

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 22nd day of December, 2006

ORIGINAL APPLICATION No.489/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

Krishna Avtar Gupta,  
aged about 65 years,  
s/o late Shri Nannoo Mal,  
r/o B 31, Triveni Nagar,  
Jaipur.

.. Appliant

(By self)

Versus

1. Deputy Commissioner,  
Kendriya Vidyalaya Sangthan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi.
2. Assistant Commissioner,  
Kendriya Vidyalaya Sangthan,  
G.C.F. Estate,  
Jabalpur (M.P.)

.. Respondents

(By Advocate:... )

O R D E R (ORAL)

The applicant who is retired Principal, Kendriya Vidyalaya Sangthan has filed this OA thereby praying for the following reliefs:-

- 8.1 The Hon'ble Tribunal is humbly prayed to allow and admit this application.
- 8.2 The Hon'ble Tribunal is prayed to quash and set-aside the order dated 9.6.2006 of the respondents.
- 8.3 The Hon'ble Tribunal is prayed to issue order or direction to the respondents to make payment of the amount of leave encashment for 56 days recovered by them from the applicant by making an adjustment of the amount leave encashment of 56 days in the amount of so called excess payment of salary for 59 days, with cost.
- 8.4 Any other order or direction deemed just and in favour of the applicant."

2. In Para 7 of the OA, the applicant has made the following averments:-

"The Applicant declares that he has not previously filed any application, writ petition or suit regarding this subject matter in respect of which this application has been made."

3. We have heard the applicant present in person at admission stage. We are of the view that the present OA is wholly misconceived and amounts to abuse of the process of Court. It may be stated that earlier the applicant has filed OA No.415/2004 before this Tribunal thereby praying that he is entitled to leave encashment for 300 days whereas the respondents have paid the leave encashment for 197 days. The said OA was disposed of vide order dated 13.4.2006 by directing the applicant to make fresh representation to respondent No.2 who was in turn directed to dispose of the same within six weeks by speaking order quoting the provisions of rule/instructions on the basis of

which the applicant is not entitled to the claim of remaining amount of leave encashment. It was further observed that in case the respondents come to the conclusion that the applicant is entitled to further leave encashment amount, the respondents will make payment of the remaining amount to the applicant within a further period of six weeks from the date of decision on such representation and in case the applicant is still aggrieved, it will be open for the applicant to approach this Tribunal for redressal of his grievance. Pursuant to the aforesaid order, the respondents passed fresh order thereby holding that the applicant is entitled to leave encashment amount for 56 days instead of 103 days. It was further observed that the applicant has been paid salary for 59 days in excess and recovery has to be made. Thus, according to the respondents, nothing was payable to the applicant. The said order dated 9.6.2006 was conveyed to the applicant vide order dated 31.7.2006 thereby enclosing copy of the order. These orders were under challenged before this Tribunal in OA No.405/2006. The said OA was disposed of at admission stage vide order dated 21.11.2006. At this stage, it will be useful to quote para 8 of the judgment which thus reads as under:-

“8. For the foregoing reasons, we are of the view that the applicant has not made out any case for our interference. Accordingly, the OA is dismissed at admission stage. It is, however, clarified that the issue whether the applicant was made excess payment of salary of 59 days which is to be recovered from him is not subject matter in this OA and this OA was

confined only as to whether the applicant was entitled to further leave encashment of 103 days, as such, no finding is required on this point. It will be open for the applicant to agitate this matter in separate OA, if so desires.”

4. Thereafter the applicant filed Review Application No.15/2006 for reviewing the order dated 21.11.2006 passed in OA No.405/2006 thereby praying that direction may be given to implement the earlier order dated 13.4.2006 passed in OA No.415/2004. The said Review Application was also dismissed by this Tribunal by circulation vide order dated 18<sup>th</sup> December, 2006. At this stage, it will be useful to quote para 5 of the order which thus reads:-

“We have given due consideration to the submissions made by the applicant. We are of the view that the present Review Application is wholly misconceived and not maintainable in view of the findings recorded by this Tribunal in para 8 of the judgment, relevant portion of which has been reproduced hereinabove. In case the judgment is wrong, the remedy available to him is to challenge the same by filing Writ Petition before the Hon’ble High Court. Certainly, Review Application is not the remedy. Further, as can be seen from para 8, this Tribunal has granted liberty to the applicant to file a separate OA in case he is aggrieved that the respondents have made excess payment of salary for 59 days. In the garb of Review Application, the applicant wants this Tribunal to issue order regarding payment of salary on account of leave encashment for 56 days but he does not want to make payment of excess salary drawn by him for 59 days as determined by the respondents. It was in these circumstances, this Tribunal has not issued directions to the respondents to make payment of 56 days leave salary and the issue was kept open to be agitated and determined in accordance with law.”

5. Now the applicant has filed the present OA thereby re-agitating the matter which stands already concluded and decided vide judgment rendered in OA No.405/2006 dated 21.11.2006 and the order dated 18<sup>th</sup> December, 2006 in Review Application No.15/2006, Thus, we are of the view that the present OA is barred by the principle of res-judicata, inasmuch as, the

subject matter in respect of which the present OA is made has already been decided by this Tribunal by disposing OA No.405/2006 and RA No.15/2006. <sup>Further</sup> ~~The~~ applicant has not annexed copies of these orders alongwith this OA. Rather, the applicant has made categorical statement in Para 7 of the OA, relevant portion of which is reproduced above, that he has not previously filed any application, writ petition or suit regarding this subject matter in respect of which this application has been made. Thus, the applicant is not only guilty of suppressing the material fact but he has also filed wrong affidavit and thus made himself liable for perjury. The applicant is also not entitled to be heard even on this account. Since the applicant is appearing in person, we are not taking any action against the applicant.

6. With these observations, the OA is dismissed with no order as to costs.

  
(J.P.SHUKLA)

Admv. Member

  
(M.L.CHAUHAN)

Judl. Member

R/