challenge the order passed more than eight years ago. Even thereafter there is a complete silence on the part of the petitioner in approaching the Court promptly.

The instant writ petition is filed challenging the said order dated 19th December 2019 and our endeavour has failed to find out any explanation offered in the instant writ petition for the delay occasioned in moving this Court against the said order.

However, the learned Advocate for the petitioner submits that the order disposing of the representation was communicated in course of hearing of the tribunal application i.e. on 28th May 2019 and, therefore, the tribunal application could not be said to be barred.

Our attention is drawn to the reliefs claimed in the tribunal application wherefrom it is explicit that the order of transfer and/or release dated 11th May 2011 and 12th May 2011 respectively was the subject matter of challenge. The aforesaid orders were also the subject matter of challenge in the earlier tribunal application filed by the petitioner, which was disposed of without interfering therewith.

Though the Tribunal directed the representation to be considered, it does not take away the efficacy of the order of transfer and/or the release and, therefore, the Tribunal does not commit any error in refusing to entertain such application. If the order disposing of the representation has been communicated on 28th May

2019, it gives a fresh cause of action and the petitioner would have taken appropriate steps then and there and having not done so, we do not find that on the basis of the facts pleaded in the tribunal application and the reliefs claimed therein, there is any infirmity and/or illegality committed by the Tribunal in rejecting the said application.

The writ petition is, thus, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)