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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 241/2002

DATE OF DECISION: 31.01.2003

Kamla Gupta w/o Sh. S.P. Gupta, By Caste Agarwal,
Resident of V-D 153, Jai Narayan Vyas Colony,
Bikaner, retired vice principal of Kendriya Vidyalaya
Army School No. 1, Jodhpur.

...APPLICANT.

V E R S U S

1. Kendriya Vidyalaya Sangathan, through:
Commissioner, Kendriya Vidyalaya Sangathan,
18 Institutional Area, Shaheed Jeet Singh Marg,
New Delhi - 11006.
2. Asstt. Commissioner, (R.O.), Kendriya Vidyalaya
Sangathan, Jaipur Region, Jaipur.
3. Principal, Kendriya Vidyalaya, Army School No. 1,
Jodhpur.
4. Principal, Kendriya Vidyalaya No. 1,
Bikaner.

...RESPONDENTS.

Present:

Mr. Harish Purohit; For the applicant.

Mr. K.K. Shah: For the respondents.

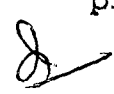
CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

: O R D E R :

Smt. Kamla Gupta, has filed this application under
Section 19 of the Administrative Tribunals Act, 1985,
praying there-in as under:-

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"(A) to make the applicant payment of 126 E.L. with interest @ 18% p.a.

(B) to pay interest @ 18% on the amount of C.P.F. which was paid after delay of almost one and half month.

(C) to rectify the error in sanctioning the E.L. from 5th Oct. to 9th Oct. 1998 instead of 6th Oct. to 9th Oct. 1998 and pay the salary of one day to the applicant.

(D) that the respondent be further be directed to credit the E.L. in account of the applicant as per Rules against the joining time which applicant not availed while joining as Vice Principal, at Army School No. 1, Jodhpur."

2. The brief facts of this case, necessary for resolving the controversy involved, as narrated in the original Application by the applicant are that the applicant retired from service on superannuation from the post of Vice Principal, Kendriya Vidyalaya No. 1, Jodhpur on 31.10.2000. She could enjoy the benefit of promotion on the post of Vice Principal only for a very short spells i.e. from 25.10.2000 to 31.10.2000 (6 days) only, and the delay in her joining has been due to the typographical error in the order of promotion issued vide letter dated 19.10.2000. She had 126 days of E.L. available for leave encashment. Further, she was entitled for the joining days on her aforesaid promotion but the same has not been allowed to her. She has not been paid due leave encashment amount.

3. The application has been filed on multiple grounds namely, there was no fault on the part of the applicant and the applicant has been deprived of her legitimate dues, the Provident Fund amount was released in the second week of May but the same sent to her on 27.06.2001 after a delay of about 1½ months, it was incumbent upon the

respondents to ascertain the E.L. at her credit but the same was not done, in the year 1998, she availed 4 days leave but erroneously 5 days leave was accounted for, she did not avail the joining time and the joining time have not been converted into the E.L. etc.

4. The respondents have contested the application and have filed a detailed reply to the application. It has been submitted that vide D.D. No. 390502 dated 23.11.2002, the payment of leave encashment has been made for a period of 122 days. An amount of Rs 4090/- was deducted towards and overpayment of LTC Bill No. 9/2K-01 vide recovery letters annexure R/1 & R/2. There was typing error in the promotion order but there was no direction for acceptance within 7 days. The delay in delivery of the D.D. for P.F. was due to summer vacation. The applicant has never raised any query regarding the grant of E.L. during the service time. She has been granted the E.L. in lieu of joining time and there was no intentional delay in the matter. The applicant also never raised any grievance during her service period.

5. I have heard the learned counsel for the parties and have carefully considered the arguments, pleadings and the records of the case. At the very outset, I take up the case relating to prayer (C) wherein it has been said that there was error in sanctioning of the E.L. in Oct. 1998 and one day salary has been claimed. This issue relates to the year 1998 and is ex facie not within the limitation besides no material has been adduced for examining the same. Otherwise also granting of leave is the exclusively

prerogative of the Competent Authority. In this view of the matter, the prayer is rejected.

6. As regards the P.F. amount (Sic.C.P.F.), it is borne from records that the applicant has been paid the due amount and there has been delay of about 1½ month (as mentioned in prayer (B)). The applicant had submitted that there was no delay attributable to the applicant. On the other hand, the learned counsel for the respondents has submitted and has reiterated the stand of the respondents in this regard as narrated in the reply and it has been submitted that the delay was due to summer vacation. This argument has been repelled by the learned counsel for the applicant that the office continues to work even during the summer vacation and the reason indicated could not be said to be a cogent reason. I have considered this matter and find that the P.F. amount was due on 31.10.2000 and the same was received in the office of the Principal in the second week of May 2001 as narrated in para 4.5, but the applicant has been paid on 27.06.2001. Thus there has been in fact a delay of about 8 months in making the payment of the due amount towards the P.F. and the applicant would be entitled to the interest for such delay.

7. Now, I take up the question relating to the number of E.L.to the credit of the applicant for which the leave encashment was required to be done. The learned counsel for the respondents has fairly submitted that he has got absolutely no details as regards the 4 days for which the deduction has been made and the leave encashment has been made for 122 days instead of 126 days. He has

submitted that reduction in the period of the leave encashment has been done on the advice of Audit. On the other hand, the learned counsel for the applicant has submitted a copy of the service-sheet wherein clearly it has been mentioned that the applicant had to her credit ~~for~~ a period of 126 days E.L. and she was, thus, entitled for leave encashment for 126 days. Faced with the peculiar variance, the learned counsel for the respondents urged that ~~he~~ has not been provided the details of 4 days and this matter may be remanded to the authorities who may be permitted to decide the same on representation which may be directed to be filed on behalf of the applicant.

8. I am surprised with the proposal and am not convinced with the same for the reason that if there was any cogent reason for reducing the E.L. by 4 days the same would have been disclosed to the Tribunal so that the matter is settled once for all but for the reason ~~best~~ known to the respondents such course has not been found expedient for the respondents. I am left with no option ~~except~~ to accept the plea of the learned counsel for the applicant. Otherwise also the respondents have not refuted validity of the service-sheet and ~~have~~ not produced any corrigendum to the entries made therein. There is no reason to ~~mis-~~believe the entries which have been made in the normal course by the respondents themselves and in this view of the matter the applicant ^{is entitled} to the leave encashment for a period of 126 days.

9. The last issue remains regarding the credit of joining days ~~towards~~ the E.L. and thereby reckoning the period for leave encashment. The applicant as per the rules

in vogue, is entitled for a period of 10 days as a joining time on her transfer from Bikaner to Jodhpur. The journey being only a day and distance less than 1000 k.m. However, in the present case, the applicant has joined only on 25 October 2000 and there was remained only 6 days for her service. If the 10 days period is allowed it will go beyond the date of superannuation and in the facts and circumstances of the case, only 6 days period can be allowed as joining time, thus, she would be entitled for a period of 6 days as joining time to be converted into E.L. and add to the period of leave encashment.

10. The matter relating to the delayed retiral benefits has already been settled by the Supreme Court in number of cases and I refrain from referring to them so as to avoid prolixity. In the present case, there has not been any delay attributable to the applicant since the matter was protracted by the respondents themselves and thus it would be justified that interest should be allowed on the due amounts in the present case.

11. In view of the above what has been said and discussed, the Original Application is hereby allowed in the following terms:-

(1) The applicant shall be entitled for leave encashment for a period of 126 days plus 6 days in lieu of joining time.

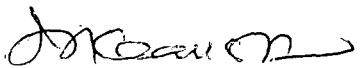
(2) The applicant shall also be paid the interest on the amounts already paid as well as payable to her on account of the E.L. as well as P.F.

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from the due date at the rate of interest 9% per annum till the date of payment.

This order shall be complied with within a period of two month from the date of receipt of a copy of the order. It would be ⁱⁿ fitness of the things if the amount of interest payable as a result of this order is recovered from the official (s)/officer (s) responsible in the matter for causing delay in making the payments in question. No order as to costs."


(J.K. KAUSHIK)
Judicial Member

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