

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 277/2005

Date of order: 9.4.2010

CORAM:

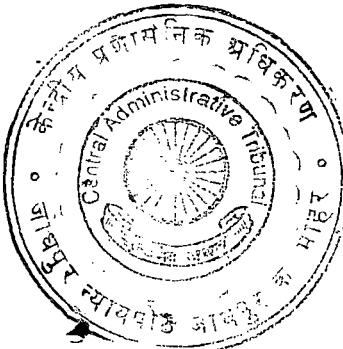
**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Manak Chand son of Sh. Moola Ram, b/c Mehtar, R/o Village & Post, Dungargarh, District, Bikaner, Official address Dismissed Labour, MES (Air Force) Bikaner.

...Applicant.

None for applicant.

VERSUS



1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Chief Engineer/Air Force, WAC, MES, Jallandhar Cantt C/o 56 APO.
3. The Superintending Engineer, CWE (Air Force) M.E.S. Bikaner.
4. The Garrison Engineer (Air Force) M.E.S. Naal, Bikaner.

... Respondents.

Mr. M. Godra proxy for Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, (JM)

Signature

1. Applicant, Manak Chand, an Ex-employee of MES, (Air Force) Bikaner has preferred this Original Application for grant of following relief:-

"i) that by appropriate order or direction the impugned order dated 13th May, 2005 Annexure A/1 forwarded with forwarding letter dated 31st May, 2005 may kindly be declared illegal and consequently quashed and set aside and in consequence of the same it may be directed that applicant is entitled to continue in service with all consequential benefits;

ii) That by appropriate order or direction the impugned order Annexure A/2 dated 3rd September, 1996 may kindly be declared illegal and quashed;

iii) Any other direction/relief/order may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.

iv) That the costs of this application may be awarded with all consequential benefits."



The brief facts of the case are as follows:-

2. Applicant was appointed in the respondent department as Mazdoor and while he was serving in the respondent department he was served with a charge sheet dated 16.1.1996 (Annexure A-3), alleging therein that the school certificate filed by him was forged and that he had obtained service on the basis of forged document, thereby he had committed misconduct in obtaining the employment. On the basis of the said charge sheet, an inquiry was conducted and on the basis of inquiry report, his services were terminated vide order dated 3.9.1996 (Annexure A-2) . It is stated that while passing the order of termination a

verification in regard to applicant's qualifications was sought from the Arvind Madhyamik Vidhyalaya, Old Ginani, Bikaner. Accordingly a verification report dated 7.9.1995 (Annexure A-4) was submitted by the Head Master of the said school whereby the applicant's certificate was declared forged. It is stated that while passing the impugned order dated 3.9.1996 (Annexure A-2), the authority did not consider the submission made by the applicant in the reply to the charge sheet. The applicant preferred an appeal before the CE AF (WAC) Jalandhar Cantt. Thereafter the applicant preferred a civil suit bearing no. 528 of 2003 (Annexure A-7) for declaration that educational certificate issued by the Arvind Madhyamik Vidhyalaya in the name of applicant be declared as genuine. The said suit was decided on 8.4.2004 ex-parte, whereby the educational certificate issued by the said educational institute in the name of applicant was declared as genuine. After the suit was decreed in favour of the applicant the applicant produced the decree before the respondent department for necessary action, but no order was passed by the concerned authority in that regard and thereafter the applicant preferred an Original Application in the year 2004 which was disposed of by this Tribunal with a direction to the respondents to decide the appeal filed by the applicant and thereafter on 13.5.2005 the appellate authority dismissed the appeal filed by the applicant. After dismissal of the said appeal the applicant preferred the present Original Application,

Y
D

challenging the order passed in appeal as well i.e. Annexure A/1 as well as the order of disciplinary authority at Annexure A-2.

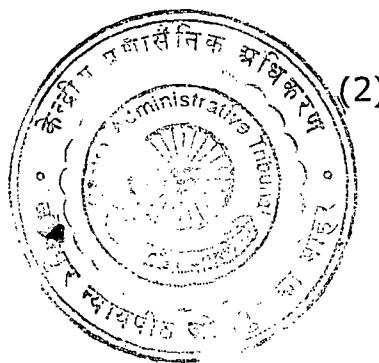
3. On filing of the present O.A. by the applicant, notices were issued to the respondents and in response to the notice the respondents made appearance through their Lawyer and have filed joint reply. According to the reply respondent's case is that the applicant was appointed on the post of Mazdoor on 29.12.1992, but in course of verification of his documents and antecedents it came to the knowledge of the respondents that he had obtained employment by producing fake and forged documents with regard to his educational qualification. Thereafter an inquiry was ordered and the same was conducted as per rules and thereafter the inquiry officer submitted his report to the disciplinary authority holding that the charge levelled against the applicant of obtaining employment on the basis of fake and forged certificate had been proved. The disciplinary authority acting on the report of inquiring officer passed an order of removal of the applicant from service on 3.9.1996. It had been admitted by the respondents in their reply that after passing of the order the applicant had preferred a Civil Suit before the Civil Judge (J.D.) Bikaner against Arvind Secondary School, Bikaner which had issued certificate to the applicant regarding his educational qualification. It has also been stated that the said suit was decreed on 4.8.2004. It is also averred that in the year 2004 the applicant had preferred Original Application before this Tribunal bearing no. 303/2004

which was decided on 17.12.2004 with a direction to decide the appeal of the applicant within a period of 3 months with a reasoned orders. It is further stated that after receipt of the order the respondents vide order dated 13.5.2005 dismissed the appeal. It is stated that the order under challenge passed by the competent authority is legal and the same is in accordance with the law. A prayer has been made in the reply to dismiss the Original Application of the applicant as the same is without merit.

4. We have heard the learned Advocates of both the parties at length and gone through the record. We are of the view that this O.A. cannot succeed on the following grounds:-

- (1) That the Original Application is hopelessly time barred.
- (2) That the ex-parte order passed in Civil Suit no. 528/2003 is not binding upon the respondents as the respondents were not impleaded as party to the suit and in the said suit removal order (Annexure A/2) was not under challenge.
- (3) That on merit the applicant has failed to establish that the educational certificate which is on official record and which was found forged was not produced by him during the course of service.

We would like to take up all the three points one by one.



[Signature]

Point No.1:

5. Although in reply the respondents have not taken any plea that the O.A. is time barred, but since it is a legal issue and the applicant has very cleverly tried to mislead this Tribunal that the O.A. has been filed within limitation period as such this point is being taken for consideration.

6. Section 21 of the Administrative Tribunal Act, 1985 deals with the period of limitation within which an application can be entertained. Sub -Section (1)(a) and 1(b) are relevant and the same is being reproduced below:-

"Section 21 (1) (a):- in case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

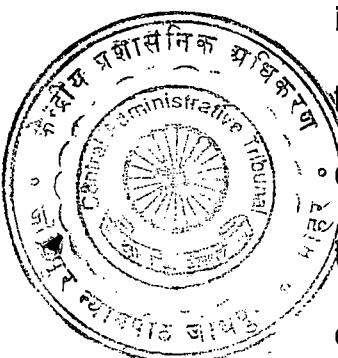
Section(1)(b):- in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and z period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

7. From the wording of Section 21 it is clear that this section prohibits the Tribunal of admitting any application which has been filed after a period of one year from the date on which final order was made or if any appeal/representation is pending against the order and a period of 6 months had expired thereafter the application has not been made within one year from the date of expiry of the said period of 6 months. Although Sub-Section 3 of Section 21 empowers the



[Signature]

Tribunal to condone the delay, if any, sufficient cause is shown by the applicant, but in the instant case it has not prayed by the applicant. Admittedly the original order i.e. Annexure A/2 by which order the applicant's service was terminated is dated 3.9.1996 meaning thereby that the said order of termination was passed about 9 years back from filing of this O.A. The plea of the applicant that before filing of this O.A. he had filed title suit before the Civil Court and also an O.A. before this Tribunal in which this Tribunal vide order dated 17.12.2004 allowed the O.A. and directed the respondents to dispose of the appeal/representation of the applicant and since the applicant has came before this Tribunal within the limitation period after passing of the order in appeal as such limitation will not apply. We are of the view that the applicant has very cleverly tried to persuade this Court that the application is not barred by limitation and for this purpose the applicant has concealed mentioning certain dates in this O.A. The fact is that after passing of order of termination on 3.9. 96 (Annexure A/2) the applicant did not prefer any appeal or filed representation against the said order till the year 2003 and for the first time in year 2003 he preferred title suit which was numbered as T.S. 528/03 (however, in the said title suit neither the termination order was challenged nor the respondents were made party). It appears that after filing of the above mentioned title suit the applicant preferred departmental appeal (memo of appeal is



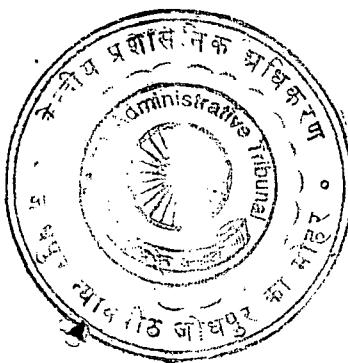
Grant

Y
8

Annexure A/6) against the order of termination dated 3.9.1996 as in the memo of appeal it has been stated that the applicant had already preferred a title suit against Arbind Secondary School Bikaner. This fact establishes beyond doubt that the applicant had preferred departmental appeal after a lapse of at least 7 years period since the date of passing of termination order which is not permissible under law. Since, this fact was not considered in the previous O.A. which was disposed of at admission stage even before the appearance of the respondents so that order passed in previous O.A. (O.A. 303/2004) on 17.12.2004 will not save the application being barred by limitation. We are also of the view that even the decree passed in T.S. No. 528/03 will not save the period of limitation as in the said T.S. neither the termination order was challenged nor the respondents were made party. Thus we are of the view that this O.A. is hopelessly time barred. Accordingly it is held that the O.A. is time barred and point no. 1 decided accordingly.

Point No.2

8. The plea of the learned counsel of the applicant is that the applicant had filed title suit for declaration that the educational certificate issued by the Arvind Madhyamik Vidhyalaya, Purani Ginani, Bikaner on 25.8.1988 in his favour be declared genuine and it may be held that the same was issued by the said Vidhyalaya under the signature of Head Master and the stamp of the school. The said suit was



Govt.

✓/08
08

decreed ex-parte on 8.9.2004 in favour of the applicant. According to the pleadings of the applicant that since the Judgment of the Civil Court which was not challenged by the respondents and its findings have not been set aside the same is binding upon the respondents and the respondents are precluded from taking any different view with regard to genuineness of the certificate. We are of the view that this plea of the applicant cannot be accepted in view of the fact that in the said title suit (bearing no. 528/2003) neither the respondents have been impleaded as party to the suit nor the very order of respondent no.2 dated 3.9.1996, terminating the services of the applicant, was under challenge. It is settled law that any order or decree passed behind the back of the any party is not binding upon the party in which he/they were not impleaded as party to the suit. In the said suit decree was obtained against the Secretary, Arvind Madhyamik Vidhyalaya , Purani Ginani, Bikaner and not against the respondents and so the said decree is not binding upon the respondents. In such view of the matter we find no merit in the submission of the learned Advocate of the applicant that in view of the decree passed in title suit no. (528/2003) the impugned order dated 3.9.1996 (Annexure A-2) becomes void; this plea cannot be accepted and accordingly point no.2 is decided.



Point No. 3

9. From the perusal of the proceedings with regard to the disciplinary inquiry against the applicant it appears that one Capt. Sukhdev Singh was appointed as inquiry officer to conduct the departmental inquiry against the applicant and one Sh. O.P. Gera AE was appointed as presenting officer. From the report of inquiry officer, it appears that the charged officer (applicant) had participated in the said inquiry and he had pleaded not guilty to the charge. However, the applicant was given opportunity to inspect all the documents including copy of report of Arvind Madhyamik Vidhyalaya , Purani Ginani, Bikaner. He was also asked to take assistance of any other Govt. servant and to submit his defence witness, but the applicant thereafter choose to remain out of inquiry proceedings and then the inquiry was conducted ex-parte and inquiry report was submitted by the inquiring officer holding the applicant guilty of producing fake educational certificate in order to obtain employment. We do not find any lacuna in the departmental inquiry and the record of the inquiry shows that several opportunities were given to the applicant to participate in the inquiry and to produce his defence, but the applicant failed to comply with the direction of the inquiry officer. It appears that even before this Tribunal the applicant has failed to produce the original educational certificate, which could have proved the case of the applicant that the said certificate was genuine one and was issued by

the authorities of Arvind Madhyamik Vidhyalaya , Purani Ginani, Bikaner . In such view of the matter, we are of the view that disciplinary inquiry against the applicant was conducted in accordance with the rules and there is nothing on record to hold that the finding of the inquiry officer was without any evidence or the same is perverse. It is settled principle of law that if the departmental inquiry is conducted as per rules and the orders of the disciplinary authority or appellate authority are based on such orders report the Tribunal is not empowered to interfere with such orders . In such view of the matter, we hold that even on merit the applicant has failed to establish his case and accordingly the point no. 3 is decided.

10. In view of the discussion made above, we find and hold that this O.A. has got no merit and as such the same is hereby dismissed with no order as to costs.



DR. Sugathan
(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

S. M. M. Alam
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

SK

दिनांक 17/2/15 का वारेसानुसार
केवी कंपनी द्वारा दिनांक 10-2-16
को दिनांक-II का L.I. नम्बर दिया गया ।

अनुसार अधिकारी
सेन्ट्रीय प्रशासनिक अधिकारी
जोधपुर न्यायपीठ, जोधपुर

Recd 624
12/4/10
S.S. Salim
See

A 1/4 / 2
B 1/4 / 2
See 6/4/10