

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 242/2002
~~XXXX NO~~

199

DATE OF DECISION _____

Hukam Singh Petitioner

Mr. A.C. Upadhyay Advocate for the Petitioner (s)

Versus

The commissioner, K.V.S. Respondent
New Delhi and three others

Mr. V.S. Gurjar Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. Mr. A.P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Central Administrative Tribunal
Jaipur Bench, Jaipur.

Original Application No. 242/2002

Hukam Singh
S/o Shri Bag Singh
r/o Village Thikariya Khurd
Manda Bhim Singh
Nawa Tehsil
Nagaur Dist.

: Applicant

rep. by Mr. A.C. Upadhyay : Counsel for the applicant.

-vs-

1. Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi through its Commissioner.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan
Regional Office
Bajaj Nagar,
Jaipur.
3. Principal,
Kendriya Vidyalaya No. 1
Bajaj Nagar
Jaipur.
4. Shri J.C. Badhwa
C/o Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi through its Commissioner. : Respondents.

rep. by Mr. V.S. Gurjar : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

Date of the order: 26.12.02

Per Mr. Justice G.L.Gupta :

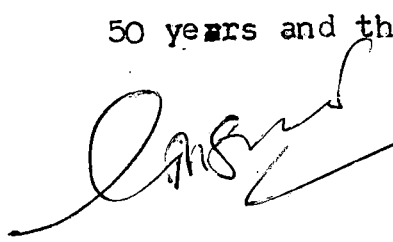
Through this application the applicant
calls in question the order dated 10.7.98 (Annex A.7)



and the order dated 21.12.98 (Annex. A.8).

2. The applicant is an ex-serviceman from the Indian Army from where he was discharged on 31.10.83. He was appointed as Group 'D' employee in the Kendriya Vidyalaya Sangathan on 8.7.86. It is averred that the applicant performed his duties to the satisfaction of his superiors, yet on the basis of a small incident which took place in the office of the Administrative Superintendent in the K.V.S. Regional Office on 1.9.94, the respondent No. 4 issued a charge sheet to him. The applicant was suspended also but his suspension was revoked on 19.10.94. The charge sheet under Rule 14 of the CCS(CCA) Rules 1965 was served on the applicant on 13.6.95. An Inquiry Officer was appointed, who conducted the inquiry on 19.2.96 on which date the applicant tendered his apology. The Inquiry Officer submitted his report on 15.5.96 and thereafter the Disciplinary Authority imposed the penalty of compulsory retirement on him vide order dated 10.9.97 (Annex. A.7). The applicant preferred an appeal against the said order which was dismissed by the Appellate Authority vide order dated 21.12.98 (Annex. A.8).

The applicant challenges the two orders on the grounds that the mis-conduct was of minor nature and the Inquiry Officer has decided the matter only on the basis of admission of guilt by the applicant and no evidence was recorded. It is averred that the applicant had not completed 20 years of service nor did he attain the age of 50 years and therefore the order of compulsory



retirement is illegal. It is also stated that the punishment is too harsh.

The applicant has filed M.A. No. 431/2002, for condoning the delay in filing the O.A. which has been opposed by the other side.

3. In the reply the respondents have opposed the O.A. mainly on the ground that it was not filed within the period of limitation. It is further averred that the applicant had admitted his guilt and therefore there is no illegality in passing the impugned orders.

4. In the rejoinder, the applicant has reiterated the facts stated in the O.A.

5. We have heard the learned counsel for both sides and perused the documents placed on record. Sec. 21 of the Administrative Tribunals Act 1985, provides limitation for filing applications before the Tribunal. An application can be filed before the Tribunal within one year from the date of accrual of cause of action. It is an admitted position that the appeal of the applicant was rejected by the Appellate Authority vide order dated 21.12.98. This O.A. has been filed on 15.5.2002. Obviously, the O.A. has not been filed within time.

6. The reason stated in the Misc. Application for condoning the delay, is that the applicant was not aware of the order dated 21.12.98 and he came to know about the same only when he received the



copy of the order dated 30.4.2002, passed by this Tribunal in O.A. No. 263/99.

7. It may be pointed out that the applicant had earlier filed O.A. No. 263/99 challenging the order of compulsory retirement, wherein it was also stated that the applicant had preferred departmental appeal against the order of penalty and the same had not been decided. In the reply filed to the above O.A., it was stated by the respondents that the appeal of the applicant had already been decided on 21.12.98. On the basis of the above averment made in the reply, the learned counsel for the applicant made a statement before the Court that he wanted to withdraw the O.A. with liberty to file fresh O.A. This Court vide order dated 30.4.2002 dismissed the O.A. as withdrawn with liberty to file fresh O.A. subject to the plea of limitation. It is evident from the order passed in the O.A. that the Court had not condoned the delay and the respondents were given right to raise the objection of limitation in the subsequent O.A.

8. Now the question for consideration is whether the stand of the applicant that he had come to know about the appellate order dated 21.12.98 for the first time when he received the copy of the order dated 30.4.2002, is correct.

9. The respondents case is that they had already sent a copy of the order dated 21.12.98 to the applicant by registered post and in support

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of the same the respondents have produced a photo copy of the despatch register maintained in the office of R.1 wherein at Sl. No. 570, the name of the applicant appears. The photo copy of the register shows the account of the postage stamp as well. There is no reason to disbelieve the documentary evidence recorded in the official course of routine duties. It has therefore to be accepted that the applicant had been sent a copy of the order dated 21.12.98, by registered post.

10. Apart from that, it is stated by the respondents in their reply that the counsel for the applicant was given a copy of the order dated 21.12.98, along with a copy of the reply in O.A. No. 263/99, in the month of September 1999. This fact ~~has~~ not been denied by the applicant in specific terms in the rejoinder. Therefore it will have to be presumed that the applicant's counsel had received a copy of the order dated 21.12.98 in September 1999. The applicant having not challenged the same within one year from September 1999, this O.A is liable to be dismissed on the ground of limitation.

11. As per the averments made in the M.A. the delay is sought to be condoned only on the ground that the applicant did not receive the Appellate Authority's order dated 21.12.98 even upto 3.10.2002, the date on which the M.A. was signed by the applicant. It has been found that the applicant had been sent a copy of the order




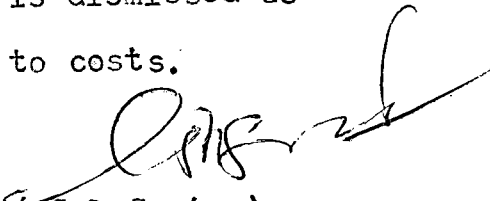
dated 21.12.98 by registered post soon after it was passed and also a copy of the same had been supplied to his counsel with the reply in O.A. No. 263/99 in September 1999. That being so, there is no good cause to condone the delay, in filing the O.A.

12. It is settled legal position that the Tribunal cannot decide the matter on merits if the application is filed after the expiry of period of limitation. See Secretary to the Government of India vs. Shivram Mahadu Gaikwad (1995 Supp (3) SCC 231)
(ii) Ramesh Chand Sharma vs. Udam Singh Kamal
(2000 SCC (L&S) 53)

13. In view of the settled legal position, the O.A. has to be dismissed on the preliminary objection that it is barred by limitation. It is not necessary to consider the matter on merits.

14. Consequently the O.A is dismissed as barred by limitation. No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L. Gupta)
Vice Chairman

jsv.