

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.3152/2017

**Reserved On:12.09.2017
Pronounced on:15.09.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

R.S.Mishra, 69 yrs
S/o Late J.P.Mishra,
Ex-PGT (Chemistry),
S-93, New Palam Vihar,
Phase-I, Gurgaon-122017.Applicant.

(Applicant in person)

Versus

Union of India, through

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18-Insitututional Area, SJS Marg,
New Delhi-110016.

2. The Joint Commissioner (Pers),
Kendriya Vidyalaya Sangathan,
18-Insitututional Area, SJS Marg,
New Delhi-110016.Respondents.

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

Heard applicant in person. He has filed this Original Application claiming the following reliefs:-

“(a) Quash bogus, unauthentic, adverse entries in the ACR for the year ending June 2001 in May & August, 2002 respectively.

(b) Direct the Competent Authority to expunge the bogus adverse entries in the ACR for the year ending June 2001 in May & August 2001 respectively.

(c) Direct the Competent Authority of KVS to take stern disciplinary action against Mr. E.T. Arasu Ex. EO KVS (SR), Mrs. Radhanrani Devi Ex. Principal KV No.1 Imphal for their admitted proven fraudulent acts.

(d) Pass any such other or further (order) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case in favour of the applicant against the respondent".

Earlier applicant had filed OA bearing No.4451/2014. When the said OA was being heard on 15.09.2016, the same was withdrawn by the applicant and the following order was passed:-

"After arguing for some time, learned counsel for the applicant seeks leave of this Tribunal to withdraw this O.A. with liberty to avail departmental remedies. Accordingly, this O.A. dismissed as withdrawn with liberty, as prayed for".

Immediately thereafter, he moved MA No.2833/2017 seeking revival of the aforesaid order passed in OA No.4451/2014 on 15.09.2016. On 10.08.2017, the Tribunal passed the following order in MA No.2833/2017:-

"This MA has been filed seeking revival of the OA which was dismissed as withdrawn by us on 15.09.2016 by the following order:

"After arguing for some time, learned counsel for the applicant seeks leave of this Tribunal to withdraw this OA with liberty to avail departmental remedies. Accordingly, this OA is dismissed as withdrawn with liberty, as prayed for."

By this order liberty was given to the applicant to avail of departmental remedies. Thereafter, if he was still aggrieved, he could approach this Tribunal by filing a fresh OA. The OA which has already been dismissed by us cannot be revived as we have already become functus officio after passing the order dated 15.09.2016.

Accordingly, this MA is dismissed”.

2. Now the question that arises is that whether a previous OA having been disposed of with liberty to the applicant to avail of department remedies, can a fresh OA on the same subject be instituted again by the applicant? A previous OA was filed in 2014 and the cause of events related to 2001 and 2002. Therefore, even in the previous and present OA filed in 2017, the first issue to be addressed is that of limitation in filing an OA. In this regard, the Hon'ble Apex Court in Special Leave Petition (C) No.25795 of 2008 titled as **C. Jacob Vs. Director of Geology & Mining & Another** has held as under:-

“6....Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation.....A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. **The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.**

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7. Every representation to the government for relief, may not be replied on merits. **Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim.....”.**

Similarly, the Apex Court in the case of **D.C.S. Negi Vs. U.O.I. and Others** decided on 7.3.2011 in SLP (C) No.7956/2011 (CC No.3709/2011) has held as under:-

“Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under **section 19** of the Act in complete disregard of the mandate of **Section 21**, which reads as under:

“21. Limitation. (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as it is mentioned in clause (a) of sub-section (2) of **section 20** has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of **section 20** has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of said period of six months.

(2) Notwithstanding anything contained in sub-clause (1) where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or as the case may be, clause (b) of sub section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. **A reading of the plain language of the reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, 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)."**

3. In view of the facts and circumstances of the case, the OA is dismissed at the admission stage itself finding it to be hopelessly barred by limitation and in view of a catena of decisions given by the Apex Court on the necessity to first decide the issue of limitation in matters coming before the Tribunal. Hence the OA is dismissed.

4. We may have imposed heavy cost on the applicant but since he is a retired employee and has argued the matter in person, we refrain to do so.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh