

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 738 of 1999.

Dated this Friday, the 10th day of March, 2000.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

Prakash Ramchandra Poddar,
C/o. Suresh Salave,
Behind Dilip Kirana Stores,
Takali, Nasik - 422 006. ... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T. Powai,
Bombay - 400 076.
2. The Commanding Officer,
7, Maharashtra Branch, N.C.C.,
H.P.T. College, Nasik.
3. The Principal,
Kendriya Vidyalaya No. 1,
Central School, Deolali,
Nasik.
4. The Group Commander,
N.C.C. Group,
Headquarters, Mumbai 'B',
Mumbai - 400 032. ... Respondents.

(By Advocate Shri V. G. Rege for
Respondent Nos. 1 and 3.

By Advocate Shri R. K. Shetty for
Respondent Nos. 2 & 4).

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the
Administrative Tribunals Act, 1985. Respondents have filed
replies opposing the application. We have heard Shri S. P.

Saxena, the Learned Counsel for the applicant, Mr. V. G. Rege, the Learned Counsel for Respondent Nos. 1 & 3 and Shri R. K. Shetty, the Learned Counsel for Respondent Nos. 2 & 4. Since the point involved is a short point, we are disposing of this O.A. at the admission stage after hearing both sides.

2. The applicant had been appointed as a Lascar in the Kendriya Vidyalaya Sangathan at Nasik and assigned to N.C.C. attached to the School to work as a Luscar. His appointment was on 09.07.1974. He joined service on 10.07.1974. He was working for twelve years till November, 1986. It appears, on 28.11.1986 the applicant gave a letter of resignation, since he was finding it difficult to work, by giving some reasons. However, the applicant withdrew that resignation in December, 1986. According to the applicant, since he had not received acceptance of the resignation letter, on second thoughts and due to domestic trouble, he withdrew the resignation letter. But the administration did not take him to duty inspite of applicant going to the administration to take him back. Then ultimately, the applicant approached this Tribunal by filing an application in 1990 but it was not entertained for want of jurisdiction. Then the applicant approached the School Tribunal at Nasik by filing appeal No. 19 of 1994. The Tribunal allowed that application by order dated 06.2.1995 and directed the respondents to reinstate him forthwith and report compliance within 40 days. Inspite of the order of the Tribunal, the administration did not take him back. After making some representations, he filed a



contempt petition before the School Tribunal in C.P. no. 3/1995. That C.P. was allowed by order dated 11.04.1996 directing the Regional Officer, Kendriya Vidyalaya Sangathan to take him back and pay him wages. Even after that the applicant was making representations to both - Kendriya Vidyalaya Sangathan and N.C.C., to take him back and to pay him wages but with no success. Then he has come up with the present application, since in the meanwhile the Government had issued a notification under Section 14(2) of the Administrative Tribunals Act, extending the jurisdiction of the Tribunal to Kendriya Vidyalaya Sangathan employees. That is how the applicant has approached this Tribunal by filing this application praying for a direction to the respondents to implement the orders passed by the School Tribunal and for any other just and appropriate orders. The applicant also prayed for an interim order for a direction to the respondents to reinstate him forthwith.

3. Reply is filed on behalf of Respondent Nos. 1 and 4, namely - Kendriya Vidyalaya Sangathan, stating that the applicant's initial appointment in 1974 was illegal. Then it is stated that he was employed for the purpose of N.C.C. and he was paid by the N.C.C. funds and, therefore, the Kendriya Vidyalaya Sangathan has no role to play in this matter and this is purely a dispute between the applicant and N.C.C. administration. It is also stated that the orders of the School Tribunal are without jurisdiction. It is admitted that applicant had sent a resignation letter and before its acceptance it has been withdrawn by him. It is also stated that there is no post of

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Luscar in the Kendriya Vidyalaya Sangathan. That the application is barred by limitation. That the applicant was paid salary from the N.C.C. Directorate and, therefore, the Kendriya Vidyalaya Sangathan is not responsible for making any payment to the applicant. That the applicant is not entitled to any relief against this organisation.

4. Respondent Nos. 2 and 4 representing the N.C.C. have filed separate reply. They have filed one reply earlier and one more additional detailed reply later. Their defence is that the applicant is not an employee of N.C.C. but he is an employee of Kendriya Vidyalaya Sangathan (in short referred to as K.V.S. in the judgement). It is also alleged that applicant's initial appointment is illegal and, therefore, he cannot get any benefit from that appointment. That the claim is barred by limitation and delay. It is also stated that the N.C.C. has since taken over all the Luscars of K.V.S. and the name of the applicant is not shown in that list. Therefore, the applicant cannot be treated as an employee of Respondent Nos. 2 and 4. Hence, Respondent No. 2 and 4 are not in any way liable for any of the reliefs prayed for in the application. It is clearly stated that the applicant was appointed by Respondent No. 1 and, therefore, there is no contract of employment between the applicant and the N.C.C. administration.

5. The arguments addressed on behalf of the respondents about applicant's initial appointment itself is illegal, has no merit. The appointment order is issued by the Chairman of the

Selection Committee. Whatever that may be, admittedly the applicant had worked for twelve long years from 1974 to 1986 and he has been paid salary from the Government fund. It is now too late in the day to say that applicant's appointment was illegal. Respondents have not produced any document to show that applicant's appointment was illegal or contrary to rules.

The next submission on behalf of respondents is that the order of the School Tribunal is without jurisdiction and therefore, it has no legal validity. We find from the order of the Tribunal that the respondents did ~~not~~ take up the question of jurisdiction and the Tribunal has written a very lengthy order and rejected the objection regarding jurisdiction and recorded a finding that it has jurisdiction and has even referred to some decisions on that point. If the respondents were aggrieved by the order of the Tribunal dated 06.02.1995, they should have challenged that order by approaching the High Court. Now it is too late in the day for the respondents to contend before this Tribunal that the order of the School Tribunal was without jurisdiction.

In the contempt petition, the Tribunal gave a direction to the respondents to again reinstate the applicant and pay his wages. But the respondents have not done anything in this matter.

6. Then there is serious dispute between the respondents as to whose employee the applicant was at the relevant time. The

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appointment order is exhibit R-1 at page 53 produced by Respondent Nos. 2 and 4. It shows that the Regional Officer, who is also the Chairman of the School Management Committee, Kendriya Vidyalaya, Mumbai, issued the order of appointment. The applicant is appointed as a Luscar - N.C.C.. It may be so. But the appointment order is issued by the K.V.S. Therefore, the initial appointment must be in the K.V.S. Then admittedly, the applicant was working as a Luscar in N.C.C. At one stage, the Learned Counsel for Respondent Nos. 2 and 4 contended that applicant was not a person holding a civil post and it might be that he was paid out of regimental fund. In our view, there is no pleading to this effect. There is no allegation that the applicant was paid from the regimental fund. On the other hand, there is intrinsic material to show that applicant was paid from the State fund. In the first written statement filed by Respondent Nos. 2 and 4 dated 20.10.1999, in para 3 of the written statement it is clearly shown that applicant was appointed by the Principal of the K.V.S. and the salary was paid to him through Central Defence Accounts, Pune, (Respondent No. 3). Now the respondents' counsel says that the word "Central" is wrongly shown and it should be shown as "Controller", that means, the salary is paid to the applicant through the Controller of Defence Accounts. There is no plea that the applicant was paid out of regimental funds. Subsequently, the N.C.C. administration has taken over all the Luscars in K.V.S. and they are to be treated as regular Government servants. Therefore, the argument that applicant was not holding a civil post cannot be accepted and further, it is not covered by the pleadings and it cannot be

allowed to be raised at the time of argument, since it is a mixed question of law and fact.

7. Whatever the nature of initial appointment of the applicant is and his nature of working in N.C.C., it is seen that by virtue of a policy decision taken by the Directorate General of N.C.C., all the Luscar of K.V.S. are treated as employees of Directorate of N.C.C. This could be seen from exhibit R-2 dated 27.12.1988. It has been clearly stated that the Luscars employed with the K.V.S. should be paid out of consolidated funds of India and should be treated as N.C.C. Civilian Central Government Group 'D' Employees. The only contention of Counsel for respondent nos. 2 and 4 is ^{that} Appendix 'A' ^{is} attached to this order and it shows the names of 13 Luscars but the applicant's name is not shown there. This order was issued in 1988 and admittedly, the applicant had not been taken back to duty in view of his earlier resignation letter. That is how his name is missing in this order. But the contents of the order dated 27.12.1988 (exhibit R-2) shows that it applies to all existing and future employees of K.V.S. It is further stated that the Principals of K.V.S. are no more appointing authority/disciplinary authority in respect of Luscars connected with N.C.C. activities. Then at page 55 there is a note that the Luscars should be borne on the strength of N.C.C. Organisation. Future vacancies of Luscars will be filled by Directorate General of N.C.C. who is now the appointing authority in respect of Luscars of N.C.C. Units of Kendriya Vidyalayas. Therefore, irrespective of the nature of appointment of the applicant in 1974, from 1988 and onwards, there is a marked change in the nature of appointment. It applies to existing and future

for

appointments. All the Luscars are to be treated as N.C.C. Civilian Central Government employees. Therefore, atleast from 1988 and onwards, the N.C.C. becomes the appointing authority for Luscars.

Though the applicant had resigned in 1986 and admittedly, resignation letter had not been accepted and he has withdrawn the resignation, and particularly, in view of the finding of the School Tribunal, the applicant's appointment survives and, therefore, he also will come within the category of existing Luscars within the parameters of the letter dated 27.12.1988 (exhibit R-2). Therefore, for all purpose, the applicant should be treated as Luscar of N.C.C. Directorate from 1988 and onwards.

8. As far as the argument regarding limitation is concerned, the applicant has approached this Tribunal for executing the orders passed by the School Tribunal in 1995 and 1996. The applicant was making number of attempts to join that post but since he could not ~~satisfy~~ ^{Access}, he has approached the Court to enforce the order of the Tribunal. The application ^{was} filed in 1995. The applicant now cannot approach the School Tribunal because the jurisdiction is conferred on this Tribunal by the Government of India by issuing notification in December, 1998 conferring jurisdiction on this Tribunal to decide disputes of K.V.S. employees under Section 14(2) of the Administrative Tribunals Act. This O.A. is filed in August, 1999. Between 1995 and 1999 the applicant has made statement that he has been making representations to the administration. The two letters at pages 24 and 25 clearly shows that applicant has been making

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representations and he has even approached them for taking him on duty but they postponed and wrote to their respective higher officers seeking guidance.

Even granting for a moment that there is some delay in filing the O.A., having regard to the facts and circumstances of the case and the litigation the applicant has been facing all these years and taking his status, namely - Class IV employee, we feel that delay, if any, should be condoned. The respondents have not complied with the order~~s~~ of the School Tribunal and the order passed in the contempt case. In such cases, we cannot allow the respondents to take the plea of limitation to deny the legitimate claim of the applicant.

9. Now the next question for consideration before us is about back wages. Having regard to the conduct of the applicant in resigning the job and again withdrawing it, he is not entitled to the backwages ^{from 1986} till the date of the reinstatement. Backwages is a money claim. Therefore, in this facts and circumstances of the case, we allow backwages for a period of one year prior to the filing of the O.A., which was filed on 16.08.1999.

10. At one stage, the Learned Counsel for the respondent nos. 2 and 4 submitted that there is no post of Luscar at Deolali in Nasik and further submitted that there is no necessity of a Luscar and there is no work. We are concerned here with a permanent employee who had worked for 12 years. If there is no vacancy of Luscar at Deolali or there is no sufficient work for

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Luscars at Deolali, it is open to the N.C.C. administration to give a suitable post to the applicant wherever there is work or wherever there is a post. Even if there is no vacancy of Luscar

at Deolali, the N.C.C. administration may try to adjust him in any other equivalent post at Deolali or elsewhere.

11. We have already held that applicant had to be reinstated in pursuance of the order of the School Tribunal dated 06.02.1995. Though we are limiting the backwages for a period of one year prior to the date of application, we direct that applicant's services should be treated as continuous from 10.07.1994 till the date of reinstatement for the purpose of pension and other retirement benefits ^{bwt} and not for backwages.

12. In the result, the application is allowed. Respondent Nos. 2 and 4, namely - the N.C.C. Directorate is directed to reinstate the applicant as a Luscar at Deolali or elsewhere or in an equivalent post, as mentioned in the body of the order. The applicant is entitled to backwages only for a period of one year prior to the date of O.A., which means, the applicant is entitled to backwages from 16.08.1998 till the date of actual reinstatement. Respondent Nos. 2 and 4 should comply with this order regarding reinstatement forthwith and regarding pay and arrears from 16.08.1998 till the date of reinstatement within a period of two months from the date of receipt of a copy of this order. Applicant should go and report for duty before Respondent

No. 2 alongwith a copy of this order, who in turn shall give a posting order to the applicant in the light of the observations made in this order. No order as to costs.

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP No.30/2000 in
OA No.738/99.

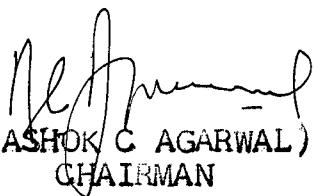
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TRIBUNAL'S ORDER:

In OA No.738/99, this Tribunal had directed on 10/3/2000 that the applicant is entitled to backwages from 16/8/1998 till the date of actual reinstatement. Respondent Nos.2 and 4 should comply with the order regarding reinstatement forthwith and regarding arrears from 16/8/1998 till the date of actual reinstatement within a period of two months from the date of receipt of copy of this order. The applicant should go and report for duty before Respondent No.2 with a copy of this order who in turn shall give a posting to the applicant in the light of the observations in the matter. The applicant after waiting for sometime filed CP-30/2000 as the respondents had not complied with the same. Now the Respondent Nos.2 and 4 have filed their reply stating that they have complied and have reinstated the applicant and have also paid the backwages amounting to Rs.41,000/- upto 30/4/2001. Also Respondent Nos.1 and 3 have paid an amount of Rs.82,000/- towards the backwages. Thus both the directions regarding reinstatement of the applicant and the backwages have been complied with. However, the learned counsel for the applicant submits that though the applicant has received the cheques, no details regarding the breakups of pay fixation has been done. *the amounts have been given nor has*

2. In our view, the Tribunal had only directed to reinstate the applicant and ^{to} pay the backwages which has been complied with. Therefore the CP-30/2000 does not survive and the same is discharged. If the applicant still has any grievance, he is free to take recourse to law as per rules.

Shanta Shastray
(SHANTA SHAstry)
MEMBER(A)


③ (ASHOK C AGARWAL)
CHAIRMAN

abp.

dt 31/5/01
order/Judgement despatched
to Applicant/Respondent(s)
on 31/5/01

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