

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO : 713/2001

Dated this Tuesday the 18th day of June, 2002.

Mrs. Kusum Bansal

Applicant.

Shri S.P. Saxena

Advocate for
applicant.

VERSUS

Commissioner, Kendriya Vidyalaya
Sangathan & 4 others.

Respondents.

Smt. H.P. Shah

Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Shri M.P. Singh, Member (A).

(i) To be referred to the Reporter or not ? No
(ii) Whether it needs to be circulated to other Benches No
of the Tribunal ?
(iii) Library. No

B. Dikshit
(Justice Birendra Dikshit)
Vice Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.713/2001.

Dated this Tuesday the 18th Day of June, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Shri M.P. Singh, Member (Administrative).

Mrs.Kusum Bansal,
(T.G.T. BIO),
Kendriya Vidyalaya,
Ganeshkhind Road, Pune.
Residing at
5, Hrishikesh Dham,
Baner Road, Opposite I.T.I.,
Aundh, Pune - 411 007.

... Applicant.

(By Advocate Shri S.P. Saxena)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Mumbai Region,
I.T.I. Campus, Powai,
Mumbai - 400 076.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Ahmedabad Region,
Sector 30, Gandhinagar - 30.
(Gujarat State).
4. Principal,
Kendriya Vidyalaya,
KRIBHCO, Surat.
5. Principal,
Kendriya Vidyalaya,
Ganeshkhind, Pune- 411 007.

.. Respondents.

(By Advocate Smt.H.P. Shah).

Order (Oral)

Justice Birendra Dikshit, Vice Chairman.

The applicant, a Trained Graduate Teacher of
B.Sc.

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Biology (in short T.G.T.) working at Kendriya Vidyalaya, Ganeshkhind, Aundh, Pune feeling aggrieved by the non-acceptance of her claim of voluntary retirement which she informed Assistant Commissioner Kendriya Vidyalaya Sangathan, Ahmedabad Region, the applicant filed this O.A. on 1.10.2001 for following reliefs:-

- 8(a) to allow the application,
- (b) to hold and declare that the applicant stood voluntary retired from her service w.e.f. 22.07.2001 (AN) on the expiry of the three months notice period from the date of submitting application for voluntary retirement on 23.04.2001,
- (c) to declare that the applicant is entitled for retirement benefits as are admissible under the Rules to employees who seek voluntary retirement, as per Pension Rules,
- (d) to direct the Respondents to pay all the retirement benefits to the applicant,
- (e) to award cost of application."

2. The case of applicant is that as she informed her decision for voluntary retirement from the post of T.G.T. and requested for waiver of notice period, which is three months, and as she did not hear from Respondents about rejection of her request for voluntary retirement on expiry of three months, she voluntarily stood retired.

3. The case of applicant has been opposed by Respondents. The Respondents claimed that applicant was informed by Kendriya Vidyalaya Sangathan Regional Office

Bijapur

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Mumbai by letter No.F.15-47/2000/KVS(MR) dated 30.7.2001 that her request for voluntary retirement cannot be acceded to as action under Article 81(d) of Education Code has already been initiated. The respondents claimed that Article 81(d) is attracted in case of applicant which provides for loss of lien by an employee who has been absent or remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended and, therefore, the applicant lost her lien under said Article.

4. Respondent No. 2, Assistant Commissioner, Kendriya Vidyalaya Sangathan Mumbai Region, by an order No. F.15-42/2000/KVS(MR)/2657 dated 29.10.2001 informed applicant that she is deemed removed from service of Kendriya Vidyalaya Sangathan with effect from 15.9.2000 from the post of T.G.T. as per Article 81(d) of Education Code. This information being given to applicant subsequent to filing of O.A., the applicant sought amendment of O.A. disputing respondents stand. By amendment the applicant added additional facts, grounds seeking further relief, the relief added being as under :

"8(a)(a) to quash and set aside the order dt. 29.10.2001,

(a)(a)(a) to declare that the provisions of CCS(CCA) Rules adopted by the Respondents will govern the case of applicant for grant of Voluntary retirement from service,

(a)(a)(a)(a) to direct the Respondent No.2 to grant leave on medical grounds to the applicant from 12.11.2000 till

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22.7.2001 when she stood voluntary retired."

5. Heard Counsel for applicant and respondents. It is clear from pleading of parties that one of the objection that respondents raised is that of deemed voluntarily abandonment of service by applicant. According to Counsel for respondents such an order is appealable and, therefore, O.A. is liable to be dismissed as applicant has not exhausted departmental remedy available to her. It has not been disputed by Counsel for applicant that appeal lies against the order under challenge. His contention is as impugned order is patently illegal, therefore, the O.A. can be entertained and applicant may not be relegated to remedy of appeal.

6. We are not inclined to accept argument of applicant's counsel. The applicant has an alternative remedy of appeal. She has not exhausted the departmental remedy available to her. Thus, we hold that the O.A. is not maintainable in view of Section 20 of Administrative Tribunals Act, 1985, due to her failure to exhaust remedy of appeal and therefore the O.A. is liable to be dismissed on this ground alone.

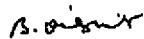
7. The applicant has filed this O.A. on 1.10.2001 and one of the order whereby applicant has been informed about her removal due to loss of lien has been passed during pendency of O.A. on 29.10.2001. It will be fair enough to applicant if she is allowed to have his say in appeal which could have been filed within 45 days from
A. V. Sankar

the date of order. As Respondent No.2 passed the appealable order on 29.10.2001 while applicant was pursuing her remedy before this Tribunal, we would like to issue direction to appellate authority that in case the appeal is filed against impugned order within a period of one month from today then the appellate authority will not reject it on the ground of bar of limitation and will dispose of the same on merit.

8. For aforesaid reasons the O.A. is dismissed subject to direction that in case an appeal is filed within one month from today against impugned order then the same shall not be dismissed on the ground of limitation and will be disposed of by Appellate Authority within 3 months from the date of filing of the appeal on merits.

9. Office will issue a copy of this order within 3 days to the Counsel for parties. No costs.


(M.P. Singh)
Member (A)


(Birendra Dikshit)
Vice Chairman.

H.