

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.No.923/99
M.A.No.1288/99
M.A.No.867/99
M.A.No.1450/99
M.A.No.2029/99
M.A.No.866/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 3rd day of November, 2000

1. Sh. R.C.Jindal
s/o Late Shiv Dhan Gupta
186, Vivakand Puri
Sarai Rohilla
Delhi - 7.
2. Rajveer Singh
s/o Ved Ram Singh
B-68, East Colony
Near Gurudwara
Delhi - 93.
3. Ved Ram Sharma
1060/E, Lohia Gali No.5
Babarpur
Shahdra
Delhi - 32..
4. S.C.Sharma
1/7136, Shivaji Park
Shahdra
Delhi - 32.
5. Rajeshwar Singh
1/3168, Ram Nagar
Shahdra,
Delhi - 32.
6. S.C.Kaushik
G-33, Vikas Puri
New Delhi - 18.
7. Mrs. Sudesh Verma
w/o Sh. H.C.Verma
B1A/46A, Janak Puri
New Delhi - 68.
8. Mrs. Usha Kapoor
167, Bhera Enclave
Pashim Vihar
Delhi.
9. Smt. Versha Sharma
AC-1/143B, Shalimar Bagh
Delhi - 52.
10. Mrs. M.Phinder Prakash Kaur
w/o S. Gurbachan Singh
BJ-28, East Shalimar Bagh.


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11. Mrs. Krishna Sadana
w/o Shri M.L.Sadana
C3/270 Janak Puri
Delhi.
 12. Mrs. Pushpa Malik
w/o Shri S.K.Malik
B-66 Dashrath Puri
Palam Road
New Delhi - 45.
 13. Mrs. Veena Mehta
w/o S.P.Mehta
AD 24C Shalimar Bagh
Delhi - 52.
 14. Mrs. R.K.Madan
w/o Shri N.L.Madan
171, Raja Garden
Delhi.
 15. Mrs. Sarla Manchanda
16/4 Old Rajinder Nagar
Delhi.

... Applicants

(By Shri S.P.Singha, Advocate)

Vs.

1. Govt. of N.C.T. of Delhi & Ors
through Chief Secretary
5, Sham Nath Marg
New Delhi.
 2. Addl. Secretary, Education
General Administration Deptt.
Govt. of NCT of Delhi
5, Sham Nath Marg
New Delhi.
 3. Director of Education
Dte. of Education,
Govt. of NCT Delhi
Old Sectt. Delhi.
 4. Dy. Director of Education (Admn.)
Dte. of Education
Old Sectt.
Delhi.
 5. Administrative Officer
Establishment-II Br.
Dte. of Education
Govt. of NCT Delhi
Old Sectt. Delhi - 110 054.
 6. Shyam Nariyanan Tyagi
 7. B.S.Verma
 8. Avdesh Kumar Saxena
 9. Hari Singh Dabas
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- 10.Syed Karar Hussain
- 11.Yash Pal
- 12.Tilak Raj Kohli
- 13.Udey Veer Singh Ahlawat
- 14.Rajiender Prashad Pachori
- 15.Virender Pal Singh
- 16.R.K.Chemola
- 17.Smt. Geeta Suchdeva
- 18.Smt. Savitri Paschiraja
- 19.Smt. Sudha Hari
- 20.Smt. Bimla Kumari
- 21.Smt. Kamlesh Khanna
- 22.Smt. Shashi Mathur
- 23.Smt. Anita Chawala
- 24.Smt. Tripta Dhamija
- 25.Sh. Tajender Singh

All working as PGTs in the schools of Govt. of NCT of Delhi. Respondent No.6 to 25 to be served through Director of Edn. Dte. of Education, Govt. of NCT of Delhi, Old Sectt. Delhi - 54.
(in a representative capacity) Respondents

(By Mrs. Avnish Ahlawat, Advocate for the official respondents 1 to 5 and Mrs. Meera Chhibbar, Advocate for the private respondent No.15.)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

The OA is filed by 15 Post Graduate Teachers (PGT) working under the Govt. of NCT of Delhi including Petitioner No.6, Shri S.C.Kaushik who happens to be the General Secretary of the Government Teachers Association of Special Cadre, Delhi, seeking to quash the order dated 17.6.1996 issued by the Deputy Director of Education, Govt. of NCT of Delhi and to implement the Judgment of the Supreme Court of

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India dated 16.8.1994 in Civil Appeal No.2824/84 in K.C.Gupta and 17 Others Vs. Delhi Administration and 43 others, in promotion to the post of PGT from Administration and Special Cadres. The consequential orders viz. the revision of their seniority and further promotion to the post of Vice Principal vide order dated 19.3.1999 are also challenged.

2. A preliminary objection was raised by the respondents as regards the maintainability of the OA on the ground of limitation. Learned counsel Smt. Avinish Ahlawat appearing for the official respondents and Mrs. Meera Chhibber, appearing on behalf of Respondent No.15 strongly urges that the order is wholly barred by limitation under Section 21 of the Administrative Tribunals Act, as the order sought to be quashed was passed as early as 17.6.1996. The subsequent orders passed are only consequential. It is contended that the order dated 17.6.1996 was passed in implementation of the judgement of the Supreme Court, promoting several TGTs to the post of PGTs and based on the said order, their seniority list was prepared. It is therefore contended that the OA should be dismissed at the threshold on the ground of limitation, as it is not filed within the period stipulated under the Act.

3. The learned counsel for the applicant, Mr. S.P.Singha, vehemently ~~contended~~ ^{contends} the arguments of the learned counsel for the respondents and submits that

the impugned order dated 17.6.1996, having been passed in violation of the Judgement of the Supreme Court in Civil Appeal No.2824/84, inasmuch as the specific direction, namely, proportions fixed between the special cadre and administrative cadres has not been complied with, the order is non-est and a non-est order can be questioned at any time. In support of this contention the learned counsel placed reliance upon the State of Orissa and Others Vs. Brundaban Sharma and Another, 1995 Supl.(3) SCC 249.

4. The applicant filed an MA for condonation of delay in which it is stated that the applicant came to the knowledge of the impugned order only before filing of the OA and that the orders were not communicated to the applicant, it has been communicated only to the Deputy Director of the concerned Education ^{District} Department. As the OA was filed within the period of limitation from the date of knowledge, the OA has to be held as filed within the stipulated period.

5. We have given careful consideration to the contentions raised in this case, as regards the preliminary objection. The impugned order dated 17.6.1996, purports to have ^{been} passed in implementing of the judgment of the Supreme Court for promotion and regularisation of the teachers to the post of PGT. According to the respondents, order was in faithful compliance of the judgement of the Supreme Court.

Basing upon this order, the subsequent orders of 1999 which are also impugned in this case are passed taking into consideration the dates of their regularisation and promotion. The main grievance of the applicants is against the order dated 17.6.1996. Thus, the main question that arises is whether the order dated 17.6.1996 is not in accordance with the judgement of the Supreme Court or whether it is liable to be quashed. Apparently the OA was not filed within the period of limitation. Realising this difficulty in maintaining the OA, the applicants filed the above MA for condonation of delay. The only ground taken in the MA is as to the knowledge of the applicants of the order dated 17.6.1996. It is their case that they came to know about this order just prior to the date of filing of the OA. But it is fairly conceded by the learned counsel for the applicant that no such averment was made in the body of the OA. In the column against limitation also it was not stated that they came to know of the order just prior to filing of the OA. This point is now taken in the MA. It is seen in the representation dated 7.10.1996 made by the General Secretary, Applicant No.6, to the Additional Director of Education, a grievance was made for non implementation of the proportions and against the 'recent appointment and promotions regarding on several anomalies contrary to the orders and directions given by the Supreme Court'. Another representation dated 26.6.1997 was made in which it was again stated that the judgment of the Supreme

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Court was not properly implemented and it favoured the administrative cadre by not providing any representation to the association. It also mentioned that the earlier requests in this regard fell on deaf ears. Thus, it is evident that the ^{applicant} association has been making representations for non-implementation of the proportions between Administrative and Special cadres right from 1996, as per the judgement of the Supreme Court. It is therefore not possible for us to be convinced that the applicants who are members of the association were unaware and came to know about the impugned order only prior to the filing of this OA. If that is the case the applicants should have made mention about it in the OA itself. The MA in our view is an afterthought and cannot be accepted.

6. The contention of the learned counsel that as the above order is non-est and it can be questioned at any time cannot be accepted either. The decision of the Supreme Court in Brundabad Sharma's case (supra), the Supreme Court was considering the scope of revisional powers of the Revenue Board under Section 38-B of the Estate's Abolition Act, 1951. For exercising the revisional powers no limitation has been prescribed under the Act. The only limitation was it must be exercised within a reasonable time. Their Lordships of the Supreme Court observed thus:

"15. In Laxminarayan Sahu V. State of Orissa a Full Bench of the Orissa High Court held that even though there is no period of limitation in Section 59(2) of Orissa land Reforms Act, 1960, it must be exercised in a reasonable manner which necessarily stipulates that it should be in reasonable time. What

would be a reasonable time so as to be immune from the attack that the power has been exercised in an unreasonable manner would depend upon the facts and circumstances of the case.

16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answer would be no.

17. It is already seen that the proceedings for settlement of the tenure is a quasi-judicial order and it should be guided by authentic and genuine documentary evidence preceding the cut-off date and the date of vesting of the lands under the Act. Since the Act creates a right and interest in the holder of the land as tenant, pursuant to an order making the settlement by the competent authority, the Tehsildar is enjoined to conduct an inquiry in that behalf. It is seen that under first proviso to Section 5(1), if the Collector concludes that the lease, transfer or settlement is not to be set aside, he should obtain prior confirmation from the Board of Revenue. No such approval was, in fact, obtained by the Tehsildar. Though in the first instance, when the respondent had brought it to the notice of the Government of his claim, in 1967 proceedings initiated were got dropped by the Government obviously at the instance of the respondent. Later on the instructions of the Government itself, inquiry was got done; and on receipt of the report from the Additional District Collector on 4-10-1982, proceedings were initiated by the Board and the respondent was given reasonable opportunity of hearing. The order was passed with a reasonable time thereafter.

18. Under these circumstances, it cannot be said that the Board of Revenue exercised and power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years old pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the benefit? Who was responsible for it? The reasons are not far

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to seek. They are self-evident. So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That, apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage."

7. As the authenticity and correctness of the Patta granted by the Tehsildar was shrouded with suspicious features, which came to the knowledge of the applicant at a later date, the Supreme Court held that the revisional powers under Section 38-B could be validly exercised and that the order of the Revenue Board was not vitiated on the ground of limitation and that the order of Tehsildar was a non-est order and conferred no title and hence its invalidity can be set up at any time. In the instant case, however, Section 21 of the Administrative Tribunals Act, 1985 stipulated the period of limitation and the Tribunal is enjoined not to admit the application if the application was not filed within the period of limitation. Thus, unlike the revisional power under the above act the period of limitation is specifically fixed and the application shall be filed within the period of limitation. In the context of the facts in that case, the Supreme Court held that the order was a non-est order and it can be set right at any time. But the impugned order dated 17.6.1996 is challenged only on the ground that the proportions were not fixed as per the directions of the Supreme Court. We will not go into the question whether the said argument is valid or not as that is the matter to be decided on

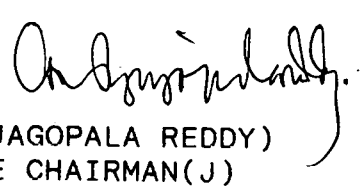
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merits. Even assuming that the order of the Supreme Court was not properly implemented, the order having been passed in 1996 and as many as about 5000 teachers were promoted and regularised and their seniority has been fixed, the applicant should have questioned that order by filing OA at earliest, within the period of limitation as stipulated under Section 21 of the Act. In view of the foregoing the OA fails and is accordingly dismissed on the ground of limitation. No costs.


(G. INDAN S. TAMPI)
MEMBER(A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/