

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**  
**CIRCUIT SITTING AT NAINITAL**

Allahabad, this the 18<sup>th</sup> day of July, 2018

**Hon'ble Mr. Justice Bharat Bhushan, Member – J**  
**Hon'ble Mr. Gokul Chandra Pati, Member – A**

**Original Application No.331/00943 of 2012**

Malaya Pathak, S/o Shri J.K. Pathak, Permanent Resident of, 112 Mahamanapuri Colony P.O. BHU Varanasi, Presently posted as Physical Education Teacher, Jawahar Navodaya Vidyalaya, P.O. Degree College Pithoragarh, Uttrakhand.

.....Applicant.

By Advocate : Shri A.D. Singh

**V E R S U S**

1. The Novodaya Vidyalaya Sammiti, Kailash Colony, New through the Commissioner, Department of Education, Ministry of Human Resource Development, Govt. of India, New Delhi.
2. The Deputy Commissioner, Navodaya Vidyalaya Sammiti Regional Office – Lekhraj Panna 2<sup>nd</sup> floor, Sector – 2, Vikas Nagar, Lucknow.
3. The Principal, Jawahar Navodaya Vidyalaya Pithoragarh, Jawahar Navodaya Vidyalaya P.O. Degree College Pithoragarh, Uttrakhand.

..... Respondents

By Advocate : Shri Nishant Mehrotra

**O R D E R**

**By Hon'ble Mr. Gokul Chandra Pati , JM**

This OA is filed with the following reliefs:-

**A.** *This Hon'ble Tribunal may graciously be pleased to issue a suitable order or direction to declare the letter / order dated of May, 2012 issued by Respondent No. 2 as null and void and further commanding the Respondent No. 3 to permit the applicant to sign the attendance register and to perform his duties on the post of Physical Execution Teacher at Jawahar Navodaya Vidyalaya Pithoragarh without any impediments.*

**B.** *To issue order or direction directing the Respondents to treat the applicant as on duty for entire period commencing from 03.04.2012 till the date he is actually permitted to sign the attendance register and allow to function on the post of Physical Education Teacher at Jawahar Navodaya Vidyalaya Pithoragarh and to pay him full amount of salary along with other allowances for the aforesaid period.*

**C. To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances in the case.**

**D. To award the cost of the present original application, through out, in favour of the applicant."**

2. This Tribunal while considering the interim relief in this case, passed the following order vide the order dated 28.08.2012:-

**"28.08.20012  
Hon'ble Mr. Sanjeev Kaushik-JM  
Hon'ble Mr. Shashi Prakash-AM**

.....  
.....

***We have considered the rival submissions and have also gone through the order dated 4.11.2010 and we are of the prima facie view that applicant has been restrained to join his duties without any reason. Therefore, we direct the respondents to allow the applicant to sign the attendance register and perform duties of the Physical Education Teacher.***

....."

3. The counter affidavit was filed by the respondents, but the applicants had not filed the rejoinder. At this stage, vide order dated 13.11.2014, the OA was dismissed in default for non-prosecution on the part of the applicant. Now the restoration application dated 26.11.2017 (No. 861/2018) has been filed by the applicant on 16.04.2018 with an application for Condonation of delay (No. 860/2018) in filing the Restoration application.

4. Shri A.D. Singh, learned counsel for the applicant submitted that the applicant has been allowed to join in pursuance to the interim order dated 28.08.2012 and he has been extended most of the benefits by the respondents. The letter dated 07.11.2012 has been filed him as Annexure to a Suppl. Affidavit of the applicant, which indicates that the grievances of the applicant have been taken care of except the payment of salary for the month of May to August, 2012 which has not been paid because the matter was subjudice.

5. He also explained the reasons for non-attendance of the applicant and for delay in filing the restoration application and stated that while the proceeding was going in Allahabad Bench, it was transferred to Nainital Circuit Bench and no intimation about it was given to the applicant by his previous counsel, for which the applicant could not take any follow up action. Shri Singh further submitted that in case the OA is restored after allowing his restoration application, he would not press this OA because of the fact most of the grievances of the applicant has been redressed, for which OA may be dismissed.

6. It is seen that till 03.09.2014 this OA was being taken up in Allahabad Bench and from 25.09.2013 the file was transferred to Circuit Bench Nainital, where the applicant was absent on 23.09.2014, 25.9.2014, 13.10.2014 and 13.11.2014, for which the OA was dismissed in default vide order dated 13.11.2014. In view of the submissions of learned counsel for the applicant that the earlier counsel of the applicant did not inform the applicant about the transfer of this case to Circuit Sitting at Nainital Bench and after considering his statement, we allow the delay Condonation application No. 860/2018 and condone the delay in filing restoration application in the interest of justice. The reasons mentioned in the Restoration application No. 861/2018 are also found satisfactory for which, it is allowed and the OA is restored to its original number in view of the submission of the learned counsel of the applicant that he would not like to press the OA as the applicant's grievances have been redressed except for arrears of salary for some months, as informed by the letter dated 07.11.2010 of the respondents.

7. In view of above and taking into account the statement of Shri A.D. Singh, learned counsel for the applicant at bar, the OA after restoration, is dismissed on the ground of not being pressed by the applicant. No costs.

**(Gokul Chandra Pati)**  
Member-A

**(Justice Bharat Bhushan)**  
Member-J

/pc/