

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW**

**Original Application No.498/2011
This the 26th day of September 2012**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

Ganga Sagar Upadhyay, aged about 69 years, S/o Sri Shiva Kumar Upadyayay, PGT (Economics)/Vice Principal (Retd.) R/o 589 Kha/303 Kuber Ki Bagia, Subhash Nagar, Telebagh, Lucknow-226025 (U.P.).

...Applicants.

By Advocate: Sri Rajiv Srivastava.

Versus.

1. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Sector-J, Aliganj, Lucknow.
2. Kendriya Vidyalaya Sangathan through its Commissioner, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. Union of India, Ministry of Human Resources Development, New Delhi.

.... Respondents.

By Advocate: Sri Surendran P.

(Reserved on 25.09.2012.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for directing the opposite parties to re-fix the pay drawn by the applicant from

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1975 after giving the protection of pay as drawn by the applicant in his previous employment in PD Inter College, Balia. A direction has also been sought to re-fix the pension from the date of his retirement w.e.f. 31.12.2001 after giving benefit of protection of pay and make payment of arrears.

2. From the other side, a serious preliminary objection has been raised on the ground of limitation.

3. The relief regarding pay protection has been sought w.e.f. 14.7.1975, when the applicant joined the institution of the respondents. Since then about 37 years have passed for which there is no explanation. We also find substance in the contention of the respondents that the claim of the applicant was rejected initially on 04.05.1983 and then on 8.3.1984. The copies of these orders have been placed by the applicant himself at Annexures-1 and 8. From the above date also about 28 years have passed. There is no explanation of delay here also. Not only this, earlier the applicant had filed a writ petition before the Hon'ble High Court, Lucknow bench, which was got dismissed as not pressed on 17.10.2000 (Annexure-11). From that date also about more than 11 years have passed but there is no satisfactory explanation regarding this delay also. Lastly, the applicant retired on 31.12.2001 and now after a lapse of about more than 11 years, this O.A. has been filed claiming protection of pay and fixation of pension. It was also pointed out on behalf of the respondents that the applicant had accepted the terms and conditions stipulated in the offer of appointment without any protest and therefore also, he has no right to claim either pay fixation or pension fixation at such a belated stage.

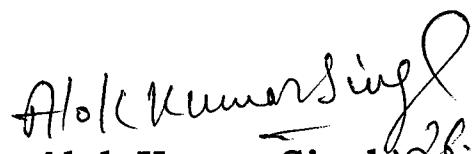
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4. The only explanation in respect of delay offered by the applicant is neither convincing nor acceptable. According to him a copy of G.O./Circular dated 6.9.2007 by the K.VS came to his knowledge when it was given in response of RTI application dated 19.11.2010 and reminder dated 30.1.2011. According to him this circular provides for protection of pay drawn in service period rendered in Semi Government Organization by an employee prior to joining of KVS. We have perused this circular also. The circular is of the year 2007 whereas, the applicant has already retired in the year 2001. It is nowhere mention in the circular that it has retrospective effect. It goes without saying that a judgment normally takes effect retrospectively unless otherwise provided, whereas, such Government orders normally take effect prospectively unless the same have been specifically giving effect retrospectively. Moreover the above explanation is only in respect of one of the reliefs and it is of general type. Besides any delay condonation application has also not been moved.

5. In view of the above, we are of the definite view that this O.A. is highly barred by time as discussed above and there is no plausible explanation for such an inordinate delay.

6. The O.A. is therefore dismissed being highly barred by limitation. No order as to costs.


(S.P. Singh)
Member (A)


(Justice Alok Kumar Singh) 26.9.12
Member (J)