Central Administrative Tribunal
Principal Bench: New Delhi.

OA No.4024/2014

Reserved on: 18.04.2016
Pronounced on: 04.05.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Mahender Singh Anand
s/o Shri Kundan Lal Hamdard,
Retd. Vice Principal/Head of School,
48, Saket Kunj Apartments,
Sector 9, Rohini,
Delhi -85. ....Applicant

(By Advocate: Sh. R.K. Mirg)

Versus

1. The Secretary,
   Department of Education,
   GNCT of Delhi,
   Delhi Secretariat, Indraprstha Estate,
   Delhi.

2. The Deputy Director of Education
   North-West (A) B Block,
   Salimar Bagh,
   Delhi. ...Respondents

(By Advocates: Sh. Anmol Pandita with Sh. V.K. Pandita)

O R D E R

The sole issue involved in the instant OA filed by the applicant relates to credit of 30 days of earned leave to his leave account.

2. The facts of the case, in brief, are that the applicant retired as Vice Principal/Head of School from Govt. Boys Secondary School [Evening], Shahabad Dairy, Delhi where he served from 25.05.2005 to 30.04.2006 after having joined the service as Trained Graduate Teacher (TGT for short) on

12.09.1967. It is the case of the applicant that he did not avail summer vacations in 2005 and was, therefore, entitled to get credit of 30 days of earned leave for the same. He was, besides, further entitled to encashment of 8+14 = 22 days special earned leave converted to earned leave in lieu of having discharged other duties. The applicant was paid leave encashment of 223 days of earned leave instead of 275 days of his entitlement and, as such, the figure of 223 days is erroneous and requires to be corrected. The applicant, after having retired on 30.04.2006, had been repeatedly requesting for encashment of 30 + 22 = 52 days of earned leave. Subsequently, it came to light through RTI information that the applicant discharged his duties as Head of Office from 25.05.2005 to 30.04.2006, though there was no formal order in the records of the respondent organization to this effect.

3. The claim of the applicant principally rests on the ground that the argument, as revealed from the RTI information to the effect that he had worked w.e.f. 25.05.2005 to 30.04.2006 but a formal letter declaring him as Head of Office was not available is not tenable as without such authorization, the applicant could not have discharged his duties as Head of School. Further, an entry in his earned leave account showed that the competent authority

converted special leave of 22 days into earned leave and this left no scope for the respondents to deny encashment of 22 days of earned leave to the applicant. The applicant has prayed for the following relief(s):-

> "*1. The respondents may be directed to allow the applicant credit and encashment of earned leave of 30 days in lieu of having discharged duties as 'Head of School' during the summers of 2005 in a time-bound manner;*
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> *2. The respondents may be directed to allow him encashment of earned leave of 22 days duly converted from special earned leave into earned leave in a time bound manner;*
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> *3. The respondents may be directed to allow him compound interest @ 12% on the aforesaid sums from the date of his retirement in a time-bound manner;*
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> *4. Pass any other order or direction in favour of the applicant, which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case; and*
>
> *5. Allow the OA with costs."*

4. The respondents on their part have filed a counter affidavit in which they have denied the averments of the applicant. It has been submitted by the respondents that earlier the applicant had approached the Public Grievance Commission [PGC for short] which, vide its order dated 05.03.2010, had rejected the applicant's complaint with remarks "*in view of the above facts the Commission is of the view that the complainant is not entitled to any relief in this complaint, hence the case of the complainant is closed in PGC."* It is further submitted by the respondents that during the period between 01.04.2006 and 30.04.2006, the account of leave of the applicant shows as 223+8+14. It is further

submitted that crediting of 30 days leave is not permissible as there is no written order on record declaring him as Head of School. It is again submitted that on the basis of leave account available at the time of retirement, the applicant has been paid encashment of 223 days of earned leave. Insofar as encashment of 14+8=22 days of earned leave is concerned, the respondents submit that the same cannot be encashed being special leave and 30 days earned leave also cannot be encashed to the applicant as the same does not find credited in his leave record.

5. The respondents have relied upon the decision of this Tribunal in *Mrs. Manorama Bhatnagar & Ors. V/s. Govt. of NCT of Delhi* [OA No.3479/2011 decided on 21.03.2012] laying down that the case under consideration being identical as that of the *Mrs. Manorama Bhatnagar & Ors.* (supra), but the same not backed by orders issued by the competent authority and was also marred by delay and laches. The second point that the respondents have adopted is that of limitation for which they have relied upon the decision in *State of Punjab Vs. Gurdev Singh* [1991 (4) SCC 1]; *Union of India Vs. Ratan Chandra Samanta* [JT 1993 (3) SC 418]; *Harish Uppal Vs. Union of India* [JT 1994 (3) 126]; *Aja Walia Vs. State of Haryana & Ors.* [JT 1997 (6) SC 592]; *Union of India Vs. M.K. Sarkar* [2010 (2) SCC 59] and *D.C.S. Negi Vs. Union of India & Ors.* [Civil Appeal No. CC

3709/2011 decided on 07.03.2011]. The respondents have also submitted that since the applicant performed his duties as Vice Principal and not as Head of School, he is not entitled to encashment of 30 days earned leave, and this view had also been adjudicated by the PGC.

6. The applicant has submitted a rejoinder application stating that his application before PGC failed because he was not equipped with the requisite information at the right time. His leave of account showed credit of 233+8+14 days but there is no mention as to why leave of 8+14 = 22 days was not encashed. It is further submitted that having admitted credit of 223+8+14 days leave to his account, it was incumbent upon the respondents to encash 22 days earned leave as well. It is further submitted that it was wrong on the part of the respondents not to have credited the applicant's leave account with 30 days earned leave for having discharged duties as Head of School in the year 2005-06, and 22 days leave having discharged other duties as special leave converted into earned leave.

7. I have carefully gone through the pleadings available on record as also the documents so adduced and the decisions relied upon by either side. I have patiently heard the oral arguments advanced by the learned counsels for both the parties.

8. The first question that needs to be dealt with relates to maintainability of the instant OA. It is an admitted position that the applicant had retired on 30.04.2006 while the instant OA has been filed on 31.10.2014. The applicant submits that he had been pursuing his case through various petitions and representations as he had faith in the efficacy of the legal machinery. He further submits that his grievance has been continuing since the date of his retirement. He has also submitted several correspondences and representations by email etc. to substantiate the point that he had not been sitting idle and had been actively engaged in pursuing his case ever-since his retirement. While the applicant retired on 30.04.2006, the earliest evidence that I find qua applicant's activities in this regard is RTI reply dated 01.10.2010. Even in his application for condonation of delay, the applicant has not mentioned anything cogent that it was being pursued actively right from the date of his retirement. Hence, what appears from the record is that the issue involved was taken up by the applicant in the year 2010 for the first time through RTI application.

9. In this regard, I would like to place reliance on the decision of *Union of India Vs. M.K. Sarkar* (supra) where the Hon'ble Supreme Court has clearly laid down 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."

Besides, in an identically placed case i.e. *Mrs. Manorama Bhatnagar* (supra), this Tribunal has held as under:-

> *"12. It is not the case of the applicant that they were promoted to the post of Principal or appointed on officiating basis to that post by the Appointing Authority and had the right to the higher pay scale on the basis of their promotion either on ad hoc or regular or officiating basis. Nor did the stop gap orders declaring them as Heads of School were made by the appointing authority, conferring on them the position of Principal. Neither is it their case that their juniors have been given this promotion to the exclusion of their rightful claim for the promotional post. They are seeking this benefit only on the strength of discharging the duty of the Head of the School/ Head of the Office although their substantive capacity was that of Vice-Principal. In the peculiar facts and circumstances of the case, if such claims will be maintained long after the original cause of action had arisen, it would open a Pandora's box for similar claims to be made by many others. Further, the possibility of seniors raising claim of equal pay cannot be ruled out if the claims of junior employees are allowed after lapse of so many years without examining the issue of limitation.*
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> *12. In view of the foregoing discussion, we feel that the claims suffer from delay and laches and the application for condonation of delay cannot be allowed in the absence of satisfactory explanation why the applicants did not raise the claim at the appropriate time. In the circumstances, the O.A. is dismissed on the ground of limitation. No costs."*

This is further backed by the decisions in *State of Punjab Vs. Gurdev Singh* [1991 (4) SCC 1]; *Union of India Vs. Ratan Chandra Samanta* [JT 1993 (3) SC 418]; *Harish Uppal Vs. Union of India* [JT 1994 (3) 126] and *Ajay Walia Vs. State of Haryana & Ors.* [JT 1997 (6) SC 592].

10. In *D.C.S. Negi Vs. Union of India & Ors. (*supra), the Hon'ble Supreme Court has put an embargo upon the Tribunals that no OA can be admitted unless the question of limitation is sorted out. The relevant portion of the decision is being extracted as under:-

> *"A reading of the plain language of the above reproduced section 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. Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is in 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 present case, the Tribunal, entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.

A copy of this order be sent to the Registrar of the Principal Bench of the Tribunal, who shall place the same before the Chairman of the Tribunal for appropriate orders."

11. There is another angle from which the entire case can be approached. Section 21 of the Administrative Tribunals Act, 1985 provides for limitation. It is an admitted position that the Act *ibid* is a specialized legislation meant for a particular purpose. It is also admitted position that where such provisions have been made, the applications will be governed by Section 21 of the Act and not by general provisions relating to limitation as has been held in [*Ramesh Chand Sharma V/s. Udham Singh Mamal & Ors.* [1999 (8) SCC 304] relevant portion whereof is being extracted hereunder:-

"6. Learned Counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2nd July, 1991, he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2nd July, 1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum-

Legal Assistant went on deputation in March, 1990 by keeping a lien on the said post. This respondent was under a bona fide belief that until the lien comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file O.A. at an early date. If there be any delay, the same may be condoned.

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 Secton 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."

12. I have also taken note of the fact that the PCG has also considered and rejected the claim of the applicant. I am, however, not influenced by the same as that relates to a different proceeding while the instant OA is being filed under AT Act.

13. From the points discussed above, I am of the considered opinion that the applicant's case is barred by laches of limitation and it has not been cured even by the application filed for condonation of delay, which is vague and does not make out specific any compelling reasons on account of which the application should be allowed. I am also aware of the fact that if the Tribunal entertains such an application, there would be no end to litigation and a large number of buried cases would be unearthed and brought

before this Tribunal. It is not that one hesitates to deal with such cases but the prime issue is that there should be finality to the litigation and the cases which have died out of posit of time should not be brought back to life.

14. With the above observations, the instant OA stands dismissed being barred by limitation. The other issues are left open. There shall be no order as to costs.

(Dr. B.K. Sinha)
Member (A)

/AhujA/