

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3850/2015

Order Reserved on: 15.10.2015
Order pronounced on 16.10.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Anju Verma
W/o Shri Rajesh Kumar
Aged about 38 years
R/o Plot No.28, Khasra No.40/6/1
Gautam Colony
Narela, Delhi – 110 040. ... Applicant

(By Advocate: Mr. Prabhat Kumar with Ms. Prerna Kumari)

Versus

Dy. Director of Education
Distt. NW-A, Hakikat Nagar
Delhi. ... Respondents

ORDER

By V. Ajay Kumar, Member (J):

Heard the learned counsel for the applicant.

2. The applicant, a PGT (Economics) under the respondent-Directorate of Education- filed the OA questioning the order dated 20.08.2007 whereunder his claim for payment of salary for the period from 24.02.2005 to 02.10.2006 was rejected on the ground that he

had not performed his duties during the said period, and the said period shall be treated as '*dies non*' for all purposes.

3. Section 21 of the Administrative Tribunals Act, 1985, which prescribes the period of limitation for filing an application under Section 19 of the said Act, reads as under:

"21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as 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 the said period of six months.

(2) Notwithstanding anything contained in sub-section (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."

4. The respondents rejected the claim of the applicant by passing the impugned Annexure A9 dated 20.08.2007 by giving reasons. As

per the OA averments, the applicant preferred a representation on 11.01.2014 (Annexure A10) and a grievance petition on 11.08.2014, i.e., after more than six years. The present OA is filed on 30.09.2015, i.e., with a delay of about seven years from the date of original cause of action.

5. As per Section 21 of the Administrative Tribunals Act, 1985, an application is maintainable within one year from the date of passing of the impugned order. If a representation or appeal as is mentioned in Clause (b) of sub-section (2) of Section 20 of the said Act, 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 the said period of six months.

6. In the present case, though the respondents rejected the claim of the applicant by passing an order on 20.08.2007, the applicant not chosen to question the same till the filing of the present OA, i.e., on 30.09.2015. Even the representation, said to have been made against the said order on 11.01.2014, i.e., after a lapse of about six years. The applicant neither explained the abnormal delay in his application nor filed any M.A. seeking condonation of the delay. Though he stated that a Writ Petition (C) No.2786/2008 was filed before the Hon'ble High Court of Delhi and the same was withdrawn by her counsel without her consent but no details were given.

7. The letters dated 25.08.2014 and 20.10.2014 (Annexure A11 and Annexure A12 respectively) whereunder the respondents have

informed the applicant that her claim was rejected on 20.08.2007 itself, cannot either extend or create new cause of action.

8. It would be relevant to refer to the judgments of Hon'ble Supreme Court on the point of limitation:

In the case of **S.S.Rathore v. State of M.P.**, AIR 1990 SC 10 wherein it was held as under:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

In the case of **Ramesh Chand Sharma v. Udham Singh Kamal & Ors.**, (1999) 8 SCC 304, the Apex Court held as under:

"7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O. A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see *Secretary to Government of India v. Shivram Mahadu Gaikwad*, 1995 Supp (3) SCC 231.

8. For the reasons stated above, the impugned order passed by the Administrative Tribunal on August 6, 1996 in O. A. No. 631 of 1994 is set aside and the said O. A. is dismissed on the ground of limitation. The Civil Appeal Nos. 3119 of 1997 and 3120 of 1997 are allowed. In the circumstances, parties are directed to bear their own costs."

In **D.C.S. Negi** v. **Union of India & Ors.** decided on 07.03.2011 in SLP (C) No.7956/2011(CC No.3709/2011) the Hon'ble Apex Court, while dismissing the Appeal, has emphasized that the Administrative Tribunal established under the Act is duty bound to first consider whether the application is within limitation, and that 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 relevant observations of the Hon'ble Apex Court are extracted below:

"A reading of the plain language of Section 21 makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (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)."

In the case of **Union of India & Others** v. **M.K.Sarkar,**
 (2010) 2 SCC 59 = 2009 (14) Scale 425 wherein it was held as
 under:

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115:

"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. 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."

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'state' issue or dispute, the

court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

In **State of Tripura v. Arabinda Chakraborty**, (2014) 5 SCALE

335, the Hon'ble Apex Court held that

"18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

(Emphasis added)

9. In the circumstances and for the aforesaid reasons, the OA is dismissed on the ground of limitation. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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