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**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 314 of 2005

Jabalpur, this the 27th day of September, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Ku. Shalini Paul, Daughter of Late
Shri P.S. Paul, aged about 50 years,
R/o. 2751, Napier Town, Jabalpur (MP). Applicant

(By Advocate – Shri B.K. Rawat)

V e r s u s

1. The Commissioner, Kendriya
Vidyalaya Sangathan, Shaheedjeet
Singh Marg, New Delhi.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, GCF Estate,
Jabalpur.
3. The Principal, Kendriya Vidyalaya,
WRS Colony, Raipur (CG). Respondents

(By Advocate – Shri M.K. Verma)

O R D E R (Oral)

By M.P. Singh, Vice Chairman –

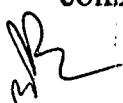
By filing this Original Application the applicant has claimed the following main relief :

“to issue a suitable direction to the respondents for payment of the salary for the period from 28.8.1998 to 15.2.1999 and further to grant leave salary for the period from 16.2.1999 to 25.3.1999.”

2. The brief facts of the case are that the applicant was working as Trained Graduate Teacher, Biology in Kendriya Vidyalaya, COD,

Jabalpur. She was declared surplus consequent upon introduction of Science stream at plus 2 stage in Kendriya Vidyalaya, COD, Jabalpur. Since no post of Trained Graduate Teacher, Biology was available at Jabalpur she was transferred from Jabalpur to Raipur vide order dated 12.8.1997. She has filed a Writ Petition No. 3459/1997 in the Hon'ble High Court of Madhya Pradesh. The said WP was withdrawn with liberty to the applicant to approach the authorities for considering the petitioner's case for accommodation at Jabalpur. Thereafter, she filed another WP No. 5323/1998 in the Hon'ble High Court of Madhya Pradesh. The Hon'ble High Court disposed of the said WP directing the respondents to consider the petitioner's case for accommodating her as a member of the surplus staff against the one available post of TGT (Biology) in Kendriya Vidyalaya, GCF No. 1, Jabalpur. In pursuance of these directions given by the Hon'ble High Court the respondents have passed the order dated 10th February, 1999 rejecting the request of the applicant to modify the transfer order. Thereafter she has filed another WP No. 4200/1998 in the Hon'ble High Court of Madhya Pradesh and the Hon'ble High Court vide order dated 18th September, 1998 have directed the respondents to dispose of the representation of the applicant. In pursuance of the direction the respondents have rejected the representation of the applicant. Since her transfer order was not modified and that she has joined her duties at Kendriya Vidyalaya, Raipur, she has approached this Tribunal by filing OA No. 320/1999 seeking directions to the respondents for payment of salary for the period from 28th August, 1998 to 15th February, 1999 and further to grant leave salary for the period from 16th February, 1999 to 25th March, 1999. The Tribunal vide its order dated 27th November, 2003 has disposed of this OA by giving following directions :

“ The applicant is directed to submit her application for regularisation of the period from 28.8.1998 to 15.2.1999 on account of court case and also for grant of leave salary for the period from 16.2.1999 to 25.3.1999 with the prescribed leave application forms, within a period of one month from the date of receipt of a copy of this order, to the respondents and the respondents are directed to consider such a representation and pass appropriate reaso



speaking order within a period of two months from the date of receipt of the applicant's representation."

Thereafter the applicant has filed a Review application No. 4/2004 praying for review of the order of the Tribunal passed on 27th November, 2003 in OA No. 320/1999. The Tribunal vide its order dated 21st January, 2004 has rejected the review application. Thereafter, the respondents have passed the order dated 31st March, 2004 in compliance of the order of the Tribunal dated 27th November, 2003 in OA No. 320/1999. Para ⁵ 4 of order dated 31st March, 2004 is reproduced below :

"5. And whereas, the Hon'ble Tribunal having considered the plea of the applicant has made it abundantly clear that the period from 28.8.1998 to 15.2.1999 be regularized by grant of leave of kind due on submission of leave application form in the prescribed format. It is explicit that the Tribunal was not for treating the aforesaid period as duty period."

The respondents while passing the order dated 31st March, 2004 have stated that the "Tribunal having considered the plea of the applicant has made it abundantly clear that the period from 28.8.1998 to 15.2.1999 be regularized by grant of leave of kind due on submission of leave application form in the prescribed format. It is explicit that the Tribunal was not for treating the aforesaid period as duty period". It was also mentioned in the order that "the applicant is advised to apply for leave of kind due in prescribed form which shall be considered by the leave sanctioning authority subject to admissibility".

3. We find that in OA No. 320/1999 the applicant has claimed relief for the payment of salary for the period from 28th August, 1998 to 15th February, 1999 and further to grant leave salary for the period from 16th February, 1999 ^{to 2} and 25th March, 1999. Similar reliefs are also claimed by the applicant in the present Original Application. We, therefore, find that the reliefs claimed by the applicant in the present Original Application has already been adjudicated by the Tribunal in the earlier OA No. 320/1999 filed by the applicant. The respondents have passed order dated 31.3.2004

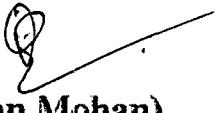


and have rejected the claim of the applicant. We find that though the applicant in paragraph 1 of the OA has stated that this OA is made against the aforesaid order dated 31.3.2004 but in the relief clause in paragraph 8 of the OA he has not prayed any direction to quash the aforesaid order dated 31.3.2004.

4. It is an established legal position that this Tribunal cannot sit in appeal or cannot re-adjudicate the matter which has already been adjudicated by the Tribunal earlier. Thus the present OA of the applicant is hit by the principles of res-judicata. Hence, the Original Application is liable to be dismissed on the principles of res-judicata.

5. The learned counsel for the applicant has submitted that because a case was pending in the Hon'ble High Court she could not join till the case was decided and therefore she should be treated on duty. We find from the order of the Hon'ble High Court that the Hon'ble High Court has not directed to treat this period as on duty. Moreover, the respondents while deciding her representation asked her repeatedly to join on the new place of duty but she has not done that and at her own violation remained absent from duty. In these circumstances that period can be regularized by granting the kind of leave due to the applicant.

6. In view of the above the Original Application is dismissed. As the applicant has suppressed the material facts and has not approached the Tribunal with clean hands we, therefore, impose a cost of Rs. 1,000/- on the applicant to be paid to the respondents.


 (Madan Mohan)
 Judicial Member


 (M.P. Singh)
 Vice Chairman