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OA 173/2010 with MA 125/2011

3.5.2011 Mr. Munesh Bhandari, Counsel for
applicant.

Mr. V.S. Chauhan, Counsel for respn'ts no. 2 to 4.

Mr. V.D. Sharma, Counsel for respn'ts no. 5 to 6.

Arguments heard. The OA as well
as MA stand disposed of, by a
separate order.

Anil Kumar

(Anil Kumar)

M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

Jaipur, the 3rd day of May, 2011

ORIGINAL APPLICATION No.173/2010

With

MISC. APPLICATION No.125/2011

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Gulab Chand Sharma
S/o Late Pt. Ram Het Lal Sharma,
R/o Plot No.4, Hanuman Colony,
Jagatpura,
Jaipur.

... Applicant

(By Advocate : Shri Munesh Bhardwaj)

Versus

1. Union of India through
Secretary, HRD,
Ashoka Road,
New Delhi.
2. Commissioner,
Kendriya Vidyalaya Sangathan (HQ),
16, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Gandhi Nagar marg, Bajaj Nagar,
Jaipur.
4. Principal,
Kendriya Vidyalaya No.2,
Jaipur Cantt., Army Area,
Jaipur.

[(Respondents No.2 to 4) By Advocate : Shri V.S.Gurjar]

5. Secretary,
Education Department,
Government of Rajasthan,
Government Secretariat,
Jaipur.
6. Commissioner/Director,
Secondary Education,
Government of Rajasthan,
Bikaner.

... Respondents

[(Respondents No.5 & 6) By Advocate : Shri V.D. Sharma]

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief :

"It is, therefore, most respectfully prayed that this Hon'ble Tribunal be pleased to call for the entire record relating to the case and after perusing the same the respondents be directed to give full pension and other pensionary benefits from the date of retirement with interest @24% p.a. to the applicant by considering his service period rendered in Education Department, State of Rajasthan, before absorption in Kendriya Vidyalaya Sangathan, with all consequential benefits."

2. In brief, facts of the case are that the applicant was initially appointed on the post of LDC on 30.8.1957 in Education Department of the State of Rajasthan and on 1.7.1967 he was sent on deputation in Kendriya Vidyalaya No.1, Jaipur. Subsequently, he was absorbed in Kendriya Vidyalaya Sangathan w.e.f. 1.7.1967 on the post of UDC. He retired on 30.6.1999 on attaining the age of superannuation from the post of Office Superintendent from Kendriya Vidyalaya No.2, Jaipur.

3. Grievance of the applicant is that his services rendered in the State of Rajasthan are not being counted for the purpose of calculation of his pension in spite of the fact that the State Government has already contributed its share in lieu of the

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services rendered by him in the State Government for the purpose of giving pension to the applicant.

4. The applicant has also submitted that two other similarly situated persons namely S/Shri U.C.Sharma & N.L.Thakur have been considered and given the same benefit but the applicant has been denied. Therefore, the applicant has requested that his services rendered in the State Government may be counted for the purpose of sanction of pension and his pension may be revised accordingly.

5. Respondents No.5&6 have submitted their reply and have stated that the amount of pension contributed for the services rendered by the applicant from 30.8.1957 to 30.6.1967 has already been released vide order dated 1.8.2000, whereby the Demand Draft No.481536 dated 1.8.2000, amounting to Rs.1803/- was sent to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi, for further necessary action on the part of respondents No.1 to 4. Therefore, nothing is required to be done on the part of respondents No.5&6.

6. Respondents No.2 to 4 have also submitted their reply. They have raised preliminary objections as to the very maintainability of the present OA preferred by the applicant on the ground of limitation alone. They have submitted that the applicant has preferred the present OA after more than 10 years of his retirement. Therefore, the OA is liable to be dismissed on that count alone keeping in view the mandate of Section-21 of the Administrative Tribunals Act, 1985 and the law declared by the Hon'ble Apex Court. The respondents have referred to a judgement of larger bench of the Hon'ble Apex Court headed by Hon'ble Mr.Chief Justice J.S.Verma, Sujata V.Manohar and B.N.Kripal, JJ, dealing with the issue of limitation in the matters of stepping of pay in the case of **Union of India v. O.P. Saxena** [(1997) 6 SCC 360]. At page 364 of the said judgement, the Hon'ble Apex Court held in unequivocal terms, as under :

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"19. The respondent did not make any claim for stepping up of his salary as long as he was in service. Having retired on 31.3.1988, in July 1991 he filed an application before the Central Administrative Tribunal for stepping up of his pay to bring it on par with that of Shri Sood and also to give him consequential benefits.

20. The Tribunal by the impugned judgement allowed the application and directed that the pay of the respondent should be stepped up and he should be given all the consequential benefits.

21. Apart from the fact that the application of the respondent before the Central Administrative Tribunal which was filed in July 1991 was highly belated, the position in this case is no different from that of Union of India v. O.P.Saxena. In this case also the respondent and Shri Sood were appointed to the stationary post from two different sources. The respondent was Driver Grade- when he was so appointed while Shri Sood was appointed to the stationary post from the post of Driver Grade-A. Therefore, for the reasons contained in the judgement in CA No.8852 of 1996 the order of the Tribunal has to be set aside.

22. We accordingly allow this appeal, set aside the order dated 27.1.1993 of the Central Administrative Tribunal, Lucknow Bench, with the result that OA No.322 of 1991 filed by the respondent stands dismissed. There will be no order as to costs."

Hence, the OA is liable to be dismissed on that count alone in limini.

7. That, by way of present OA, the applicant is seeking relief of counting his past services w.e.f. 30.8.1957 to 30.6.1967. He also made a representation to this effect to the State of Rajasthan vide communication dated 19.1.1989 (Ann.A/1). Thus, the applicant was very much aware of his alleged claim since January, 1989 but he did not avail of any legal remedy. Therefore, the delay of more than 20 years is apparent on the face of record since the OA was preferred in the year 2010. Hence the OA preferred by the applicant is not within the period of statutory limitation as prescribed under

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Section-21 of the Administrative Tribunals Act, 1985. The applicant has failed to make out any case, worth the name, so as to explain the undue and inordinate delay of 20 years in preferring this OA. Learned counsel for the respondents, on the point of limitation, also referred to the following decisions of Hon'ble Apex Court in the reply:

1. **Administrator of Union Territory of Daman and Diu v. R.D. Valand** [1995 Supp (4) SCC 593],
2. **Ramesh Chand Sharma v. Udhamp Singh Kamal** [(1999) 8 SCC 304] &
3. **Secy. to Govt. of India v. Shivram Mahadu Gaikwad** [1995 Supp (3) SCC 231].

8. Heard learned counsel for the parties and perused the material available on record. Learned counsel for the applicant reiterated the points which he has taken in the OA. However, he could not explain the delay in filing the OA. The legal notice given by him is dated 15.2.2010, which is also filed almost after 10 years of his retirement. The applicant has not even filed an application for condonation of delay.

9. Learned counsel for the respondents, during the course of arguments, drew my attention to a recent judgement of Hon'ble Apex Court in the case of **D.C.S. Negi v. Union of India & Ors.**, dated 7.3.2011. In this judgement, the Hon'ble Apex Court has held that;

"It is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

The ratio laid down by the Hon'ble Apex Court in the various judgements, quoted above, squarely applies in the present case. The applicant has failed to justify the delay of more than

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10 years in filing the present OA. Hence the present OA stands dismissed on the ground of limitation alone.

10. In view of the order passed in the OA, no order is required to be passed in MA 125/2011, which also stands disposed of accordingly.

11. No order as to costs.



(ANIL KUMAR)
MEMBER (A)

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